

## **HIGH COURT OF ORISSA: CUTTACK.**

### **RFA No.9 of 2006**

From the judgment and decree dated 12.9.2005 passed by Shri A.K.Das, learned Civil Judge (Senior Division), Padampur in Money Suit No.3 of 2002.

Managing Director,  
Western Electricity Supply Company  
Of Orissa Limited, Burla & others.

..... Appellants

- Versus-

Raibari Chhatria and others

..... Respondents

For Appellants : M/s. B.C.Panda, S.Mishra,  
B.N.Das,J.N.Panda and  
L.Das

For Respondents : M/s. Basudev Pujari and  
M.R.Nayak

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**PRESENT:**

**THE HONOURABLE SHRI JUSTICE B.K. PATEL**

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Date of hearing – 13.2.2013 :: Date of judgment – 26.2.2013

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**B.K. PATEL, J.**

This appeal is directed against the judgment dated 12.9.2005 passed by learned Civil Judge (Senior Division), Padampur in Money Suit No.3 of 2002 decreeing the suit and directing the appellants-defendants to pay compensation amount of Rs.2,60,000/- to respondents-plaintiffs on account of death of deceased Adhikari Chhatria due to electricity shock.

2. Plaintiffs, who are the widow and sons of the deceased, filed the suit against the WESCO, Bargarh and other officials under WESCO

as defendants. Plaintiffs' case is that on 11.4.1999 at night, while returning to his village Charpali from Bijepur, the deceased, who was the only bread earner of the family, came in contact with 11 K.V. live electric wires hanging dangerously at three feet height from the ground surface, got electricity shock and died. Alleging negligence on the part of the defendants in maintenance of electricity lines at the prescribed height, plaintiffs claimed compensation of Rs.3.00 lakhs from the defendants.

3. Defendant No.4 filed written statement admitting that the WESCO is carrying on business of supplying electric energy throughout the western Orissa and denying plaintiffs' allegation that on 11.4.1999 the 11KV electric line was hanging at three feet height from the ground surface on the footpath due to negligence on the part of defendants in maintenance of electricity lines. The defendant no.4 also denied the claim made by the plaintiffs that the deceased was the only earning bread earner of his family and on his death the plaintiffs are thrown to starvation.

4. Considering rival pleadings the following issues were framed by the trial court :-

- (1) Is there any cause of action to file the suit?
- (2) Whether Adhikari Chhatria died of electrocution due to the negligence of the officers of the defendants-Corporation?
- (3) Whether the plaintiff is entitled for the amount claimed?

(4) To what relief, if any, the plaintiff is entitled to?

5. Plaintiffs examined five witnesses P.Ws.1 to 5, including plaintiff nos. 1 and 2 as P.Ws. 1 and 2 respectively and relied upon documents marked Exts.1 to 12, of which Exts.5, 8,11 and 12 are certified copies of documents prepared in course of enquiry in U.D.G.R.Case No.31 of 1999 instituted in connection with death of the deceased. No evidence, oral or documentary, was adduced by the defendants.

6. On an appraisal of evidence on record, in answering issue no.2, the trial court held that the deceased died of electrocution due to negligence of the defendants. While answering issue no.3, it was held that the suit is not barred by limitation and the plaintiffs are entitled to receive compensation amount of Rs.2,60,000/-. Accordingly, issue nos.1 and 4 were also answered in favour of the plaintiffs.

7. In assailing the impugned judgment and decree it was submitted by the learned counsel for the appellants that alleged incident took place on 11.4.1999 whereas the suit was instituted on 6.4.2002, i.e., about three years after the cause of action took place. Therefore, it was contended, the suit is barred by limitation. According to learned counsel for the appellants the suit, being a suit for compensation based on torts, should have been filed within one year from the date when the cause of action arose in view of period prescribed under Article 72 of the Limitation Act (for short 'the Act'). It was argued that the court below illegally held the suit to have been filed

in time by invoking provision under Section 7 of the Act. Secondly, it was argued that findings of the trial court with regard to issue no.2 that the deceased got electricity shock due to negligence of the defendants is not supported by evidence on record. Lastly, it was contended that the plaintiffs having not pleaded in the plaint that the deceased was working as a coolie or manual labour, the trial court was wrong in assessing the deceased's income at the rate of Rs.50/- per day.

8. In reply, learned counsel for the respondents contended that the trial court has assigned cogent reasons in respect of the conclusion arrived at in answering all the issues. It is in the evidence that plaintiff nos.2 and 3 were minors during the period of occurrence. Plaintiff no.3 was minor even at the time of institution of the suit. Therefore, in view of provisions under Sections 6 and 7 of the Act the trial court rightly held that the suit was not barred by limitation. Medical evidence of P.W.3, the doctor who conducted post-mortem examination on the dead body of the deceased, leaves no room for doubt that the deceased died of electrocution. Witnesses to the occurrence have testified that electric line at the spot was hanging at a height of three feet from the ground level across the footpath leading to the deceased's village. In such circumstances, in absence of any rebuttal evidence it was rightly held that electrocution and consequential death of the deceased occurred due to negligence in maintenance of the electric line by the defendants. With regard to the assessment of quantum of compensation payable by the defendants it has been

pleaded by the plaintiffs that the deceased was the only bread earner of the family. Evidence of P.Ws.1 and 2 to that effect has not been assailed in any manner. It is in the evidence of P.W.4 that the deceased was working as coolie or labour. The trial court has assessed the compensation amount on the basis of minimum wage of Rs.50/- as is required to be paid to a daily wage earner per day. Therefore, there is absolutely no infirmity in directing payment of compensation amount of Rs.2,60,000/-.

9. Article 72 of the schedule to the Act provides one year period of limitation for a suit for compensation for doing or for omitting to do an act alleged to be in pursuance of any enactment in force for the time being. In the present suit plaintiffs have not alleged violation of any statutory enactment in force. Article 113 of the Act provides three years period of limitation for any suit for which no period of limitation is provided elsewhere in the Schedule to the Act. Admittedly, in the present case the suit has been instituted within three years from the date of death of the deceased when the right to sue accrued to the plaintiffs. Be that as it may, description of age of plaintiff nos.1 and 2 to be aged about eighteen and twelve years respectively in the plaint has not been disputed by the defendants. Therefore, obviously plaintiff no.2 attained majority in the very year when the suit was instituted and plaintiff no.3 was still a minor at that time. Both plaintiff nos.1 and 2 were incurring legal disability to institute the suit during the period when the occurrence took place. Sub-Section (1) of Section 6 of the Act

provides, *inter alia*, that where a person entitled to institute a suit is, at the time from which the prescribed period is to be reckoned, a minor, he may institute the suit within the same period after the disability has ceased, as would otherwise have been allowed from the time specified therefor in the Schedule. Section 7 of the Act provides, *inter alia*, that where one of several persons jointly entitled to institute a suit is under any disability to institute a suit, and a discharge cannot be given without the concurrence of such person, time will not run as against any of them until one of them becomes capable of giving such discharge without the concurrence of the others or until the disability has ceased. The trial court has referred to relevant judicial pronouncements to conclude that each of the heirs of the victim of an accidental death has an independent cause of action to claim compensation. None of them is competent to give discharge in respect of the right of other. Where one of such persons is under disability Section 7 of the Act would come into play and extend the period of limitation for the entire body of co-heir who had a joint right to sue. Such settled legal principle was not disputed by the learned counsel for the appellants in any manner. In such view of the matter, under the facts and circumstances of the case, there is no infirmity in the finding of the trial court that plaintiff nos.2 and 3 being minors at the time of accident, provisions under Section 7 of the Act would apply for which the suit is not barred by limitation.

10. It is not disputed that Bijepur U.D.G.R. Case No.31 of 1999 was instituted in connection with the death of the deceased. Dead body

of the deceased was subjected to inquest and post-mortem examination in course of enquiry into the case. Ext.5, Inquest Report; Ext.8, Final Form; Ext.11, Post-mortem Report and Ext.12, F.I.R. prepared in connection with U.D. G.R. Case No.31 of 1999 are on record. P.W.3 testified that he conducted post-mortem examination over the dead body of the deceased and found that cause of death of the deceased was due to electric current shock and burns on different parts of his body. Therefore, it stands establish that the deceased died of electrocution.

11. Not only P.Ws.1 and 2, who are plaintiff nos.1 and 2 respectively, but also P.W.4 stated that at the spot 11 K.V. live electricity wire was hanging at a height of three feet from the ground surface crossing the road leading from village Charpali to Bijepur. It is in the evidence of P.Ws.1 and 4 that after his death they went to the spot and found that the live electricity wire had touched the neck of the deceased. Thus, it is evident that live electricity wire was hanging at a dangerously low level on the road itself. The defendants, who are responsible for supply of electricity and maintenance of electricity line, have not offered any explanation for not taking care to ensure that the electricity line was secured at a safe height. Therefore, the only inference is that the defendants were neglected in maintaining the electricity line as a result of which the electricity line was hanging on the road at a height of three feet only from the ground level. Hence, there is no infirmity in the finding of the trial court in answering issue

no.2 that deceased died of electrocution due to negligence of Electricity Company and its officers.

12. Plaintiffs' assertion in the plaint that the deceased was the only bread earner of the family consisting of the plaintiffs has not been denied in the written statement nor has the assertion of P.Ws. 1,2 and 4 to that effect in their evidence been assailed in course of cross-examination. P.W.4 stated that the deceased was working as Coolie or labour. It was strenuously contended in course of argument by the learned counsel for the appellants that there being no specific pleading in the plaint that the deceased was working as a Coolie, evidence of P.W.4 to that effect is liable to be ignored. Even if such contention is accepted, evidence adduced by the plaintiffs to the effect that the deceased was the only bread earner of the family remains unshaken. Income of the deceased has been assessed at Rs.50/- per day as was payable as minimum wage to a daily labour. Considering the fact that the deceased died at the age of 35 years, trial court has calculated that the deceased would have earned Rs.3,60,000/- at least during the next 20 years but for his premature death. Allowing deduction of Rs.1,00,000/- towards expenses of the deceased himself trial court has assessed loss of dependency of the plaintiffs due to death of the deceased to be Rs.2,60,000/-. Such assessment of compensation does not at all appear to be unreasonable or exorbitant. Plaintiffs have



rightly be held to be entitled to the amount to which they have been deprived of due to death of the deceased.

13. Before concluding it may be observed that in course of argument learned counsel for the appellants made an attempt to raise certain technical objections like want of verification on the consolidated plaint by plaintiff no.2 upon attaining majority in assailing the impugned judgment. Appellants are instrumentalities of a welfare State. Death of the deceased has been established to have been occurred due to their negligence in proper maintenance of electricity lines. Therefore, such technical objections are uncalled for to defeat the claim which is required to be considered compassionately on humanitarian ground. Appellants being instrumentalities of the State ought to have made an effort to settle the plaintiffs' claim on their own outside the Court, instead of compelling them to be entangled in a protracted litigation for more than a decade.

14. In view of the above discussion, there is no merit in the appeal which is liable to be dismissed. Accordingly, the appeal is dismissed with cost. The impugned judgment and decree are confirmed.

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B.K.Patel,J.