IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 7447 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL and sd/-
MR.JUSTICE M.C.PATEL sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

2. To be referred to the Reporter or not? Yes

3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

JASUBEN WD/O DEVCHANDBHAI PARMAR

Versus

GEB

Appearance:
MS SK VISHEN for Petitioners
MS LILU K BHAYA for Respondent No. 1
MR JV JAPEE for Respondent No. 2

CORAM : MR.JUSTICE J.M.PANCHAL and
MR.JUSTICE M.C.PATEL

Date of decision:30/09/98

ORAL JUDGEMENT (Per J.M. Panchal,J.):

In this appeal, which is filed under Section 96 of the Code of Civil Procedure, 1908, the appellants have challenged judgment and decree dated August 31, 1995 rendered by the learned Civil Judge (S.D.), Himatnagar, in Special Civil Suit No.95 of 1992 by which suit filed

by the appellants claiming compensation of Rs.3,00,000/for accidental death of deceased Devchandbhai N. Parmar, is dismissed.

Deceased Devchandbhai, a resident of village Vansdol, Tal. Idar, had secured first class in the Certificate Course in Wiremen Apprentice conducted by Technical Examinations Board, Gujarat State. Thereafter he had cleared examination for wiremen held by Government of Gujarat and was awarded wireman's certificate on December 24, 1980. He had also obtained certificate dated April 10, 1981 issued by Institute of Trade Engineering which is recognised by Government for having completed prescribed course in thoery and practice of Electric Motor Rewinding. In pursuance of a contract of apprenticeship, the deceased was engaged as a full term apprentice lineman for a period of three years by Gujarat Electricity Board on the terms and conditions mentioned in communication dated September 30, 1987. The apprenticeship of the deceased was to be over on September 30, 1990. An electric repairing work was required to be carried out at Sumitra Ceramics, Motipura, Himatnagar, particularly to change the punctured drop out of double pole structure and for that purpose on August 21,1990, the deceased was instructed to go to the Sumitra Ceramics with Supervisor, Mr.Prahladbhai Virchandbhai Patel. After reaching the premises of Sumitra Ceramics, Mr.Prahladbhai, who was discharging duties as Supervisor of Gujarat Electricity Board, instructed the deceased to do the repairing work only after the Supervisor got the electricity supply snapped. The Supervisor went to the Octroi Naka to inform the concerned employee of Gujarat Electricity Board on phone to disconnect the electricity supply and returning to the place where deceased was standing near double pole structure, he informed the deceased that the electricity supply was disconnected and he was at liberty to carry out the repair work. Relying upon the say of the Supervisor, the deceased climbed up the pole and started rectifying the fault. However, suddenly the deceased received electric shock and sustained injuries. The Supervisor climbed up the pole and brought down the deceased. Thereafter, the deceased was removed to the Civil Hospital, Himatnagar. However, during the treatment the deceased succumbed to injuries on August 27, 1990. According to the appellants, who are dependents and heirs of deceased Devchandbhai, the deceased died of electrocution because of negligence on the part of Supervisor Prahladbhai. It was the case of the appellants that but for the wrong instructions given by the Supervisor, the deceased would not have climbed up the pole, nor would have started doing the repairing work

and would have received electric shock. Under the circumstances, the appellants instituted Special Civil Suit No.95 of 1992 in the Court of learned Civil Judge (S.D.), Himatnagar and claimed damages of Rs.3,00,000/-.

It may be stated that the appellants had filed appropriate application seeking permission of the Court to file suit as indigent persons. The said application was allowed and the appellants were permitted to institute suit as indigent persons.

The Gujarat Electircity Board, which was impleaded as defendant No.1, contested suit by filing written statement at Exh.42 and controverted the averments made in the plaint. In the written statement it was mentioned that the deceased himself was negligent in not checking as to whether the electricity supply was disconnected or not and therefore suit was liable to be dismissed. It was claimed therein that before climbing up the pole, the deceased had not put on rubber shoes, gloves, etc. supplied by the Board, nor had attempted to ascertain as to whether the electricity supply was disconnected by using a piece of insulated wire and thus the deceased himself being negligent, the suit should be dismissed. It was emphasised in the written statement that in view of the provisions of Section 16 of the Apprentices Act, 1961, read with Section 19(2) of the Workmens' Compensation Act, 1923, the Civil Court had no jurisdiction to try the suit and therefore, the appellants were not entitled to reliefs claimed in the plaint. It was also stated that the suit was barred by limitation and therefore the appellants were not entitled to receive any damages.

It is relevant to note that though Supervisor Mr.Prahladbhai Virchandbhai Patel was impleaded as defendant No.2 in the suit, no written statement was filed by him controverting the averments made in the plaint.

Having regard to the pleadings of the parties, necessary issues for determination were raised by the learned Judge at Exh.21.

In support of the averments made in the plaint, Jashiben Devchandbhai Parmar, widow of the deceased, examined herself at Exh.26. Another witness, Ganeshbhai Bababhai Pranami, was also examined by the appellants at Exh.52 in support of their case pleaded in the plaint. He had recorded statement of deceased Devchandbhai during the course of investigation of Entry No.157/90 which was

report of the accident in question. The said witness produced statement of deceased, recorded by him, at Exh.53. On behalf of the respondent No.1, one Mr.Manilal Girdharbhai Patel, who was then discharging duties as Deputy Engineer in G.E.B. Office, situated at Prantij, was examined at Exh.80. On consideration of oral and documentary evidence led by the parties, the learned Judge held that the Supervisor Mr.Prahladbhai was not negligent in performing his duties. The learned Judge deduced that the Civil Court had jurisdiction to try the suit and the suit was not barred by period of limitation. The learned Judge further held that the accident had taken place because of negligence and carelessness of the deceased himself and therefore, the suit was liable to be dismissed. In view of above-referred to conclusions, the learned Judge dismissed the suit by judgment and decree dated August 31, 1995, giving rise to the present appeal.

Ms.Sangeeta K. Vishen, learned Counsel for the appellants, has taken us through the entire evidence on record. Learned Counsel for the appellants submitted that it was the duty of the Supervisor to ascertain whether electricity supply was disconnected or not and as the deceased had climbed up the pole on instructions of the Supervisor, the learned Judge was not justified in holding that the supervisor was not negligent in performing his duties. It was claimed that the evidence on record clearly shows that Supervisor Prahladbhai had gone to the Octroi Naka to inform the concerned employee of Gujarat Electricity Board to snap the electricity supply and after coming back, had informed the deceased that the supply was disconnected and the deceased was at liberty to carry out the repair work and therefore it ought to have been held that deceased died only because of negligence on the part of the Supervisor and deceased was not careless at all in performing his duties. What was highlighted by the learned Counsel by the appellants was that there is no positive evidence on record indicating that either earlier or on the date of accident, the deceased was given rubber shoes or gloves or insulated wire as claimed by G.E.B. in the written statement and therefore the finding recorded by the learned Judge that the accident took place only due to carelessness of the deceased deserves to be set aside. Elaborating the aspect of negligence, learned Counsel submitted that the statement of deceased Devchandbhai, which should be treated as his dying declaration, read with the evidence of Deputy Engineer examined by the Board, clearly establishes that there was sheer negligence on the part of Supervisor before instructing the deceased to repair the line and therefore the appeal

deserves to be allowed. Learned Counsel for the appellants stressed that Section 16 of the Apprentices Act, 1961 does not bar jurisdiction of Civil Court to try the suit and therefore the finding recorded by the learned Judge that Civil Court has jurisdiction to try the suit should be upheld. On the aspect of damages, it was claimed that but for the accident, the deceased would have completed the training course successfully within three months of the accident and in all probability would have been employed with the G.E. Board as a regular employee and therefore the damages claimed by the appellants being reasonable, should be awarded to them.

Ms. Lilu K. Bhaya, learned Counsel for the respondent No.1, submitted that the G.E. Board had deposited a sum of Rs.31,000/- with the Commissioner, Workmen's Compensation Act, 1923 and as the said amount was withdrawn by the appellants during the pendency of the appeal, the suit filed by the appellants was not maintainable. It was claimed that Section 16 of the Apprentices Act, 1961 read with Section 19(2) of the Workmen's Compensation Act, 1923 bars the jurisdiction of civil Court to try suit of the nature filed by the appellants and therefore dismissal of the suit by the learned trial Judge should not be interfered with in the present appeal. It was stressed on behalf of the Board that before actually starting work of repairing, the deceased had not taken steps to ascertain whether electricity supply was disconnected or not by using an insulated wire and thus there being complete negligence on the part of the deceased, the suit was rightly dismissed by the trial Court. It was asserted that while doing the repairing work, the deceased had neither put on rubber shoes nor gloves supplied by the G.E.B. and therefore the deceased himself being negligent, the appellants were not entitled to any damages. In the alternative, it was pleaded by the learned Counsel for the respondent No.1 that at the time of accident, the deceased was getting stipend of Rs.390/- per month and therefore the damages claimed on the basis that the deceased would have been employed with the Board on completion of training course being erroneous, the compensation as claimed by the appellants should not be awarded.

So far as point of jurisdiction of civil Court to try the suit is concerned, Section 16 of the Apprentices Act, 1961 provides that if personal injury is caused to an apprentice by accident, arising out of and in the course of his training as an apprentice, hie employer shall be liable to pay compensation which shall be

determined and paid, so far as may be, in accordance with the provisions of the Workmen's Compensation Act, 1923, subject to the modifications specified in the Schedule. The Schedule appended to Apprentices Act, 1961 reads as under:-

"THE SCHEDULE

(See Section 16)

Modifications in the Workmen's Compensation Act, 1923 in its application to apprentices under the Apprentices Act, 1961.- In the Workmen's Compensation Act, 1923-

(1) in section 2,-

(a) for clause (e), substitute-

(e) "employer" means an employer as defined in the Apprentices Act, 1961, who has engaged one or more apprentices;

(b) omit clause (k);

(c) for clause (m), substitute-

(m) "wages means the stipend payable to an apprentice section 13(1) of the Apprentices Act,1961;

(d) for clause (n), substitute-

(n) "workman" means any person who is engaged as an apprentice as defined in the Apprentices Act,1961, and who in the course of his apprenticeship training is employed in any such capacity as is specified in Schedule II;

(2) omit section 12;

(3) omit section 15;

(4) omit the proviso to section 21(1);

(5) omit the words "or a registered Trade Union" in section 24;

(6) omit clause (d) in section 30(1);

(7) omit clause (vi),(xi),(xiii),(xvii),(xviii), (xx),(xxii),(xxiv),(xxv) and (xxxii) in Schedule II."

On analysis of Section 16, it becomes evident that if an apprentice receives personal injury by accident arising out of and in the course of his training as an apprentice, his employer is liable to pay compensation. The compensation has to be determined in accordance with the provisions of Workmen's Compensation Act, 1923. It is also required to be paid in accordance with the proivisions of the Workmen's Compensation Act, 1923. Section 16 of the Apprentices Act, 1961 cannot be construed as excluding jurisdiction of civil court to try a suit for damages, which may be filed on the basis of tortious act of the employer or some persons for whose act or default he is responsible.

At this stage, it would be advantageous to notice

the provisions of Section 3 sub-section (5) of the Workmen's Compensation Act, 1923, which are as under:-

"3.(5) Nothing herein contained shall be deemed to confer any right to compensation on a workman in respect of any injury if he has instituted in a Civil Court a suit for damages in respect of the injury against the employer or any other person; and no suit for damages shall be maintained by a workman in any court of law in respect of any injury--

(a) if he has instituted a claim to compensation in respect of the injury before a Commissioner;or

(b) if an agreement has been come to between the workman and his employer providing for the payment of compensation in respect of the injury in accordance with the provisions of this act."

A bare look at the provisions of sub-section (5) of Section 3 of the Workmen's Compensation Act, makes it apparent that suit for damages will not be maintainable by a workman in any Court in respect of an injury, if he has instituted a claim to compensation in respect of the injury before a Commissioner under the provisions of Workmen's Compensation Act, 1923. It is true that the appellant had deposited a sum of Rs.31,000/- with the Commissioner, Workmen's Compensation Act, 1923 and the said amount was withdrawn by the appellants during the pendency of the appeal. However, deposit of the amount by the respondents with Commissioner or withdrawal of the said amount by the appellants cannot be interpreted to mean as institution of a claim to compensation by the appellants in respect of the injuries sustained by the deceased before a Commissioner under the provisions of the Workmen's Compensation Act, 1923 so as to bar suit for damages in Civil Court. Where death gives rise to a claim for compensation under the common law as well as Workmen's Compensation Act, the party entitled to compensation can claim compensation under either of the laws but not under both. The words "may claim" make it clear that the option is left to the person entitled to compensation to choose whether he would seek the remedy available under the common law or the Workmen's Compensation Act. It is, therefore, obvious that if he has exercised his option and has chosen one of the two remedies available to him he would be entitled to compensation under the chosen remedy only. But merely because the appellants had received compensation

deposited by the respondents suo motu to discharge obligation under the statute, it cannot be said that the appellants had exhausted their option to claim compensation under the Workmen's Compensation Act and were therefore debarred from claiming compensation under the common law. The words "may claim" clearly indicate that the option is with the person entitled to compensation and that option cannot be taken away by the act of a third party discharging his obligation under the Workmen's Compensation Act. The appellants could not have prevented the respondent No.1 Board from discharging its obligation under the statute of depositing the amount as requirede by Section 4 of the Workmen's Compensation Act. In order to negative the claim made under the common law, it must be shown that the person entitled to compensation had made a claim for compensation under the Workmen's Compensation Act. Deposit of compensation money by a third party in discharge of his obligation under the Workmen's Compensation Act can never be tantamount to the option being exercised by the person entitled to compensation. Moreover, the test for the purpose of determining whether a suit for damages on the ground of personal negligence or wilful act of the employer or of some persons for whose act or default he is responsible is barred would be whether the Commissioner working under the Workmen's Compensation Act would have jurisdiction to entertain and grant relief in case of a claim for compensation or damages arising out of the personal negligence or wilful act of the employer or of some person for whose act or default the employer is responsible. Learned Counsel for the respondents submitted that in view of the provisions of Section 19(2) of the Workmen's Compensation Act, 1923, the jurisdiction of the civil Court to try the suit is ousted. In our view, there is no substance in this contention and it cannot be said that the civil court had no jurisdiction to try the suit which was filed by the appelants for damages. It cannot be said that the Commissioner can adjudicate upon the question of the personal negligence or wilful act of the employer or of some person for whose act or default the employer is responsible and grant relief. The Commissioner will be concerned only with the question whether the injury caused to the workman by the accident arose out of and in the course of his employment and to what amount of compensation the workman will be entitled. The Civil Court functioning under the general law and the Commissioner working under the Workmen's Compensation Act have to operate in totally different and distinct fields and have to give their decisions on totally different considerations. The liability contemplated by Workmen's Compensation Act for payment of

compensation to a workman, who has either died or has received injuries during the course of his employement, is a liability of an absolute nature while the liability for damages which a civil court functioning under the general law has to take into account is the liability which is based on tort. The liability which a civil court is supposed to take into account is fault-based liability which involves the consideration of the question whether the alleged tortfeasor has committed any act of negligence. The Commissioner working under the Workmen's Compensation Act for the purpose of fixation of liability is not expected to go into the question whether the injury or death of a workman during the course of his employment is the result of any negligence on the part of anybody else. Therefore, the suit filed by the respondents was rightly tried by the learned Judge and Civil Court had ample jurisdiction to try the same. Even otherwise, the exclusion of jurisdiction of the civil Court is not to be readily inferred. The jurisdiction of Civil Court to try any such suit is neither expressly barred nor impliedly barred, unless a claim is made by the workman or his dependents under the provisions of Workmen's Compensation Act, 1923. Section 3(5) read with Section 19(2) makes it clear that if a workman institutes the suit for damages in a civil Court he will not be entitled to claim compensation under the Act and vice versa. This prohibition is significant in that in a civil Court a workman can claim compensation beyond the amount which has been specified under the Workmen's Compensation Act, by proving among other things, the extent of not only the loss of his earning capacity but also the actual and probable loss of his earnings. But under the said Act, the amount of compensation that he can claim even when he proves 100 per cent loss of his earning capacity is restricted to that specified in Schedule IV of the Act. Section 3(5) puts a ban on making two separate claims-one before the Commissioner under the Workmen's Compensation Act and another in the civil Court. Duplication of proceedings occasioned by a claim filed under the Workmen's Compensation Act and a claim under common law is intended to be avoided. The sub-section in effect bars double recovery of compensation in respect of an injury by accident arising out of and in the course of employment. An injury gives a cause of action to the employee to sue for damages in the civil Courts, but it is incumbent in such suits to prove the necessary elements for a suit in damages. The Workmen's Compensation Act, on the other hand, provides for a straightway award of fixed compensation to the workman irrespective of the fault or contributory negligence of either party. Alternative remdeies are

prescribed because the grounds upon which damages can be obtained in the civil Court against the employers for breach of duty on the part of the person occasioning it or on the part of his agents or servants are different from the compensation payable under the Workmen's Compensation Act. The workman may, as an alternative to claiming compensation under the Act, elect to avail himself of any other remedy against the employer at common law, i.e. in tort for damages for negligence or wilful act of the employer or of some person for whose act or default the employer is responsible. But he cannot have the best of both the worlds and put his employer in double jeopardy. That is why the Workmen's Compensation Act, 1923 protects the employer not only against the double payment but also against double proceedings. Negligence resulting in injury is a distinct act and constitutes different cause of action than the one referred to in Section 3(5) and therefore the workmen or, as the case may be, his dependents, can avail themself of remedy against the employer at common law, i.e. in tort for damages for negligence or for wilful act of the employer or some other person for whose act or default the employer is responsible. The exclusion of jurisdiction of civil Court will be there only if an application is filed for compensation under the provisions of Workmen's Compensation Act, 1923. As no application was filed by the appellants for compensation under the provisions of Workmen's Compensation Act, 1923, it cannot be said that jurisdiction of the civil court was excluded to try the suit filed by them. Therefore, the contention that civil Court had no jurisdiction to try the suit filed by the respondents and therefore the suit should be dismissed cannot be accepted and is hereby rejected.

In order to prove that deceased died because of negligence of the Supervisor, the appellants have relied upon statement of the deceased himself, which was recorded on August 21, 1990 by Head Constable Ganeshbhai Bababhai Pranami. Head Constable, Mr.Pranami, has categorically stated in his evidence, which was recorded at Exh.52 that during the course of investigation of Entry No.157/90, he had recorded the statement of deceased Devchandbhai Nathabhai on August 21, 1990 at Civil Hospital, Himatnagar and at the time of recording of the statement, the deceased was fully conscious and fit to make the statement. In the statement, the deceased stated that after reaching double pole structure, the Supervisor had gone to Octroi Naka to inform the concerned employee of G.E. Board on telephone to disconnect the electricity supply and after coming

back had informed him that the electricity supply was disconnected and therefore he should change the punctured drop out. The Head Constable, Mr.Pranami, who has proved the statement, has not been cross-examined regarding recording of statement of the deceased at all. On consideration of the evidence of Mr.Pranami, we are of the view that the statement made by the deceased has passed the test of reliability. The statement of the deceased recorded by Mr.Pranami during the course of investigation is admissible under Section 32 of the Indian Evidence Act, in view of the exception provided in sub-section (2) of Section 162 of the Code of Criminal Procedure, 1973. On bare reading of the statement of the deceased, there is no manner of doubt that the statement is the true version as to the circumstances of the death of the deceased and therefore it can be acted upon under Section 32 of the Evidence Act, without any corroboration. As noted earlier, Head Constable Mr.Pranami has stated in his evidence that the deceased at the time of making statement, was conscious and was in a fit state of mind to make the statement. This part of his evidence having not been challenged, we do not see any reason as to why the same should not be accepted for the purpose of deciding cause and circumstances of death of the deceased. The learned Counsel for the respondent No.1 has failed to point out any inherent weakness in the statement of the deceased. It is not brought on the record of the case that tutored version of the accident was given by the deceased. Having regard to all the attending circumstances, we are of the view that the statement of the deceased is a reliable piece of evidence and should be taken into consideration for the purpose of deciding negligence or otherwise of the supervisor. As indicated hereinabove, a bare reading of the said statement indicates that after reaching the double pole structure, the deceased had waited till the Supervisor had come back and instructed him to climb up the pole for the purpose of repairing the punctured drop out and but for the instructions given to him, the deceased would not have started repairing the faulty line. In fact, the supervisor had not ascertained at all as to whether the electricity supply was disconnected or not. Thus, statement of the deceased shows that there was sheer negligence on the part of the Supervisor in passing on wrong instructions to him. Even the evidence of Mr.M.G.Patel, Deputy Engineer, who was examined by the Board as its sole witness, indicates that if appropriate care and caution had been taken by the Supervisor Shri Prahladbhai, the accident would not have taken place at all. The witness has admitted during cross-examination that after it is ascertained by the Supervisor that the

electricity supply is disconnected, it is not the duty and/or responsibility of the apprentice to ascertain that the electricity supply is disconnected. The said witness has also admitted in his evidence that in fact Supervisor, Shri Prahladbhai, by mistake got disconnected another supply-line instead of the line on which the deceased was supposed to do repairing work. Thus, the admissions made by the witness of the Board would also indicate that there was complete negligence on the part of Supervisor Shri Prahladbhai in performance of his duties and but for his carelessness and negligence, the accident would not have occurred. The learned trial Judge has neither taken into consideration the contents of statement made by the deceased on August 21, 1990 nor has taken into consideration the material admissions made by witness of the Board and has recorded a finding that deceased was negligent because he had not put on rubber shoes or gloves before starting the repairing work. At this stage, it would be instructive to refer to rule 36 of The Indian Electricity Rules 1956 which reads as under:-

"36. Handling of electric supply lines and apparatus.(1) Before any conductor or apparatus is handled adequate precautions shall be taken by earthing or other suitable means to discharge electrically such conductor or apparatus and any adjacent conductor or apparatus if there is danger therefrom, and to prevent any conductor or apparatus from being accidentally or inadvertently electrically charged when persons are working thereon. Every person who is on electric supply line or apparatus or both shall be provided with tools, and devices such as gloves, rubber shoes, safety belts, ladders, earthing devices, helmets line testers, hand legs and the like for protecting him from mechanical or electrical injury. Such tools and devices shall always be maintained in sound and efficient working conditions."

(2) No person shall work on any live electric supply line or apparatus and no person shall assist such person on such work unless he is authorised in that behalf and takes the safety measures approved by the Inspector.

(3) Every tele-communication line on supports carrying a high or extra high voltage line shall, for the purpose of working thereon be deemed to be a high voltage line."

A plain reading of above-quoted rule makes it clear that every person who is working on an electric supply line or apparatus or both has to be provided with tools and devices such as gloves, rubber shoes, safety belts, ladders, earthing devices, helmets, line testers and the like for protecting him from mechanical or electrical injury.

Though the witness examined by the Board has stated in his examination-in-chief that an apprentice is supposed to wear rubber shoes, gloves, etc. before doing the repairing work and is also supposed to ensure that electricity supply is disconnected by use of insulated wire, the evidence on record does not show that in fact the deceased was provided with the rubber shoes or gloves or insulated wire at all. The Supervisor, who had instructed the deceased to climb up the pole for the purpose of repairing punctured drop out, was impleaded as defendant No.2 in the suit. However, he neither filed written statement nor stepped into witness box. It is only he who could have deposed before the Court whether rubber shoes, gloves and insulated wire were supplied to the deceased or not and whether the deceased had refused to wear the shoes, gloves,etc. The evidence on record establishes that after reaching near double pole structure, Supervisor Mr.Prahladbhai had gone to Octroi Naka to inform the concerned employee of the Board to disconnect the electricity supply and had instructed the deceased to wait near the double pole structure. In fact, when the Supervisor returned, the deceased was waiting near double pole structure. Thus, the evidence indicates that the deceased had obeyed all the instructions of his Supervisor. If rubber shoes, gloves, insulated wire etc. had been supplied to the deceased, the deceased would not have failed to make use of them. This would show that those articles were not supplied to the deceased and therefore he could not use the same. It was never the case of Supervisor Mr.Prahladbhai that he himself had handed over rubber shoes, gloves, piece of insulated wire etc. to the deceased and that deceased had failed to make use of those articles. Moreover, the question which arises for consideration is whether the deceased was supposed to take safety measures when he was informed by his supervisor that the electric supply line was dead? Sub-rule (2) of rule 36 of the Indian Electricity Rules, 1956, which is quoted above, provides that no person is supposed to work on any live electric supply line unless he takes measures approved by the authorities. The evidence in this case shows that the Supervisor had informed the deceased that electric supply

line was dead and deceased was free to do the repairing work. Under the circumstances, it was not necessary for the deceased to take safety measures and therefore even if it is presumed that the rubber shoes, gloves etc. were provided to the deceased, non-user of the same by the deceased would not constitute any negligence on his part.Under the circumstances, we are of the opinion that the learned Judge was not justified in coming to the conclusion that the deceased had not used shock-proof shoes or rubber hand-gloves or insulated wire and therefore he himself was responsible for the accident in question. As discussed above, the evidence clearly establishes negligence of the Supervisor. On the totality of the facts and circumstances of the case, we hold that the Supervisor had shown negligence and carelessness before instructing the deceased to climb up the pole for the purpose of repairing the punctured drop-out and had not ensured that the electricity supply was disconnected. The finding recorded by the trial Court that deceased himself was negligent being erroneous and contrary to the proved facts on record, is hereby set aside. But for the carelessness and negligence of the Supervisor, the accident would not have occurred. The Supervisor, who was impleaded as defendant No.2 in the suit, was in the employment of the appellant-Board and was acting for and on behalf of the Board. The carelessness and negligence were shown by the Supervisor during the discharge of his duties and therefore the respondentG.E.Board would be vicariously liable for the negligence of the Supervisor.

In view of our finding that Supervisor Mr.Prahladbhai V.Patel was negligent in performing his duty and as he was acting on behalf of the Board, the Board is vicariously liable, the next question which arises for consideration is as to how much damages the appellants are entitled to receive. We may state that this is a suit filed under the provisions of Fatal Accidents Act, 1855. For assessment of damages to compensate the dependants, the Court has to take into account many imponderables, eg. the life expectancy of the deceased and the dependants, the amount that the deceased would have earned during the remainder of his life, the amount that he would have contributed to the dependants during that period, the chances that the deceased may not have lived or the dependants may not live up to the estimated remaining period of their life expectancy, the chances that the deceased might have got better employment or income or might have lost his employment or income altogether. The manner of arriving at the damages is to ascertain the net income of the

deceased available for the support of himself and his dependants, and to deduct therefrom such part of his income as the deceased was accustomed to spend upon himself, as regards both self-maintenance and pleasure, and to ascertain what part of his net income the deceased was accustomed to spend for the benefit of the dependants. Then that should be capitalised by multiplying it by a figure representing the proper number of year's purchase. Much of the calculation necessarily remains in the realmn of hypothesis and in that region, as observed by the Supreme in the case of (1) G.M. Kerala SRTC v. Susamma Thomas, AIR 1994 SC, 1631, and (2) G.M. Kerala SRTC v. Susamma Thomas, AIR 1994 SC, 1631,"arithmetic is a good servant but a bad master". Since there are so often many imponderables in every case it is the overall picture that matters and the court must try to assess as best as it can the loss suffered. The choice of the multiplier is determined by the age of the deceased or that of the claimants whichever is higher and by the calculation as to what capital sum, if invested at a rate of interest appropriate to a stable economy, would yield the multiplicand by way of annual interest.

In the light of above-referred to principles, quantum of damages payable to the appellants will have to be determined. On behalf of the original plaintiffs, Jashuben Devchandbhai Parmar, widow of the deceased, was examined at Exh.26. In her deposition, it is stated by her that her husband was receiving fixed salary of Rs.360/- per month as an apprentice. It was asserted by her that as her deceased husband had completed course of motor rewinding as well as course of wireman, he would have been employed on permanent basis with G.E.B. on completion of training period as apprentice and would have received salary of Rs.2800/- per month. She has given instance of one Govindbhai Lakhabhai Parmar, who was earlier appointed as an apprentice and was thereafter employed on permanent basis with G.E.B. on successful completion of training as an apprentice. The widow of the deceased has stated that Govindbhai Lakhabhai Parmar on being appointed as a permanent employee was immediately receiving a salary of Rs.2800/- per month. She has also stated that the deceased was an expert in the work of rewinding and wiring and had he been alive, he would have earned promotions and got salary of Rs.4000/- tp Rs.5000/- per month. She has claimed that deceased was member of Scheduled Caste and as per the policy of the Government, he would have got many benefits in service, had he been alive and employed as a permanent employee with G.E.B. In her evidence, she claimed that an amount of Rs.12,000/- was spent by her after the

treatment of the deceased, whereas a sum of Rs.2000/- was spent on transport and Rs.2500/- towards attendants. She also asserted that the appellants were entitled to receive a sum of Rs.25000/- under the head of pain, shock and suffering and a sum of Rs.10,000/-, which was spent by the plaintiffs for performing obsequies of the deceased. Though she was searchingly cross-examined by the respondents, nothing could be elicited so as to discredit her version which was given in the examination-in-chief. The record shows that the deceased had completed course in wiremen apprentice and secured first class. The certificate issued by Institute of Trade Engineering indicates that the deceased had also completed course in theory and practice of electric motor rewinding. Moreover, the deceased had also successfully passed examination for wiremen held by Government and was granted necessary certificate by I.M. and P. Department, Gujarat State. The respondent-Board has failed to point out that the work of the deceased as an apprentice was unsatisfactory in any manner. While explaining doctrine of legitimate expectation of apprentices, the Supreme Court in U.P.S.R.T.C. v. U.P. Parivahan Nigam Shishukhs Berozgar Sangh,((1995) 2 S.C.C. 1, has observed that time, energy and public money spent on them should be properly utilised and not allowed to go waste. The Supreme Court in said decision has ruled that preference should be given to them over direct recruits in matter of employment and their names need not be sponsored by employment exchange. It is further observed therein that even age bar should be relaxed for them. Under the circumstances, the assertion made by the widow of the deceased that if deceased had been alive, he would have been employed with the G.E.B. on permanent basis is reasonable and acceptable. It is not disputed by the Board that if the deceased had been employed on permanent basis, he would have drawn salary of Rs.2800/- per month. Having regard to all the aspects, we are of the view that it would be reasonable to assess the income of the deceased at Rs.2500/- per month. The deceased would have spent some amount for himself and therefore it would be reasonable to deduct 1/3rd amount from the monthly income and thus dependency benefit which would be available to the appellants would be Rs.1600/- per month, i.e. Rs.19,200/- per annum. At the time of the accident, the deceased was aged 32 years and therefore we are of the opinion that it would be appropriate to adopt multiplier of 15 in the facts of the present case. Thus, under the head of dependency benefits, the appellants would be entitled to receive a sum of Rs.2,88,000/- as damages. The accident in question took place on August 21, 1990 whereas the deceased died on August 27,1990. Naturally,

therefore, the appellants would be entitled to a sum of Rs.20,000/- under the head of loss to estate. The appellants would also be entitled to loss of consortium of Rs.15,000/- as well as other incidental expenses. However, the appellants have claimed damages of Rs.3,00,000/- and therefore we hold that the appellants are entitled to damages of Rs.3,00,000/- with running interest at the ratre of 12 per cent per annum from the date of filing of the suit till realisation and costs. Admittedly, the appellants have withdrawn a sum of Rs.31,000/- deposited by the respondent No.1 and therefore that amount will have to be deducted while determining actual amount payable to the appellants as damages.

For the foregoing reasons, the appeal is allowed. The respondents are held jointly and severally liable to pay a sum of Rs.2,69,000/- to the appellants with 12 per cent interest thereon from the date of filing of the suit till realisation. The respondent No.1 is directed to deposit the full decretal amount in the trial Court within eight weeks from today. On amount being deposited, the appellant No.1 shall be permitted by the trial Court to withdraw a sum of Rs.25,000/-. Rest of the amount shall be invested in fixed deposit with any nationalised Bank for a period of 10 years. The amount shall be invested in the joint names of appellant No.1 and the Registrar of the trial Court. The Bank in which the amount may be invested shall not permit anyone to raise loan on the strength of the said deposit nor shall permit any withdrawal therefrom, without the permission of the trial Court. The periodical interest which may accrue on the deposit shall be paid to the appellant No.1 by account payee cheque. The apppeal is allowed with costs all throughout.

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