

**HEADING OF DECISION IN CIVIL SUITS**

IN THE COURT OF 1<sup>st</sup> ADDL.SENIOR CIVIL JUDGE,  
BHUBANESWAR, DISTRICT-KHURDA.

PRESENT:- Pranab Kumar Routray, LL.,M,  
1<sup>st</sup> Addl. Senior Civil Judge,  
Bhubaneswar.

**C.S. No. 11/61 of 2011/2001**

Rajani Biswal, aged about 45 years,  
W/o. Late Brahmanand Biswal,  
Gokulpur, P.O./P.S. Kakatpur,  
Dist. Puri

..... Plaintiff.

-Versus-

1. Chief Executive Officer, Electricity,  
(CESU) IDCO TOWER, Janpath Road,  
Bhubaneswar.
2. Executive Engineer, Electrical,  
Division, Baulagada Chhak, Old Town,  
Bhubaneswar.
3. Junior Engineer, Electricity,  
Section-I, Kakatpur, Dist. Puri.

..... Defendants.

**COUNSEL APPEARED**

For the Plaintiff : Sri A. Swain & Associates.

For Defendants : Sri P.K. Mohapatra & Associates

**DATE OF CONCLUSION OF ARGUMENT : 25.09.2013**  
**DATE OF JUDGMENT : 26.09.2013**  
**J U D G M E N T**

The plaintiff who is the wife of Late Brahmananda Biswal has filed this suit claiming compensation of Rs. 4,00,000/- (Rupees Four lakhs only) arising out of the death of the said deceased of electrocution with interest and with cost.

2. The case of the plaintiff in brief is that :-

On 15.04.2000 about 6 A.M the son of the plaintiff named as Ajit found disconnected live electric wire on paddy field and informed the matter to defendant No. 3, Jr. Engineer, Electricity Section 1, Kakatpur for taking early action. On being assured for action, the husband of the plaintiff named as Brahmananda Biswal went to the field by 7 A.M and being obstructed by the said disconnected electric wire, he tried to remove it but suddenly he was electrocuted and died at the spot. His son attempted to save him but he himself also got injured. The deceased was immediately shifted to Kakatpur Hospital where he was declared dead. The matter was informed to police and also to defendant No. 3. But defendant No. 3 didn't attend the deceased. It is pleaded by the plaintiff that death of her husband was caused due to the negligence in maintenance of electric pole and wire. Had there been regular checking and immediate response to the complaint of such incident this unfortunate incident could have been avoided. When defendant No. 3 did not pay any heed on the approach of the plaintiff, she put her grievance before the defendants in writing

through registered post with AD on dtd. 15.7.2000 praying for some compensation. But the defendants also did not respond to such grievance of the plaintiff. The plaintiff sent pleader notice which was also remained unanswered which caused serious mental shock to her. The husband of the plaintiff was running a grocery shop and was earning Rs. 10,000/- (Rupees Ten thousand only) from that source and Rs. 1,000/- from cultivation. He was the sole earning member of his family consisting of twelve members. The plaintiff could not run the business after demise of her husband and ultimately closed the business. Hence, the plaintiff approached this Court on 28.03.2001 claiming compensation of Rs. 4,00,000/- (Rupees Four lakhs only) from the defendants on the ground that death of her husband was caused due to negligence of the defendants.

3. The defendants filed written statement challenging the suit as not maintainable and there is no cause of action to file this suit against the defendants. It is also claimed that this Court lacks jurisdiction to adjudicate the suit. The defendants denied the fact of immediate shifting of the deceased to Kakatpur Hospital and reporting the matter to the police or to defendant No.3. It is denied by the defendants that the plaintiff has ever approached the defendants for help or put her grievance on dtd. 15.10.2000 through registered post or has sent pleader notice dtd. 29.11.2000. It is also denied that the son of the plaintiff has informed defendant No. 3 about disconnected live electric wire lying on the field and

he was assured for early action .It is pleaded that there was no disconnection of live electric wire on the so called field at any point of time and therefore question of alleged assurance to the son of the plaintiff does not arise. It is further averred that maintenance of electricity was then in good condition at the relevant time and at the relevant spot and there was no accident occurred causing death of deceased Brahmananda Biswal. At the same time it is pleaded that the defendants have not drawn the alleged electricity wire over the field or in and around the same. The husband of the plaintiff might have died due to his own fault at somewhere else but not due to alleged accident. Lastly it is averred that the plaintiff has created a false story in order to get pecuniary benefit as well as to harass the defendants. Therefore, the defendants are not liable to pay any compensation which is claimed by the plaintiff in connivance with the concerned police station as well as Health Officer in managing to procure documents like FIR and Post- mortem report. On these grounds defendants prayed for dismissal of this suit with cost.

4. On the aforesaid pleadings of the parties the following issues have been framed:-

### **ISSUES**

- 1) Whether the suit is maintainable ?
- 2) Whether this Court has jurisdiction to try this suit ?
- 3) Whether Brahmananda Biswal died due to electrocution

on 15.04.2000?

- 4) Whether the death of Brahmananda Biswal caused due to negligence of the defendants?
- 5) Whether the plaintiff is entitled to get compensation as claimed for with interest?

5. In order to succeed the suit, the plaintiff has examined herself as P.W. 1, her son Ajit Kumar Biswal as P.W. 2 and one of her co-villagers Prasanna Kumar Khuntia as P.W. 3 and brought some documents into evidence. Certified copy of Final Report in UD Case No. 68/2000 in the Court of Sub-Divisional Magistrate, Puri is marked as Ext. 1, Original Death Certificate of deceased Brahmananda Biswal is marked as Ext. 2, Personal copy of notice to defendant No. 1 is marked as Ext. 3, Postal receipt of the registered letter sent under Ext. 3 is marked as Ext. 4, Ext. 4/a is the postal receipt of the registered letter sent to defendant No. 2. The pleader notice sent to defendants is marked as Ext. 5; Ext. 6, 6/a, 6/b are the postal receipts of the registered letter sent under Ext. 5 to defendant No. 1, 3 and 2 respectively; Ext. 7, 7/a and 7/b are the postal acknowledgment cards.

On the other hand, defendant No.3 has been examined as D.W. 1 and no document has been brought into evidence from the side of defendants.

### FINDINGS

In the aforesaid materials on record, this Court is to decide the issues as framed.

6. Issue Nos. 3 and 4

These two issues are taken up together first being the principal issue. In order to arrive at a conclusion that as to whether deceased Brahmananda Biswal died due to electrocution on dtd. 15.04.2000 the evidence of the parties is to be scanned carefully . It is deposed by P.W. 2, Ajit Biswal, the son of the deceased & plaintiff, that on 15.04.2000 by 6 A.M when he found disconnected live electric wire lying on their field, he intimated the same to defendant No. 3 for early action and accordingly he was assured for early action. Getting such assurance he along with his father went to their field by 7 A.M and on obstruction by the said disconnected electric wire, his father tried to remove it but suddenly he was electrocuted. He attempted to save his father but he himself was injured and his father was heavily shocked. It is further deposed by him that his father was immediately shifted to Kakatpur Medical where he was declared dead. Immediately thereafter the matter was reported before local police station at Kakatpur and also to defendant No.3.The Plaintiff( P.W.1) deposed the same facts regarding the date and time of occurrence and on cause of death of the deceased. P.W. 3, a co-villager of the plaintiff corroborated the evidence of P.W. 1 and 2 as regards to date, time and place of occurrence and also about the cause of death of the deceased. All the three witnesses have been cross-examined at length. Some discrepancies have been found as regards to the exact place of occurrence. But no discrepancy is found from cross-

examination of any other witnesses as regards to date and time of incident and as regards to the cause of death.

Learned counsel for the defendants while advancing argument pointed out some discrepancies as regards to the place of occurrence by submitting that P.W. 1 in para 21 has deposed that the actual spot of occurrence is a paddy field belonging to one Gola Das of Village Nilakanthapur whereas in her examination in chief she deposed that the electric line was lying on their field. He also pointed out the discrepancies found in the evidence of the witnesses as regards to the khata No. and plot No. of the land where the occurrence took place. Learned counsel for the plaintiff vehemently opposed on this point and argued that nowhere the witnesses have stated that the electric wire was not lying on their field. It is further contended by him that all the witnesses had categorically stated that the deceased Brahmananda Biswal died on paddy field but minor discrepancies as regards to Khata No., Plot No. etc., about the exact spot of occurrence are bound to occur as the witnesses are rustic villagers.

I carefully perused the examination in chief and cross examination of the witnesses from the side of plaintiff as regards to the date, time and place of occurrence and as regards to cause of death and found that all of them have deposed that deceased Brahmananda Biswal got electrocuted on 15.04.2000 by 7 A.M on paddy field when the deceased was going to field but on his way, disconnected electric wire became obstacle, he tried to remove it as

a consequence of which he was electrocuted. All of them specifically deposed that P.W. 2 also got injured as he tried to save the deceased. It is also established evidence that the deceased was immediately shifted to Kakatpur Hospital where he was declared dead. Hence, so far as the discrepancies pointed out by the learned counsel for the defendants is concerned , it may be said that the plaintiff being a rustic villager, it is not expected from her to possess the photographic memory and to recall details of the incident as if a video tape is replayed on his mental screen. She and her son being rustic villagers, it is also not expected from them to answer the Khata No. and Plot No. of the land whereon the deceased who was their most closest person and was the head of their family died prematurely and that too it is just not necessary to test veracity of the witness in a dispute like this. With this observation, I am of the considered view that the stand taken by the learned counsel for the defendant on the aforesaid point is not sustainable.

It is already held in the above para that there is established evidence from the side of the plaintiff that on 15.04.2000 at 7 A.M deceased Brahmananda Biswal died due to electrocution. Their oral evidence get support by documentary evidence vide Ext. 1, the certified copy of Final report in U.D Case No. 01/2000 of Kakatpur P.S. corresponding to U.D. G.R. Case No. 68/2000 in the Court of Sub-Divisional Magistrate, Puri. Ext. 1 reveals the cause of death is due to electric shock. Hence, considering the materials available on record this Court comes to hold that the deceased

Brahamanda Biswal died due to electrocution on 15.4.2000.

7. Now it is to be seen that whether the death of Brahmananda Biswal is due to the negligence of the defendants?

As a general rule, it is for the plaintiff to prove that the defendant was negligent. The initial burden of making out at least a prima facie case of negligence as against the defendant lies heavily on the plaintiff, but once this onus is discharged, it will be for the defendant to prove that the incident was the result of inevitable accident or contributory negligence on the part of plaintiff. If the plaintiff is not able to prove the negligence on the part of the defendant, the defendant cannot be made liable. Though, as a general rule, the plaintiff has to discharge the burden of proving negligence on the part of the defendant, there are, however, certain cases when the plaintiff need not prove that and the inference of negligence is drawn from the facts. There is presumption of negligence according to the maxim 'Res ipsa loquitur' which means 'the thing speaks for itself'. When the accident explains only one thing and that is that the accident could not ordinarily occurs unless the defendant had been negligent, the law raises a presumption of negligence on the part of the defendant. In such a case, it is sufficient for the plaintiff to prove accident and nothing more. The defendant can, however, avoid his liability by disproving negligence on his part. For the maxim 'Res ipsa loquitur' to apply, it is also necessary that the event causing the accident must have been in the control of the defendant. Thus,

when the circumstances which causes the damage are at the material time exclusively under the control or management of the defendant or his servants and the happening in such as does not occur in the ordinary course of things without negligence on defendant's part, the maxim applies burden of proof is shifted from the plaintiff to the defendant. Instead of the plaintiff proving negligence, the defendant is required to disprove it.

Learned counsel for the defendants forcefully argued that in the case at hand the plaintiff failed to establish that the defendants are negligent and therefore there is no requirement on the part of the defendant to disprove negligence. He further contended that even in an action in Torts, if the defendant gives no rebuttal evidence but a reasonable explanation, still the burden of proving the affirmative that the defendant was negligent and the accident occurred by his negligence, still remains with the plaintiff, and the Court is to see whether the proven or undisputed facts, as a whole disclose negligence. To substantiate his stand, a case law reported in AIR 1979 SC 1848 has been relied on by learned counsel for the defendants which speaks as follows:-

pin it on the defendant.

C. Torts-Negligence-Burden of proof-Presumptions available to person alleging negligence-Evidence Act 1872), Sections 4, 105 and 114.

Under the Evidence Act, the general rule is that the burden of proving negligence as cause of the

accident, lies on the party who alleges it. But that party can take advantage of presumptions which may be available to him to lighten that burden. Presumptions are of three types:

- (i) Permissive presumptions or presumptions of fact,
- (ii) Compelling presumptions or presumptions of law (rebuttable).
- (iii) Irrebuttable presumption of law or "conclusive proof".

Even in action in torts, if the defendant given no rebutting evidence but a reasonable explanation, equally consistent with the presence as well as with the absence of negligence, the presumptions or inferences based on *res ipsa loquitur* can no longer be sustained. The burden of proving the affirmative that the defendant was negligent and the accident occurred by his negligence, still remains with the plaintiff, and in such a situation it will be for the Court to determine at the time of judgment whether the proven or undisputed facts, as a whole, disclose negligence.

Keeping in mind the the principle of '*Res ipsa loquitur*', and the guidelines of the Hon'ble Apex Court imparted in the decision

cited supra, the evidence on record is to be scanned carefully in order to observe that whether the plaintiff has established that the defendants were negligent and this accident occurred for their negligence.

In support of the pleadings of the plaintiff, the witnesses from the side of the plaintiff have deposed that when P.W. 2 found disconnected electric wire lying on the field he informed defendant No. 3 to take early action in the matter and he was also assured for early action. It is deposed by all the witnesses from the side of plaintiff that no action was taken on behalf of defendant No. 3 in order to disconnect flow of current. It is also the evidence on record that live electric wire was lying in the field. P.W. 2 deposed that during super cyclone, the electric poles were uprooted in their locality and new electric poles were installed and wires were connected but the said electric poles were not secured by support of concrete cement. P.W. 3 deposed that prior to death of the deceased, the villagers had lodged a written report in the Electric Office at Kakatpur about improper maintenance of the electric poles and wires.

Considering the evidence of the witnesses, it is seen that the plaintiff established that there was negligence on the part of defendants in maintaining the electric pole and wires attached to the pole and even after receiving of complaints on dangling of wire, the defendant No. 3 did not take any step. It is contended that had the defendants taken steps for proper maintenance of electric

poles and wire this unfortunate incident could not have been occurred.

On the contrary, learned counsel for the defendants forcefully argued that there was no negligence on the part of the defendant because the evidence of the witnesses is not cogent and trustworthy and contradicts with one another. When one witness is saying that the electric wire was snapping the other witness was saying that the electric wire was dangling and this apart, no report has been made to defendant No. 3 or to any of the defendants about improper maintenance of any electric pole or wire connected to the poles at the alleged place. In support of their stand, defendants have examined Laxmidhar Rout, Junior Engineer, Kakatpur Section as D.W. 1 who deposed that the maintenance of electricity was then in good condition at the relevant place and there was no laying/snapping of live line electric wire over the so called field on the alleged date and time. He also deposed that there was no accident occurred causing death of deceased Brahmananda Biswal over the field. The cross-examination of D.W. 1 shows that he doesn't have any personal knowledge regarding the incident and he gathered his knowledge about such incident basing on the documents available in his office. He further deposed that a register is maintained in P.S. for lodging complaint regarding electricity disconnections and other problems but he has not produced the complaint register concerning the alleged date of occurrence.

The evidence on record speaks that plaintiffs have intimated

the defendants much earlier to the alleged date of occurrence to take steps to repair the electric pole and wires in order to avoid such type of incident as alleged. Even on the date of occurrence the son of the plaintiff informed defendant No. 3 but no action was taken by the defendants. It is also the established evidence on record that the deceased died when came in contact with live line electric wire which was lying on the field. Hence, considering the evidence on record, this Court comes to the irresistible conclusion that the plaintiff has proved its burden that the defendants were negligent and that the accident occurred only for their negligence. The defendants have control of the thing which caused death of the deceased and therefore the defendants are in a better position than the plaintiff to explain as to how the accident occurred but the defendant failed to do so. Hence, the “res” in the present case not only speaks about negligence but also pin it on the defendant. Hence, the proven and the undisputed facts as a whole speaks that death of deceased Brahmananda Biswal is due to the negligence of the defendants.

The next question comes for decision is that what would be the just and proper quantum of compensation. It is the evidence of the plaintiff that deceased Brahamanda was running a grocery shop and was earning Rs. 10,000/- per month from that source and was also earning Rs. 1000/- per month from agriculture. But there is no document to show that the deceased was running a grocery shop. when the defendants are disputing the income of the deceased ,the plaintiff should have brought clinching evidence in support the

claimed income. Under such circumstances, Notional income of deceased may be taken into consideration. Age of the deceased is also disputed by the defendant. The plaintiff who is the wife of the deceased stated in her evidence that the deceased was aged about 60 years at the time of his death. Ext. 2, the final report in the U.D. Case submitted by Kakatpur police reveals that the deceased was 55 years of age. The plaintiff who is a rustic villager deposed after more than 12 years of the incident mentioning her age as 56 years which shows that she was 44 years of age by the time of this incident. But Ext 2 is prepared by a public servant after conducting enquiry and hence the age mentioned in Ext.2 is to be taken into consideration and therefore the deceased was 55 years of age at the time of his death. 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 the guidelines in the case reported in 1997 (1) OLR 398 between Anand Ch. Behera vrs. Chairman, Orissa State Electricity Board. Taking into consideration the notional income of the deceased, it may be said that the deceased might be earning Rs. 100/- (Rupees hundred only ) per day in the year 2000 . In this way, the monthly income of the deceased comes to Rs. 3000/- (Rupees Three thousand only) per month. Deducting 1/3rd from his income towards personal expenses of the deceased ,loss of dependency to the family comes to Rs. 2000/- (Rupees Two thousand only) per month or say his annual income comes to Rs. 24,000/- (Rupees Twenty four thousand only). In terms of the

second schedule to M.V. Act, the correct multiplier to be applied is 11. Applying the multiplier of 11, the compensation to which the plaintiff is entitled comes to Rs. 2,40,000/- (Rupees Two lakhs Forty thousand only). Rs. 10,000/- should be added to this towards loss of consortium, loss of love and affection and funeral expenses etc. Hence, the plaintiff is entitled to get compensation of Rs. 2,50,000/- (Rupees Two lakhs fifty thousand only) in total from the defendants. In the meantime thirteen years have been passed but the plaintiff has been waiting to get some compensation. Under such circumstances, this Court is of the opinion that interest @6% per annum will be just and proper.

These issues No. 3 and 4 are answered in favour of the plaintiff accordingly.

8. Issues No. 1 and 2

The defendant No. 1, Chief Executive Officer, CESU is the competent person to pay compensation whose office is at Bhubaneswar which is within the jurisdiction of this Court and hence, this Court has jurisdiction to try the case. In view of findings in issue No. 3 and 4 the suit so filed is maintainable. Issue No. 1 and 2 are answered in favour of the plaintiff. Hence, 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. 2,50,000/- (Rupees Two lakhs fifty thousand

only) to the plaintiff along with interest @6% per annum from the date of filing of the suit till the amount is paid. The defendants are further directed to make payment within two months hence failing which the plaintiff may get the decree executed through process of Court. Out of the compensation amount, a sum of Rs. 50,000/- (Rupees Fifty thousand only) shall be kept in fixed deposit in any Nationalized Bank for a period of five years which cannot be liquidated without leave of the Court.

1st. Addl. Senior Civil Judge,  
Bhubaneswar

The judgment is typed to my dictation by the Stenographer 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 day of 26th September, 2013 under my seal and signature.

1st. Addl. Senior Civil Judge,  
Bhubaneswar

List of Witnesses examined for the Plaintiff:

P.W. 1	Smt. Rajani Biswal
P.W. 2	Ajit Kumar Biswal
P.W. 3	Prasanna Kumar Khuntia

List of Witnesses examined for the Defendant :

N o n e

List of Documents marked as Exhibits for the Plaintiff:

- Ext. 1 Certified copy of Final Report in UD Case No. 68/2000 in the Court of Sub-Divisional Magistrate Puri
- Ext. 2 Original Death Certificate of deceased Brahmananda Biswal
- Ext. 3 Personal copy of notice to defendant No. 1
- Ext. 4 Postal receipt of the registered letter sent under Ext. 3
- Ext. 4/a Postal receipt of the registered letter sent to defendant No. 2
- Ext. 5 The pleader notice sent to defendants
- Ext. 6 to 6/b Postal receipts of the registered letter sent under Ext. 5 to defendant No. 1, 3 and 2 respectively
- Ext. 7 to 7/b Postal acknowledgment cards.

List of Documents marked as Exhibits for the Defendant :

N i l

1st. Addl. Senior Civil Judge,  
Bhubaneswar.