
(2014) 02 KL CK 0156

High Court Of Kerala

Case No: R.F.A. Nos. 616 of 2004 and 477 of 2013

Santha

APPELLANT

Vs

Kerala State Electricity
Board

RESPONDENT

Date of Decision: Feb. 21, 2014

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 33 Rule 11, Order 33 Rule 33
- Constitution of India, 1950 - Article 39A
- Evidence Act, 1872 - Section 114

Citation: (2014) ACJ 2168 : (2014) 2 AnWR 932 : (2014) 1 KHC 723 : (2014) 1 KLJ 833 : (2014) 1 KLT 1038

Hon'ble Judges: T.B. Radhakrishnan, J; A. Muhamed Mustaque, J

Bench: Division Bench

Advocate: M.C. Gopi, Advocate for the Appellant; P. Santhalingam, Sr. Advocate and S. Sharan, Advocate for the Respondent

Judgement

A. Muhamed Mustaque, J.

Sivaraman was a ticket checker in a bus. On 11.10.1998, when the bus reached a stop at Pulikkakadavu, a broken electric line was lying across the road, seeing it as an obstruction Sivaraman alighted from the bus and tried to clear the way for his bus by removing the electric line. According to the version of the defendant-Kerala State Electricity Board (hereinafter referred to as, the "Board"), line was snapped due to the fall of cadjan leaves from a coconut tree standing in the property of St. Clara Homes. Sivaraman came into contact with the live wire while attempting to remove the same and consequently became the victim. P.W. 3 a passenger in the bus testifies that Sivaraman's attempt was only to remove the obstruction. On the facts of the case, it appears that there is no much dispute on the incident or cause of death. The suit was filed by the widow and minor children of deceased Sivaraman. The trial court declined full compensation based on contributory negligence of Sivaraman. The Board maintains the

stand that it is on account of negligence of Sivaraman the incident occurred and, therefore, they pray that they may be exonerated from any liability. Challenging the decree and judgment, the plaintiffs filed R.F.A. No. 616/04. The defendants also filed an appeal aggrieved by the decree awarding compensation, before the District Court, Trichur. This Court, as per the order on I.A. No. 4471/2009 dated 21.12.2009 in R.F.A. No. 616/2004 withdrew the above appeal and transferred to this Court to be heard along with the appeal filed by the plaintiffs. Heard learned counsel for both the parties.

2. In these appeals we are called upon to decide a novel question on comparative negligence. The court below termed the act on the part of deceased Sivaraman as contributory negligence. Contributory negligence proceeds from the injured person's actual awareness of risk and failure to take precautions for his own safety. Learned counsel for the plaintiffs argues, with reference to R. 91 of the Indian Electricity Rules, 1956 (for short, the "Rules") that electricity is hazardous and dangerous substance and, breach of mandatory statutory provision like R. 91 of the Rules entails in absolute liability of the defendants and no plea of defence is available to exonerate from the said liability. R. 91 of the Rules enjoins on the Board duty to ensure safety and protective measures, in case overhead line breaks. R. 91 provides as follows:

Safety and protective devices.--(1) Every overhead line (not being suspended from a dead bearer wire not being covered with insulating material and not being a trolley-wire) erected over any part of a street or other public place or in any factory or mine or on any consumer's premises shall be protected with a device approved by the Inspector for rendering the line electrically harmless in case it breaks.

Learned counsel further submits that R. 91 of the Rules being mandatory in nature and, on its breach, the Board is absolutely liable, as the Board should have ensured with protective device to render overhead line harmless when it broke. In law difference between absolute liability and strict liability lies on defence available to the defendants. "In case of strict liability, what is brought on the land is not inherently dangerous like water. Therefore, defence of Act of God, sabotage and plaintiff's negligence could be pleaded. In case of absolute liability, what is brought on the land is inherently dangerous, and in such case no defence at all allowed" (see Ramaswamy Iyer's "The Law of Torts" by Lakshminath 10th Edition Pg. 766). In [M.C. Mehta and another Vs. Union of India and others](#), the Hon"ble Supreme Court had occasion to deal with the concept of absolute liability of an enterprise engaged in hazardous industry and in para. 31 it was held as follows:

... an enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas owes an absolute and non delegable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous nature of the activity which it has undertaken. The enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous

activity in which it is engaged must be conducted with the highest standards of safety and if any harm results on account of such activity, the enterprise must be absolutely liable to compensate for such harm and it should be no answer to the enterprise to say that it had taken all reasonable care and that the harm occurred without any negligence on its part.....

(emphasis supplied)

Electricity is a dangerous substance, as held by the Hon"ble Supreme Court in [Madhya Pradesh Electricity Board Vs. Shail Kumari and Others](#), while relying on the principles of "strict liability" to cast liability on M.P. Electricity Board in a case awarding compensation to the victim of a snap electrocution. However, we find that merely because electricity is being called as dangerous substance, absolute liability is not fastened on the defendant on account of accident involving electricity. What essentially makes a difference for casting absolute liability is escape of dangerous thing from the control of owner and directly result in accidents. We view that causation directly from the dangerous substance would alone qualify for imposing "absolute liability" on the defendants. In other words, nature of liability would be "strict", if accidents are indirectly resulting from the dangerous things, with defence open to the defendants as propounded in Rylands v. Fletcher (1868 LR3 HL. 330). Blackburn J. illustrated certain exceptions to the principle of strict liability in Rylands v. Fletcher (supra). They come under the heads viz., "Act of God", "Default of the plaintiff", "Consent of the plaintiff", "Independent act of the third party" and "Statutory Authority". It is not necessary to prove any negligence or breach of duty in a claim based on absolute or strict liability. The Hon"ble Supreme Court in [Union of India \(UOI\) Vs. Prabhakaran Vijaya Kumar and Others](#), held as follows:

22. Strict liability focuses on the nature of the defendants' activity rather than, as in negligence, the way in which it is carried on (vide Torts by Michael Jones, 4th Edn. p. 247). There are many activities which are so hazardous that they may constitute a danger to the person or property of another. The principle of strict liability states that the undertakers of these activities have to compensate for the damage caused by them irrespective of any fault on their part. As Fleming says "permission to conduct such activity is in effect made conditional on its absorbing the cost of the accidents it causes, as an appropriate item of its overheads" (see Fleming on "Torts" 6th Edn. p. 302).

23. Thus, in cases where the principle of strict liability applies, the defendant has to pay damages for injury caused to the plaintiff, even though the defendant may not have been at any fault.

24. The basis of the doctrine of strict liability is two fold: (i) The people who engage in particularly hazardous activities should bear the burden of the risk of damage that their activities generate and (ii) it operates as a loss distribution mechanism, the person who does such hazardous activity (usually a corporation) being in the best position to spread the loss via insurance and higher prices for its products (vide "Torts" by Michael Jones

4th Edn. p. 267).

3. The case of the Board is that line broke due to fall of cadjan leaves from the coconut tree standing in the property of St. Clara Home. The court below did not reject this version of defendants. The court below also accepted the contention of the defendants that deceased Sivaraman had contributed to his death by contacting live wire recklessly. Therefore, the question is whether this case falls under exceptions vis-a-vis "act of stranger" (independent act of third party) or under "default of the plaintiff".

4. Electricity being a dangerous substance, the Rules provides safety measures through various provisions. These provisions are intended to protect and to ensure human safety in case of accidents and other natural calamities. R. 91 of the above Rules provides for measures to be taken for rendering overhead line harmless in case it breaks. When such measures are not taken by the Board, it cannot take shelter to save from the liability by attributing it as "acts of third party".

5. In M.P. Electricity Board"s case (supra) it was observed by Supreme Court at paragraph 7 as follows:

...at any rate, if any live wire got snapped and fell on the public road, the electric current thereon should automatically have been disrupted...

(emphasis supplied).

It was further held at paragraph 13 that "In the present case, the board made an endeavour to rely on the exception to the rule of strict liability (Ryland v. Fletcher) being "an act of stranger". The said exception is not available to the board as the act attributed to the third respondent, should reasonably have been anticipated or at any rate, its consequences should have been prevented by the appellant-board..." If accident breaks out of a dangerous thing, owner is liable even without proof of negligence though cause of such accident is attributable as an act of stranger. "Even where the damage has been caused by the act of a third party, the owner of the dangerous thing is liable if there has been negligence on his part. Negligence, in this context, means that the act of stranger is one which the owner ought reasonably to have foreseen and guarded against but had failed to do so." (see page 863 Charles worth and Percy on Negligence 7th edition). In the light of law as above, fall of cadjan leaves from third party"s property will not save the Board from liability as the Board should have foreseen such harm and ensured protection under R. 91 of the Rules to render line harmless. R. 91 provides a statutory duty on the Board, it intends to protect third party on break of line. Sivaraman, therefore, in ordinary course of human conduct could only have presumed that Board had carried its statutory duty. Therefore Board cannot take advantage of its own breach as against such third person when it failed to perform duty imposed on it under R. 91. "Once it proved that the statutory duty has not been performed, it becomes actionable without having to prove any lack of care or diligence on the part of the person on duty imposed. The mere non

performance of the act, which the statute requires a person to perform, is itself negligence on the part of that person" (see pages 779-780 Charlesworth and Percy on Negligence 7th edition).

6. Next question then arises is whether the act on the part of deceased Sivaraman amounts to contributory negligence to fall under the exceptions in *Rylands v. Fletcher* (supra). The court below accepted Board's contention of wilful negligence on the part of Sivaraman and reduced compensation amount awarded, by fifty percent. Contributory negligence in this context means Sivaraman's failure to take reasonable care for him. We have already observed in the foregoing paragraph that deceased Sivaraman is legally entitled to presume that electric line remained harmless when it broke and fell on the road. We are also persuaded by yet another reason to conclude that the act on the part of Sivaraman will not come under wilful negligence. It is human nature to remove obstruction which he sees as hindrance to him and others, in that he, is not pervaded by selfishness but as duty owed as rational being to help others. Austin claimed that there was also a class of absolute duties to which no corresponding rights attached and one of such duty is "duties owed to persons indefinitely (e.g. towards the community)" (see pages 294-295, A Text Book of Jurisprudence by G.W. Paton 4th edition). Indian society by culture has prosocial concern, beneficence and altruistic outlook. Therefore any aid at the time of distress is reflective of such culture. S. 114 of Evidence Act enables the court to presume existence of such human conduct being natural event in human relationship as duty to others. We see Sivaraman's attempt was an impulsive urge in normal nature of human conduct to remove obstruction, who would have expected broken line remained harmless, P.W.3 who is the only eye witness to the incident affirms that broken line was lying on the road as obstruction to the bus. This affirmation has not been controverted by the Board. We see the act of removal is a natural human conduct and during the course of such act, if any loss is ensued, the person who is responsible for creating such situation is alone liable. We see acceptance of principles akin to this in other jurisdictions by relying on Doctrine of rescue. The rescue principle holds that, where a defendant has created a situation of peril for a victim, the defendant will be liable to the rescuer of the victim for any injury he may incur in the rescue. This doctrine was originally created in case law by *Wagner v. International Railway* (232 N.Y. 176(1926)), by Justice Cardozo. In *Wagner's* case, the plaintiff was seriously injured in an attempt to rescue his cousin who had been thrown from a moving train as a result of the defendant railway company's negligence. Therein, the court rejected the railway's arguments that: (1) the plaintiff's rescue attempt of his cousin was outside the causation chain; and (2) the plaintiff's rescue attempt was a "wanton exposure to a danger that was useless" and was thus contributorily negligent. In a frequently quoted passage, Justice Cardozo wrote:

Danger invites rescue. The cry of distress is the summons to relief. The law does not ignore these reactions of the mind in tracing conduct to its consequences. It recognizes them as normal. It places their efforts within the range of the natural and probable. The wrong that imperils life is a wrong to the imperiled victim; it is a wrong also to his rescuer.

Going by the above principle, what Sivaraman exhibited was a human conduct in its natural course, and that cannot be held to his peril and to the advantage of the offender-the Board. Therefore, we hold that the act of removal of broken line by deceased Sivaraman cannot be termed as an act of contributory negligence. Thus, the legal heirs of deceased Sivaraman are entitled for full compensation.

7. Onto the question of compensation, the trial court found that by applying principles of multiplier attached to the Motor Vehicles Act, plaintiffs are entitled to compensation of Rs. 3,60,000/- towards loss of dependency. However plaintiffs having limited compensation to Rs. 2 lakhs for loss of dependency in the plaint, the court below awarded compensation for loss of dependency at Rs. 2 lakhs. We find the calculation of loss of dependency by the court below is by reckoning correct multiplier and multiplicand. In this appeal also plaintiffs have calculated compensation based on the reliefs made before the court below. We notice that plaintiffs sued as indigent for want of means to pay the court fee. The court below and this Court in the appeal found that plea of indigency are bona fide and allowed plaintiffs to sue as indigent. Question posed before us, whether plaintiffs should be deprived of rightful compensation for want of necessary payment of court fee. Access to justice is one of the professed norms under Article 39A of the Constitution of India. If a person is deprived of rightful compensation for want of sufficient means to pay court fee, it amounts to violation of Article 39A of the Constitution of India as held by Supreme Court in [Manoharan Vs. Sivarajan and Others](#), . Supreme Court also in [Bhag Singh and Others Vs. Union Territory of Chandigarh through the land acquisition collector, Chandigarh](#), and in [Chandrashekhar and Others Vs. Additional Special Land Acquisition Officer](#), held that, though in land acquisition matters, benefit of rightful claim of the claimant for compensation cannot be defeated on technical ground of "want of requisite court fee".

8. We have also another reason to award full compensation without court fee being paid by the plaintiff for the same. Division Bench of this Court in [Joseph Vs. Kerala State Electricity Board](#), held that amendment brought to O.XXXIII R. 11 of the CPC by Notification No. D1 (A)-43450/86 dated 13th January, 1999 published in Kerala Gazette dated 27th April, 1999 enables the Court to exercise its discretion as to whether an indigent person should be exempted from payment of court fees in all circumstances of the case. We are of the opinion that the appellant-plaintiffs are entitled to exemption from payment of court fee in this appeal and in the court below. The first appellant is a widow and remaining appellants were minor at the time of institution of the suit. It is found by the court below and in enquiry conducted for the purpose of exemption of court fee under O. XXXIII that the appellants have no income of their own.

9. Thus, we find plaintiffs are entitled for full compensation of Rs. 3,60,000/- on loss of dependency. The court below calculated compensation of Rs. 33,500/- on other heads such as compensation for transportation, funeral expenses, pain and sufferings, towards loss of the estate and towards shock in anxiety. We find award of Rs. 33,500/- is moderate and reasonable. Thus we find plaintiffs are entitled to total compensation of Rs. 3,93,500/-.

In the result, decree and judgment is passed as follows:

- i. Appellants-plaintiffs are awarded a compensation of Rs. 3,93,500/- together with interest at 6% from 11.10.1998 till date of realisation.
- ii. Appeal filed by the defendant Board is dismissed.
- iii. The respondent-defendant is given three months time to pay the amount.
- iv. Any amount paid including ex-gratia will be duly adjusted against the principle amount.
- v. The plaintiffs are exempted from payment of court fee in this appeal and in the court below.
- vi. No costs.