

**HEADING OF DECISION IN CIVIL SUITS
IN THE COURT OF 1st ADDL.SENIOR CIVIL JUDGE, BHUBANESWAR**

***Present :- Pranab Kumar Routray, LL.M,
1st Addl. Senior Civil Judge,
Bhubaneswar.***

C.S.117/962 of 2011/2009

1. Jamuna Das, aged about 30 years,
W/o. Late Ranjan Kumar Das
2. Ritanjali Das, aged about 11 years,
D/o. Late Ranjan Kumar Das,
3. Rashmikanta Das, aged about 9 years,
S/o. Late Ranjan Kumar Das,
4. Rabindra Das, aged about 7 years,
S/o. Late Ranjan Kumar Das,
5. Rajendra Das, aged about 5 years,
S/o. Late Ranjan Kumar Das,
6. Jayant Das, aged about 2 years,
S/o. Late Ranjan Kumar Das.

Sl. Nos.2 to 6 being minors are represented through their mother guardian namely Jamuna Das. All are of Vill: Gupti, P.S.: Rajnagar, Dist.Kendrapada, At present At: Kalpana Square, Bhubaneswar, Dist: Khurda

... **Plaintiffs**

-Versus-

1. The Chief Executive Officer, CESU,
IDCO Tower, 2nd floor, Janpath, Bhubaneswar.
2. The Executive Engineer, CESU,
Electrical Division, Kendrapada,
At/P.O./Dist: Kendrapada
3. The Sub-Divisional Officer, CESU,
Rajnagar Electrical Sub-Division,
At/PO: Rajnagar, Dist.: Kendrapada.
4. The Junior Manager CESU,
Rajnagar Section, At/P.O.Rajnagar, Dist.Kendrapada.

... **Defendants**

COUNSEL APPEARED

For Plaintiffs : Sri S.K. Panda and associates
For Defendants : Sri S.C. Dash and associates

Date Of Conclusion Of Argument : **07-03-2015**

Date Of Judgment : **12-03-2015**

J U D G M E N T

The plaintiffs are the legal heirs of deceased Ranjan Kumar Das have filed the suit claiming compensation of Rs.5,00,000/- with interest arising out of death of the said deceased due to electrocution and with cost.

2. The case of the plaintiffs in brief is as follows:-

That on 24-06-2007 about 9 A.M. while the deceased alongwith one Haripada Hauli were proceeding on foot towards village Singidapal, on the way, near village Debendra Narayanpur between Rajnagar-Gupti R& B road, they were suddenly electrocuted by one 11 KV electric live wire which was hanging in low height of 2 to 3 feet from ground. Both of them sustained grievous burn injury. They were shifted to nearby hospital for preliminary treatment and they were referred to SCB Medical College, Cuttack for better treatment. But despite of all the treatments the deceased succumbed to the said injuries on the next date i.e. on 25-06-2007 while undergoing treatment. On the date of this accident, plaintiff no.1, wife of the deceased has reported about the

incident before the nearest police station at Rajnagar but no action was taken by the said police. On the death of the deceased at SCB Medical College at Cuttack, Mangalabag Police has registered one unnatural death case vide no.609 dtd.25-06-2007 on the information of doctor. It is averred that this accident happened due to non maintenance of overhead line at periodical interval and due to negligence of the defendants and therefore they are tortuously liable for the incident. The plaintiffs had preferred a writ application vide W.P.(c) no.7453 of 2008 before the Hon'ble High Court of Orissa for grant of compensation which was disposed on 16-02-2009 with a direction to move the opposite parties/defendants and to request the defendants to grant adequate compensation with further direction to the defendants that if such a representation is filed they should consider the same on its merit and take a liberal view and dispose the same within a period three months. Prior to filing of the writ petition, the plaintiffs had given a pleader's notice on 08-12-2007 to the defendants and again plaintiff no.1 herself requested the defendants on 06-04-2009 through registered post alongwith order dtd.16-02-2009 of Hon'ble High Court for compensation but the defendants have not granted any amount of compensation. Regarding monetary loss caused to the plaintiffs, it is pleaded that the family members of the deceased have spent a sum of Rs.50,000/- towards medical treatment of the deceased and for funeral ceremony. The deceased was a strong and energetic man of 32 years of age and was the sole earning member of the family. He was working as helper in a tractor and

was earning a sum of Rs.4000/- and was contributing major share of income for the family. His death put the plaintiffs on starvation. Had this accident not happened he would have become a driver in future and would have earned much more than the amount he was earning. Hence, the plaintiffs approached this Court by filing suit claiming compensation of Rs.5,00,000/- with interest from the defendants with cost.

3. The defendants have filed a written statement challenging the suit on its maintainability, cause of action, limitation, non-joinder and mis-joinder of parties, jurisdiction of this Court and also on the ground that there was no fault or negligence of any kind attributed to the alleged occurrence by any of the defendants. The defendants are claiming that the real fact as noticed during enquiry into the matter in the concerned village that the deceased as a helper and driver Haripada Hauli while proceeding in a tractor, the driver dashed against a stay-wire of a pole of 11 KV supply line near the case village as a result of which the overhead 11 KV line was sagged and both the helper and driver got electric shock from the sagging electric wire and were shifted to hospital and later on the deceased succumbed to injuries. Hence, the deceased died due to the negligence of the driver of the tractor namely Haripada Hauli who invited the occurrence/accident for his own fault of rash and negligent driving without having a valid driving licence. The accident place is a cultivable land where the supply line was/is being maintained by CESU in proper height of ground clearance without any allegation of improper maintenance by any of the villagers of the said locality at any point of time.

Hence, no fault or contributory negligence can be attributed to the CESU officials, the defendants and therefore they are not liable to pay any amount to the plaintiffs by way of compensation. It is further pleaded that in view of direction of Hon'ble High Court in writ petition vide no.7453 of 2008 there is no scope for the plaintiffs to initiate the present suit. With the aforesaid pleadings it is prayed for dismissal of the suit.

4. Considering pleadings on record the following issues have been settled :

ISSUES

- 1) Whether the suit is maintainable ?
- 2) Whether there is cause of action to file the suit ?
- 3) Whether the suit is bad for non-joinder and mis-joinder of necessary parties ?
- 4) Whether the suit is barred by the law of limitation, principle of res judicata ?
- 5) Whether the Court has jurisdiction to entertain the suit ?
- 6) Whether one Ranjan Kumar Das, the husband of plaintiff no.1 and father of plaintiff nos.2 to 6 died due to electrocution on 24-06-2007 at 9 A.M on the R & B road, near village Debendra Narayanpur due to the negligence of the defendants ?
- 7) Whether the plaintiffs are entitled for award of compensation of Rs.5,00,000/- (Rupees Five Lakhs) alongwith interest as prayed from the defendants ?
- 8) To what other relief(s) the plaintiffs are entitled ?

5. Plaintiff no.1 has examined herself as P.W.1 and one Rabindranath Mandal, a co-villager of the plaintiffs is examined as P.W.2. Some documents have been brought into evidence vide Exts.1 to 9 list of which is appended at the foot of the judgment. On the other hand, the then S.D.O in Rajnagar Sub-Division and presently working as Executive Engineer in CESU is examined as D.W.1, one Ashok Kumar Jena working as Deputy Manager (Commerce), Electrical Sub-Division, Rasulgarh, Bhubaneswar is examined as D.W.2 and the Junior Manager of Rajnagar Electrical Section as D.W.3, one Clerk of Electrical Division who is a signatory to the enquiry conducted on 10-04-2009 is examined as D.W.4. Documents vide Exts.A to E are marked list of which is given at the foot of judgment.

With the aforesaid evidence on record the issues as framed are to be answered.

FINDINGS

Issue nos.6 and 7

6. These two issues are principal issues and are interlinked, hence, taken up together. It is the claim of the plaintiffs that the deceased Ranjan Kumar Das died due to electrocution and his death was caused for the negligence of the defendants. On the other hand, defendants are claiming that death of the deceased was caused due to rash and negligent driving of the driver of the tractor wherein the deceased was sitting and not due to the negligent act of the defendants and, hence, they are not liable to pay any amount towards compensation to the plaintiffs.

7. On careful perusal of evidence of P.Ws.1 and 2 it is found that they have deposed that on 24-06-2007 by 9 A.M the deceased alongwith one Haripada Hauli were going towards village Singidapal on foot for collection of funds from farmers. On the way, on the middle part of cultivation field they were suddenly electrocuted by overhead live electric wire which was hanging at a very low height as a result they sustained grievous multiple injuries. They were shifted to Raj Nagar hospital and further shifted to SCB Medical College Hospital for better treatment but unfortunately said Ranjan Kumar Das succumbed to injuries on the next day of occurrence. It is the further evidence of P.W.1 that Mangalabag P.S. has registered a case vide U.D. Case no.609/2007 and Post-mortem was done at SCB Medical College Hospital under supervision of Mangalabag police. She had also lodged FIR before Raj Nagar police on the same day of occurrence. The plaintiff has produced and proved certified copy of the FIR in the said U.D. Case as Ext.4, Final report in the said case as Ext.5, Inquest report conducted by Mangalabag Police vide Ext.6, Dead body challan vide Ext.7 and Post-mortem report vide Ext.8. Considering these documents and the oral evidence there is no doubt that deceased Ranjan Kumar Das died on 26-06-2007 at SCB Medical College Hospital, Cuttack. The post-mortem report reveals that the cause of death was due to asphyxia as a result of effect of injuries and the injuries were caused due to high voltage electric shock. Hence, considering the oral evidence supported with documents it is clear that death of the deceased was caused due to electrocution.

8. Now it is to be found out whether death was caused due to fault or negligence of the defendants. The defendants are disputing that the deceased was not going on foot rather he was proceeding in a tractor by sitting on it and the tractor was driven in a rash and negligent manner which dashed against a stay wire of electric pole as a result of which the live electric wire sagged causing this accident and therefore they have no fault and hence not liable to pay compensation. To prove these averments they are relying on the enquiry report conducted by the CESU officials at the spot. D.W.1 was working as S.D.O in Raj Nagar Sub-Division during the accident period who in his cross-examination admitted to have received information about the accident over telephone. He further deposed that Junior Engineer after conducting field verification submitted his report to Electrical Inspector but he has not produced the said report. He further admitted that he has no knowledge about the enquiry conducted on dtd.10-04-2009 because by that time he was not working as S.D.O, Raj Nagar Division. Similarly, D.W.2, the Deputy Manager (Commerce) Electrical Sub-Division, Rasulgah deposed that he was not working as Junior Manager, Electrical at Raj Nagar Section on 10-04-2004 and further admitted that he has no knowledge about the enquiry conducted on that day nor about the enquiry report vide Ext.B. He also admitted that he has not kept acknowledgment to show that the report regarding electrical accident vide Ext.C has been sent to Electrical Inspector. He has not filed postal receipt in support of sending the said letter vide Ext.C. On further perusal of Exts.B and C it is found

that Deputy General Manager of Electrical Division no.I, Kendrapada submitted enquiry report vide no.1630 dtd. 05-06-2009 to the Manager (Law) of CESU headquarters and the said enquiry was conducted with reference to the office letter of the Senior General Manager of CESU, Bhubaneswar dtd.30-04-2009. Hence, the evidence adduced by the officials of the CESCO company reveals that the Electrical Inspector has not conducted enquiry rather their officials have conducted enquiry and they are unable to say whether the report was sent to the Electrical Inspector or not. The other report is an enquiry submitted on 10-04-2009 is filed vide Ext.E which is written by one Balaram Prasad Das, Clerk of Electrical Division no.I, Kendrapada bearing signature of some witnesses of the said locality and the defendants are mainly relying on this document saying that the independent witnesses have stated that the accident was caused due to rash and negligent driving of tractor being driven by one Haripada Hauli wherein the deceased Rajan Kumar Das was helper and both of them were in intoxicating state and dashed the tractor with electric stay wire of a pole, the live electric wire sagged causing injury to both of them. But interestingly the defendants have not examined any of the four independent witnesses. It is the claim of the plaintiff that principle of natural justice has been violated in the enquiry. The report Ext.E also reveals that none of the members from the family of the deceased have attended the meeting nor they were noticed to attend the meeting. It is already found that the Electrical Inspector who is empowered to conduct enquiry has not made enquiry nor there is material to believe that the said

enquiry report has been submitted to him. In course of argument, it is also submitted by learned counsel for the plaintiffs that the defendants have elicited from the mouth of the witnesses that the occurrence took place in a cultivable land which speaks itself that a tractor cannot run in high speed at the occurrence spot and therefore question of dashing with any electric stay wire causing sagging of pole and electric live wire does not arise because it requires much force to sag any electric pole and for such force a tractor should run in high speed. Considering such submission and appreciating the evidence of the defendants as regards to enquiry which is their main basis to establish that the fault cannot be attributed on them, it is found that the enquiry report submitted by them cannot be accepted. This apart, the occurrence took place on 24-06-2007 whereas this enquiry was conducted on 10-04-2009 i.e. near about two years after the occurrence whereas there is evidence that the incident was reported to the defendants just after the occurrence. On this ground, doubt also raises on the genuine conduct of the enquiry.

8(a) It is contended on behalf of the defendants that the order of High Court passed on dtd.16-02-2009 in W.P.(c) no.7453/2008 speaks that the deceased was travelling on a tractor but the pleadings of the plaintiffs shows that the deceased was going on foot which is contradictory and therefore it is not believable that the deceased was going on foot. On this point, learned counsel for the plaintiffs submitted that order of Hon'ble High Court does not speak so rather in the first paragraph of the order it is reflected that it was the averment of

the petitioner. It is further submitted that the advocate notice of the plaintiffs dtd.08-12-2007 reveals that the deceased alongwith his friend were proceeding towards Singidapal as pedestrians. It is urged that basing on the evidence as deposed by the witnesses from the side of plaintiffs and the contents of the pleader notice it can be safely held that the deceased was not travelling in tractor rather he was going on foot when met with this accident. The copy of the FIR lodged by the wife of the deceased at Raj Nagar P.S vide Ext.9 reveals that it was lodged on the same day of occurrence mentioning that when her husband and Haripada Hauli was proceeding towards Singidapal through the cultivable land they met with this accident which caused due to negligence of the defendants. This piece of evidence clearly reveals that the accident occurred on cultivable land and nowhere it is mentioned that they were proceeding in a tractor rather it discloses that her husband who was working as helper was proceeding to Singidapal with one Haripada Hauli who was a driver in order to collect money from the villagers. At that point of time and in that state of mind the wife of the deceased who is a rustic villager and appears to be an illiterate lady could not have thought of creating such a story against the defendants thereby she would claim compensation and would accordingly get the FIR drafted. Considering all these available materials on record it is held that the defendants failed to substantiate their claim that accident was caused due to rash and negligent driving of tractor and thereby negligence cannot be attributed on them.

9. Rule 91 of Electricity Rules says about safety and protective devices. It specifically says that every overhead line erected over any part of street or in any public place or in any factory or mine or in any consumer premises shall be protected with a device approved by the Inspector rendering the line electrically harmless in case it breaks. In the present case the electric wire which was sagged was not covered with protective devices. If for the sake of argument, it is to be believed that the electric wire was sagged due to accident caused by the tractor being driven by someone wherein the deceased was sitting then also it can be firmly said that the sagged wire could not have caused injury to them if it were covered by protective devices. Besides this, the witnesses from the side of plaintiffs have deposed that the pole and electric wire were not maintained properly at the occurrence spot about which they have reported to CESCO authorities on earlier occasion. In view of failure of compliance to Rule 91 of the said Act and in view of evidence on record, it is found that this accident took place due to sagging of electric wire which was not covered by protective devices. Hence, the thing itself speaks that the defendants were negligent in their act because supply of electric live line was under the exclusive control of the defendants. Hence, irresistible conclusion is drawn that death of deceased was caused due to fault and negligence of the defendants. Hence, they are liable to pay compensation.

10. It is also claimed by the defendants that the plaintiffs should recover the realised amount from the Insurance Company or from the truck owner. On this point, relying on a

decision of Hon'ble High Court of Orissa reported in 2000(2) TAC.102(ORI), it is contended by learned counsel for the plaintiffs that the claimants are entitled to recover the amounts from all the tort-feasores either jointly or severally. It is further submitted that be it the fault of driver of the tractor or of the defendants but husband of plaintiff no.1 and father of the other plaintiffs lost his life in the accident. In view of the matter, the plaintiffs have option to claim compensation from either of the parties and the defendants can recover the award amount from the insurer of the tractor if they feel so. Hence, the point raised by the defendants is not sustainable.

11. Now question comes what would be the amount of compensation to be paid to the plaintiffs. It is pleaded and deposed that the deceased was aged about 32 years at the time of death and he was working as a helper in a tractor who was earning a sum of Rs.4,000/- per month and contributing major share of his income towards betterment of his family. The defendants are denying the age and income of the deceased. Post mortem report says that the deceased was aged about 32 years. No document has been filed in proof of income of the deceased. When there is no cogent evidence about income of the deceased, the second schedule to Motor Vehicles (Amendment) Act can be followed to determine compensation as per the guidelines imparted in different authorities of law. Taking into consideration the notional income of the deceased, it may be said that the deceased might be earning Rs.100/- per day in the year 2007. In this way his monthly income comes to Rs.3000/-. There are six dependants on him. So deducting

1/4th from his income towards personal expenses, loss of dependency to the family comes to Rs.2250/- per month or say his annual income comes to Rs.27,000/-. In terms of the second schedule to M.V. Act, the correct multiplier is 17 to be applied in the present case. Applying the multiplier of 17, the compensation to which plaintiffs are entitled comes to Rs.4,59,000/-. Atleast Rs.6,000/- should be added towards loss of consortium, loss of love and affection and funeral expenses. Hence, the plaintiffs are entitled to get compensation of Rs.4,65,000/- in total from the defendants. In the meantime seven years have been passed but the plaintiffs have not yet got justice. Under such circumstances, payment of interest @6% per annum on the compensation amount will be just and proper. Hence, these two issues are answered accordingly in favour of the plaintiffs.

Issue no.5

12. This issue relates to jurisdiction of this Court to entertain the suit. It is pleaded by the defendants that the accident being occurred under Rajnagar Police Station area in the district of Kendrapada, this Court has no jurisdiction. Defendant no.1, the Chief Executive Officer, CESU is the competent person to pay compensation if the plaintiffs succeed in the suit and his office is at Bhubaneswar which is within the jurisdiction of this Court. Hence, this Court has jurisdiction to try the case.

Issue no.4

13. It is claimed by the defendants that the plaintiffs have preferred writ petition before Hon'ble High Court

claiming for compensation and in view of direction dtd.16-02-2009 of Hon'ble High Court in the said writ petition vide no.W.P.(c) 7453 of 2008 the plaintiffs are debarred to initiate the present suit. It is the pleadings of the plaintiffs that Hon'ble High Court gave direction to them to approach the defendants for compensation who shall consider the grievance and to dispose the matter within three months but when the defendants did not pay any compensation they approached this Court by filing this suit. The order of Hon'ble High Court is also available in record wherein Hon'ble High Court had not denied compensation rather the Court felt that natural justice and equity will be better served if the plaintiffs move the defendants and to request them to grant adequate compensation. In view of such order of Hon'ble High Court, since the claim was not finally adjudicated, the suit is not barred by the principle of res judicata.

13(a) The plaint reveals that the occurrence took place on 24-06-2007. The plaintiffs approached Hon'ble High Court and Hon'ble High Court passed order on dtd.16-02-2009 with direction to approach the defendants. The plaintiffs approached the defendants on 06-04-2009 but when defendants did not pay any compensation, the suit is filed on dtd.17-08-2009. In view of the matter, the suit is not barred by law of limitation.

Issue nos.1, 2, 3 and 8

14. These issues are formal in nature. In view of findings under issue nos.6 and 7 the suit is not bad for non-joinder and mis-joinder of necessary parties. There is cause of

action to file the suit and the suit so filed is maintainable. Besides the reliefs claimed, the plaintiffs are not entitled to any other relief. These four issues are answered accordingly.

Hence, it is ordered.

ORDER

The suit be and the same is decreed on contest against the defendants with cost. The defendants are liable to pay compensation of Rs.4,65,000/- to the plaintiffs alongwith interest @6% per annum from the date of filing of this suit i.e. from 17-08-2009 till the amount is paid. The defendants are further directed to make payment within two months hence failing which the plaintiffs may get the decree executed through the process of Court. Out of the compensation amount, a sum of Rs.1,65,000/- shall be kept in fixed deposit in the name of plaintiff no.1 in any Nationalised Bank for a period of 5 years which cannot be liquidated without leave of the Court. Plaintiff nos.2 to 6 being minors, plaintiff no.1 being their mother and wife of deceased is to receive compensation amount on behalf of all the plaintiffs.

***1st. Addl. Senior Civil Judge,
Bhubaneswar.***

The judgment is typed to my dictation by the typist attached to this Court directly on the computer provided under E-Court Project, corrected and pronounced by me in the open Court today i.e. on the 12th day of March, 2015 under my seal and signature.

***1st. Addl. Senior Civil Judge,
Bhubaneswar.***

List of Witnesses examined for the Plaintiffs:

P.W.1: Jamuna Das

P.W.2: Rabindra Nath Mandal

List of Witnesses examined for the Defendants :

D.W.1: Sri Pabitra Mohan Sahu

D.W.2: Sri Ashok Ku. Jena

D.W.3: Sri Narayan Paramanik

D.W.4: Sri Barada Prasanna Das

List of Documents marked as Exhibits for the Plaintiffs:

Ext.1: P.W.1's Advocate notice sent to defendant dtd.8-12-2007;

Ext.2: Order of Hon'ble High Court of Orissa dtd.16-02-2009
passed in W.P.(c) no.7453 of 2008 ;

Ext.3: Copy of notice sent to P.W.1 to the defendant
on 04-04-2009 ;

Ext.3/a: Signature of P.W.1 on Ext.3 ;

Ext.4: Copy of F.I.R of Mangalabag P.S. U.D. Case no.609/2007

Ext.5: Final report

Ext.6: Inquest report of deceased ;

Ext.7: Dead Body Challan ;

Ext.8: Post-Mortem Report ;

Ext.9: Copy of F.I.R. Lodged by P.W.1 at Rajnagar P.S.

List of Documents marked as Exhibits for the Defendants :

Ext.A(with objection): Office copy dtd.23-06-2009 of order
on the representation of the plaintiff ;

Ext.B(with objection): Office copy of enquiry report ;

Ext.C(with objection): Copy of report dtd.24-06-2007 sent
to Electrical Inspector ;

Ext.D(with objection): Joint Enquiry Report ;

Ext.D/1: Signature of D.W.3 on Ext.D ;

Ext.D/2: Signature of S.D.O ;

Ext.D/3: Signature of Executive Engineer (D.G.M) ;

Ext.E: Statement of witnesses recorded by Clerk of D.W.1's
department namely Barada Prasanna Das ;

Ext.E/1: Signature of D.W.3 on Ext.E ;

Ext.E/2: Signature of S.D.O. On Ext.E ;

Ext.E/3: Signature of Executive Engineer(D.G.M) on Ext.E ;

Ext.E/4: Signature of D.W.4 on Ext.E ;

***1st. Addl. Senior Civil Judge,
Bhubaneswar***

