

(2006) 11 KAR CK 0108

Karnataka High Court

Case No: Regular First Appeal No 705 of 2001

Borawwa Guggari and
Kumar Vittal Minor,
Rep. By his Next
Friend and Natural
Guardian and Mother
Borawwa Guggari

APPELLANT

Vs

The Karnataka Power
Transmission
Corporation Ltd.
(Formerly K.E.B.) and
Others

RESPONDENT

Date of Decision: Nov. 22, 2006

Citation: (2007) 1 KCCR 645

Hon'ble Judges: D.V. Shylendra Kumar, J

Bench: Single Bench

Advocate: S. Suseela and Vighneshwar S. Shastri, for the Appellant; Rudra Gowda, for R-2 and 3, for the Respondent

Final Decision: Allowed

Judgement

D.V. Shylendra Kumar, J.

Appeal by the disappointed plaintiffs in OS No. 23 of 1992, on the file of Civil Judge (Sr Dn), Gokak, whose suit for compensation by way of damages for the death of their breadwinner - the husband of the first plaintiff and the father of the second plaintiff, for a sum of Rs 3.00 lakh with interest etc., came to be dismissed under the impugned judgment and decree dated 16-2-2000 rendered in the said suit.

2. The appeal is filed contending that the trial court has non-suited the plaintiffs without applying the relevant law and in a proper manner; that while the material placed on behalf of the plaintiffs has not been properly considered or evaluated by

the learned trial judge, the version of the defendants has been accepted without any justification; that the finding recorded in the suit is contrary to the material on record and the evidence placed before the court by the plaintiffs; that the delay in approaching the court for seeking damages as against the defendants disentitles the plaintiffs any relief is a reasoning which is not tenable in law, particularly after the learned judge found that the suit was within the period of limitation; that the denial of relief to the plaintiffs for the reason that their breadwinner indulged in unauthorized act of drawing low tension wires disentitled them from any compensation is not based on any legal principle; that the judgment and decree dismissing the suit is not tenable, the appeal is to be allowed, the judgment under appeal is set aside and the suit decreed as prayed for.

3. Brief facts leading to the suit and the appeal are that the first plaintiff is the wife and the second plaintiff, who was aged about three years at the time of filing the suit, is the son of one Mallappa Buggari; that the said Mallappa Buggari died due to an accident that took place on 16-12-1989 at 12.00 hours in the field of father of first plaintiff at Matur village, Raibaug taluk of Belgaum district, while in the process of the electrical lines and wires were being drawn on the poles erected by the respondent-board for such purpose; that one of the poles which had been loosely planted gave way and fell off dragging wire along with, which fell on the other high tension live wire and the live wire came in contact with the wire that was being drawn by the husband of first plaintiff and other people, electrocuting them and due to the shock while the husband of the first plaintiff died, the other persons who were engaged in the work suffered injuries of varying degrees; that if there should have been proper care and caution on the part of the employees of the first respondent-board, the accident of an accidental falling to earth in the process of dragging a power line resulting in the electrocution of any persons and the consequential death of the husband of the first plaintiff would not have taken place; that the defendants are bound to compensate the loss suffered by the plaintiffs due to the death of their breadwinner; that the husband of the first plaintiff was earning a minimum of Rs 50/- per day by way of wages working as agricultural coolie; that the defendants 4 and 5 are parents of the deceased; that the deceased was aged 26 years, hale and healthy and could have lived for not less than 65 years of age and the untimely death of the husband of the first plaintiff and father of second plaintiff caused them untold misery, hardship and also loss of their support, prospects of the plaintiffs; that the plaintiffs are entitled to claim damages to a sum of Rs 3.00 lakh, which is inclusive of loss of support, present and future maintenance, loss to the estate, loss of consortium to first plaintiff and deprivation of love and affection to the second plaintiff and therefore the plaintiffs are entitled to the said sum with interest from the date of suit till payment.

4. Defendants entered appearance and filed written statement. While all the plaintiff averments were denied in general, it was also pleaded that the accident if at all was due to the voluntary act on the part of the husband of the first plaintiff and the

father of the husband of the first plaintiff in whose land her husband was working at that time; that they had in turn committed some unauthorized acts of drawing power lines; that they had ventured into such exercise even without permission or authorization on the part of the defendants; that either the accident or any injury and consequential death of the husband of the first plaintiff cannot be attributed to any negligent act on the part of the first defendant or its officers; that the defendants have never received any intimation of any such accident having taken place from either the plaintiffs or any one else on their behalf; that the deceased had obviously indulged in illegal act of providing electrical supply to the owner of the land without the knowledge of the defendants and therefore there is no liability on the part of the defendants to compensate the plaintiffs, assuming that said Mallappa Guggari died due to electrocution. With regard to the income and the prospects of the deceased person, the defendants contended that the plaintiffs are put to strict proof of the same and such pleadings were denied by the defendants. The suit was also contended to be a frivolous one and filed beyond the period of limitation and accordingly, the defendants have pleaded for dismissal of the suit with compensatory cost of Rs 3,000/- in their favour.

5. In the light of such rival pleas, the learned trial judge has framed the following issues:

1. Whether the plaintiffs prove that on 16-12-1989 at 12.30 pm, the employees of the defendants No 1 to 3 were laying electricity supply line at Mantur?

2. Whether the plaintiffs prove that Mallappa sustained high voltage electric shock due to rash or negligent acts on the part of the employees of the defendants 1 to 3 while laying the supply line?

3. Whether the plaintiffs prove that the defendants No 2 to 3 are liable to pay them general and special damages to the extent of Rs 3, 00, 000/-?

4. Whether the defendants No 1 to 3 prove that Mallappa sustained electric shock due to his illegal acts?

5. Whether the suit is barred by limitation?

6. Whether the defendants No 1 to 3 are entitled to compensatory costs of Rs 3,000/-?

7. To what reliefs, if any, are the plaintiffs entitled

6. Parties led evidence in support of their cases on the issues as framed. On behalf of the plaintiffs, apart from first plaintiff, five other witnesses including some of those who had suffered injuries at the time of the accident as also the owner of the land namely Bhimappa Balappa Hanji were examined as PWs 1 to 5. Documentary evidence adduced on behalf of the plaintiffs are Ex P1 copy of the complaint and first information report registered at the jurisdictional police; ExP2 a copy of the inquest

panchanama and the report of unnatural death and ExP3 post mortem report. On behalf of the defendants, two assistant executive engineers of the Board were examined as DWs 1 and 2 and got marked Ex DI to 11, prominent amongst them ExD8 and 9 -store invoices to indicate that some of the essential equipment for drawing power fine was not available with the defendant-board, ExD10 log book, ExD11 muster roll, for the purpose of showing that one Dasti was an employee of the Board, who was absent on the day of accident in question and that he had not been deputed for any work on behalf of the respondent-board as has been pleaded by the plaintiff.

7. The learned trial judge on appreciation of the evidence adduced by the parties, answered the first issue in the negative, holding that the plaintiffs have not able to prove the liability of the defendants 1 to 3 to pay damages due the death of husband of first plaintiff and on the contrary held that the defendants 1 to 3 were successfully proved that the deceased Mallappa did not die due to any negligence on their part but only due to his illegal acts and though the suit as filed on 17-12-2001 was just on the last day of the limitation, excluding the preceding Sunday due to closure of court, the suit was nevertheless was liable to be dismissed on merits and accordingly dismissed the suit.

8. I have heard Ms S. Susheela, learned Counsel for the appellants-plaintiffs and Sri Rudra Gowda, learned Counsel for the defendant-board.

9. What is principally urged on behalf of the appellants is that when once the factum of accident involving material and property of the first defendant-board is established, and it is also established that the death of the husband of the first plaintiff had taken place due to electric shock that he received while in the course of helping his father-in-law and other workers in the field and death of the husband of the first plaintiff having been established to be due to such factum of the electric shock, the dependents of such victim have to be compensated irrespective of any act of negligence being attributed to the defendant or not. In this regard the learned Counsel submits that the learned trial judge has not approached the entire issue and applied the relevant law, but has gone by the general principle that it is only the plaintiff who should prove the negligence on the part of the defendants; that such reasoning does not hold good in the case of strict liability, which is the nature liability on the part of the defendants in the present situation, particularly when the defendants are persons who provide electric supply through the apparatus set up by them; that there is every possibility of public coming into contact with such equipment and apparatus of the defendants; that if any person succumbed to such injuries being exposed to the apparatus and equipment of the defendants-board, the defendant-board is liable in law, irrespective of there being any act of negligence on their part or even assuming that the defendants are able to plead and prove that they had taken reasonable care and acted with sufficient precaution with regard to third persons or victims of any such accident involving the

equipment/material of the board, the board is nevertheless liable to compensate such persons by applying the principles of strict liability and therefore the learned trial judge has misdirected himself in law and dismissed the suit. In this regard, the learned Counsel for the appellants has relied upon the following decisions:

1. [Mothukuri Bheemavva and Others Vs. Andhra Pradesh State Electricity Board and Another, ;](#)
2. A.S. Zingthan v. State of Mawpur 1999 ACJ 904; and
3. [Madhya Pradesh Electricity Board Vs. Shail Kumari and Others,](#)

particularly relying on the decision of the Supreme Court in the case of [Madhya Pradesh Electricity Board Vs. Shail Kumari and Others,](#) it is submitted that the Supreme Court having held that in cases of such nature where the defendants like the electricity boards which are managing such equipment and engaged in hazardous or dangerous activity and cause harm to any one on account of its operation, the board is strictly and absolutely liable to compensate the affected person when such liability is not subject to any exception of the principles of strict proof and submits that if this principle of law is applied, the suit of the plaintiffs should have been decreed without anything more.

10. Countering such submissions, Sri Rudra Gowda, learned Counsel for the respondent-board submits that the suit has been rightly dismissed; that the plaintiffs were unable to establish any negligence on the part of the defendants as had been pleaded in the plaint; that moreover, the accident, assuming that it had taken place and had resulted in the death of the husband of the first plaintiff, it was due to the illegal act on the part of such person who tried to draw power unauthorizedly from the main line, which by itself was an offence and if the person had died in the course of such illegal activity and particularly when it had been established on the part of the defendants that the defendants had not authorized either the officials of the Board or even any other private persons to effect the work of drawing power line on the poles erected by the board, there is no question of plaintiffs claim any compensation from the defendants and the suit has been rightly dismissed and no interference is called for.

11. Learned Counsel for the respondent-board submits that the plaintiffs-appellants having not apprised the board of any such event or occurrence and not having put forth any claim with the defendant-board, are not entitled to come up with a suit of this nature; that obviously the claim is not a genuine claim; that it was only an effort on the part of the father of the first plaintiff to provide some help or sustenance to his daughter and grandson; that the claim was not with any merit; that it also appears to be more a simulated one at the behest of the PW4 and the learned trial judge having noticed this has rightly dismissed the suit and there is no need or justification to interfere with such findings.

12. However, Sri Rudra Gowda, learned Counsel for the respondent-board has very graciously submitted that apart from the question of negligence and liability on the part of the officials of the board, for the past two years the board has been providing compensation to victims of such fatal accidents involving the electricity supply company's apparatus granting a sum of Rs 1.00 lakh and if a representation were to be given to the board,. perhaps the board would have considered such representation for grant of such compensation and it is even now possible to give a representation to the board and the board will consider the same and provide compensation to the appellants also, as had been done in other cases.

13. I have bestowed my thoughtful attention to the thoughtful submissions at the Bar, perused the records and examined the legal position.

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14. In the light of the rival plea and evidence on record, it is a matter beyond controversy that the accident took place on 16-12-1989; that the husband of the first plaintiff died in the accident due to electrocution and this is clear on perusal of ExP1 to 3. While the version of the plaintiffs was that the accident took place even in the presence of the officials of the defendant-board and while drawing power line to the land of PW4, the version of the defendant-board was that the defendant-board having not authorized to draw up power line on that day either by any officials of the board or by any private persons on behalf of the board, if at all the accident has taken place it must have been due to the illegal act on the part of the victim in trying to draw power from the main line unauthorizedly and therefore received shock in that process etc.

15. Assuming for arguments" sake that there was no administrative negligence on the part of the defendants 1 to 3 either for the accident or for the consequential death of the husband of the first plaintiff, does it disentitle the plaintiffs from claiming any damages is the question. This question is being answered against the plaintiffs by the learned trial judge and dismissed the suit.

16. But if one should apply the law as evolved in the perusal of the decisions cited on behalf of the appellants by their learned Counsel, particularly in the light of the law laid down by the Supreme court in [Madhya Pradesh Electricity Board Vs. Shail Kumari and Others](#), , it becomes obvious that even in terms of the Fatal Accidents Act, 1855 and on the principles of law of strict liability, once the death is attributed to be in the context of the functioning of the first defendant-board, the principle is attracted and the victim and the dependents will have to be compensated by the first defendant board, which is engaged in a hazardous and endangering activity.

17. Though there is some confusion as to how the power supply in the high tension wire should have flowed into the line which was being tried to be drawn by the victim and his father-in-law PW4, and which was a dead wire, and therefore got charged etc., resulting in shock to the deceased, it is a fact that the power for

administering electric shock was one that was either in the main line of the board or flowing in the high tension wire, also belonging to the board. Whether there was any negligence or not on the part of the officials of the board, the fact of death being attributable to electric shock which the deceased received is not in dispute. If that is so, applying similarity to the principles of strict liability laid down in the said decision, the board is bound to compensate the plaintiffs.

18. That leaves the question of quantum. The plaintiffs claimed that the deceased was earning a wage of Rs. 50/-per day as agricultural labourer i.e. Rs 1,500/- per month and the life expectancy is 65 years, while the victim was 25 years at the time of his death and except for the plaintiffs and the defendants 4 and 5, there were no other dependents.

19. Though it is contended by Sri Rudra Gowda, learned Counsel for the defendant-board that the wages during the year 1989 were not as much as Rs 50/- per day, it should be taken only as Rs 30/- per day, on the other hand, it is the submission of the learned Counsel for the plaintiffs-appellants is that even as per the Minimum Wages Act, such amount was being paid to agricultural labourers during that time and as there was prospects of higher earning over a period of time, the average monthly income can be safely taken to be at Rs 1,500/- per month and the dependents may get one-third thereof allowing one-third to the deceased. If so determined, the dependency will be Rs 1,000/- per month or Rs 12,000/- per annum. Having regard to the age of the victim and the dependents, the multiplier can be safely taken as 17 for calculating the loss of future earning. If so, the total loss of dependency would be $\text{Rs } 12,000 \times 17 = \text{Rs } 2,04,000/-$. Learned Counsel for the appellants also submits that for loss of consortium a sum of Rs 10,000/- is to be awarded, a sum of Rs 5,000/- may be granted for funeral expenses and towards love and affection to the second plaintiff, a sum of Rs 10,000/- may also be granted. Learned Counsel also submits that the amount is payable from the date of accident and as the amount has not been paid, will have to be paid with interest as is normally done in such cases arising under the Motor Vehicles Act.

20. I think it is just to direct the defendants to pay this amount with interest at the rate of 6% p.a. from the date of accident till payment.

21. In the result, this appeal is allowed and the judgment and decree impugned is set aside. The suit of the plaintiffs is decreed in part, awarding damages in favour of the plaintiffs in a sum of Rs 2, 29,000/- (Rupees two lakh twenty-nine thousand only] as compensation with interest at the rate of 6% p.a. from the date of accident till payment.

22. The entitlement for apportionment will be as submitted by the learned Counsel for the appellant amongst the plaintiffs and defendant No 5 - mother of the deceased - as all these three persons are class-I heirs as per the provisions of the Hindu Succession Act. The compensation is to be apportioned equally at one-third in

favour of plaintiffs 1 and 2 and fifth defendant.

23. The share of the second plaintiff with interest to be kept in a term deposit in any nationalized bank for a period of three years. In so far as the amounts of the first plaintiff and the fifth defendant are concerned, while interest portion may be released in their favour, the principal amount be deposited in a term deposit in any nationalized bank for a period of three years.

24. The trial court to ensure such deposit is made before releasing the payment. The first defendant-board should deposit such amount before the trial court within a period of eight weeks from today, failing which necessary action may be taken in accordance with law. The plaintiffs having succeeded, the appeal is allowed with costs throughout.