



REGULAR CIVIL APPEAL NO.13/2024	
RECEIVED ON	23-10-2024
REGISTERED ON	23-10-2024
DECIDED ON	23-04-2026
DURATION	DYS - MTS - YRS
	00 - 06 - 01

IN THE COURT OF ADDITIONAL DISTRICT JUDGE DAHOD
AT, LIMKHEDA.

REGULAR CIVIL APPEAL NO.13/2024

EXH.09

- (1) **MANAGING DIRECTOR**
WESTERN GUJARAT VIJ COMPANY LTD,
AGE - -,
OCCUPATION – SERVICE,
RESIDENT OF RAJKOT,
TAL. & DIST.RAJKOT
- (2) **EXECUTIVE ENGINEER SHRI,**
WESTERN GUJARAT VIJ COMPANY LTD,
AGE - -,
OCCUPATION – SERVICE,
RESIDENT OF RAJKOT,
TAL. & DIST.RAJKOT
- (3) **EXECUTIVE ENGINEER SHRI,**
WESTERN GUJARAT VIJ COMPANY LTD,
AGE - -,
OCCUPATION – SERVICE,
RESIDENT OF DHROL,
DIST.JAMNAGAR.

.....APPELLANTS
(ORIGINAL DEFENDANTS)

VERSUS

(1). **RAMESHBHAI TIKABHAI VAKHLA**
AGE – 48 YEARS,
OCCUPATION – LABOUR WORK,
RESIDENT OF PIPARGOTA,
TAL.DHANPUR, DIST.DAHOD.

(2) **KAMIBEN RAMESHBHAI VAKHLA**
AGE – 30 YEARS,
OCCUPATION – AGRICULTURE,
RESIDENT OF PIPARGOTA,
TAL.DHANPUR, DIST.DAHOD.

.....RESPONDENTS
(ORIGINAL PLAINTIFFS)

(3) **SHIVABHAI KACHRABHAI PATEL**
AGE – ADULT,
OCCUPATION – AGRICULTURE,
RESIDNET OF LATIRPUR,
TAL.DHROL.

(4) **MADHYA GUJARAT VIJ COMPANY LTD.**
OCCUPATION – ---
HAVING OFFICE AT SARDAR
PATEL VIDHYUT BHAVAN,
RESCOURSE CIRCLE ROAD,
VADODARA.

(5) **MADHYA GUJARAT VIJ COMPANY LTD.**
OCCUPATION – ---
HAVING OFFICE AT BAHARPURA,
PADAV, DAHOD.

(6) **MADHYA GUJARAT VIJ COMPANY LTD.**
OCCUPATION – ---

HAVING OFFICE AT BARIA,
DIST.DAHOD.

.....RESPONDENTS
(ORIGINAL DEFENDANTS)

SUBJECT :- REGULAR CIVIL APPEAL FILED UNDER
SECTION - 96 OF CIVIL PROCEDURE CODE
AGAINST JUDGMENT & DECREE PASSED
BY LEARNED PRINCIPAL SENIOR CIVIL
JUDGE, LIMKHEDA, IN SPECIAL CIVIL
SUIT (NEW) NO.16/2016 (OLD NO.15/2009),
DTD.08-12-2023.

MR. M.A.PARIKH
LEARNED ADVOCATE FOR THE APPELLANTS

MR.M.C.CHAUHAN
LEARNED ADVOCATE FOR THE RESPONDENT NOS.1 & 2
OPPONENT NO.3 SERVED AND ABSENT.

MR.M.A.SHAH
LEARNED ADVOCATE FOR THE OPPONENT NOS.4 TO 6

:- J U D G M E N T :-

(1). The present appellants, who are the original defendant nos.1 to 3 have preferred this appeal against the present respondents - original plaintiff Nos.1 & 2 and original defendant No.3 to 6 being aggrieved and dis-satisfied with the judgment and decree passed in Special Civil Suit (New) No.16/2016 Old No.15 of 2009 on 08.12.2023 by the learned Principal Senior Civil Judge, Limkheda wherein learned Trial Judge has partly allowed the suit of the plaintiff. The present appeal is preferred under the provision of Section 96 of the Civil Procedure Code

and prayed to set aside the judgment and decree passed by the Trial Court.

(2) The facts of the special civil suit are as under :-

(2.1) It is averred that plaintiffs were doing the agriculture work at Saurashtra and residing in the Vaadi of defendant No.4 situated at Latipur, Tal.Dhrol along with the family and in the Vaadi of the defendant No.4 one Well situated.

(2.2) It is next averred that on 03.01.2009 at about 03:00 hours in the noon plaintiff No.1 was doing the agriculture work in the campus of defendant No.2 and in the Vaadi of the defendant No.4 and son of the plaintiff – Hemantkumar was seating and at that time near the room of the Well one live wire of the defendant Nos.1 to 3 touched to the Hemant and therefore, he became unconscious and therefore, he was immediately removed to the Government Hospital. Dhrol and there doctor declared the Hemant dead. There-after, police have been informed and post mortem was carried out.

(2.3) It is next averred that defendants have provided the electric connection and also provided the electric supply and therefore live wire is required to be taken out to one place to another place in the Jamnagar District and therefore, the responsibility to maintain and repairing of said lines and wires are of the defendants. It is next averred that though in the Vaadi of the defendant No.4 live wire broken, defendants have not repaired

the said wire or not disconnected the electric supply of the said live wire till the repairing and therefore, defendants committed the grave negligence and therefore the said incident occurred and therefore, defendants are required to be held liable to pay compensation.

(2.4) It is next averred that at the time of accident, Hemant was minor. At the time of accident, he was 07 years old and he was sound and healthy. He had good prospects in life after study well and he would be earned Rs.6,000/- per month in future. Due to accident, the plaintiffs have lost deceased. Therefore, on the above facts the claimants have filed this claim Petition to get the compensation of Rs.11,00,000/- from the opponents, under various heads with interest and costs against the opponents.

(3) After institution of the said suit, urgent notices and summons have been issued upon the defendants and defendants appeared through their learned Advocates.

(3.1) The defendant Nos.1 to 3 have filed the written reply vide Exh.35, wherein they have mainly denied the facts of the suit and contended that, it was not intimated by the police or plaintiffs or any other person about the alleged incident of the electrocution and defendant No.4 has not informed about the broken wire to the defendant Nos. 1 to 3 and if the defendants had been informed this incident would not have happened.

(3.2) It is next contended that defendant's company regularly and properly maintained the electric lines and if they received any complaint, they solve it without any delay. The incident occurred due to the negligence on the part of the defendant No.4 and to escape from his liability, they have created the false incident. Lastly, it is requested to dismissed the suit against the defendant Nos.1 to 3.

(4) After completion of the pleadings the learned Trial Court has framed the issues for adjudicating the dispute between the parties vide Exh.15 the same are re-produced here-with.

- (1) Whether the plaintiffs prove that on 03.01.2009 due to the negligence and carelessness of defendant Nos.1 to 3 their son Hemant received electrocution and died ?
- (2) Whether the plaintiffs prove that due to the negligence on the part of the defendant Nos. 1 to 3 Whether the defendants prove that plaintiff met with an accident due to his own negligence ?
- (3) Whether plaintiffs prove that this Court has the jurisdiction to try this suit ?
- (4) Whether the plaintiffs prove that plaintiffs are entitled to get prayer as prayed for ?
- (5) What Order and decree ?

(5) On perusal of the Judgment of the learned Trial Court, it reveals that, the following oral evidences led by the plaintiffs before the learned Trial Court.

-: ORAL EVIDENCE :-

1. Deposition of Plaintiff – Rameshbhai Tikabhai Vakhla **Exh.20**

(6) On perusal of the Judgment of the learned Trial Court, it reveals that the following documentary evidence has been produced by the plaintiff before the learned Trial Court.

-: DOCUMENTARY EVIDENCE :-

Sr. No.	Documentary Evidence	Exh./ Mark
1	Application of the applicant under the R.T.I. Act, to the defendants	42
2	Reply of the application sent by the plaintiff.	43
3	Panchnama of place of incident ;	44
4	Statement of Kamiben Rameshbhai Koli recorded before the Police ;	45
5	Statement of Navlabhai Kalubhai recorded before the Police ;	46
6	Statement of Chimanbhai Bachubhai recorded before the Police ;	47
7	P.M.Note	48

(7) On perusal of the Judgment of the learned Trial Court defendants have lead following oral evidence.

-: ORAL EVIDENCE :-

1. Deposition of Ratansingbhai Kanjibhai **Exh.16**

(8) On perusal of the Judgment of the learned Trial Court defendants have not produced any documentary evidence.

(9) After completion of the evidence as well as the arguments of the learned Advocates for both the parties, learned Trial Court has partly allowed the suit of the plaintiffs and whereby awarded the compensation of Rs.11,00,000/- with the interest at the rate of 8%. Being aggrieved and dissatisfied with the judgment and decree passed by the learned Trial Court present appellant - original defendant Nos. 1 to 3 have preferred the appeal.

(10) After filing of the present appeal, notices were served upon the respondents. Respondent Nos. 1 & 2- original plaintiffs have appeared through the learned Advocate Mr.M.C.Chauhan and contested the appeal. Respondent No.3 remained absent. Respondent Nos.4 to 6 appeared through the learned Advocate Mr.M.A.Shah.

(11) I have read contentions of the appeal memo. I have gone through the record and proceedings of learned Trial Court and heard the learned Advocate Mr.M.A.Parikh for the appellants and perused the written arguments submitted by the learned Advocate Mr.M.C.Chauhan for the respondent Nos. 1 & 2.

(12) Appellants in their appeal memo and learned Advocate Mr.M.A.Parikh for the appellants in his oral argument mainly contended that present respondent Nos.1 & 2 – original plaintiffs in para No.2 of the plaint stated that electric wire was hanging

while in para No.4 of the plaint stated that electric wire was broken and lying there. Thus, pleadings of the plaintiffs have not consistent. He has further submitted that incident occurred in the room of the field in one room suddenly electric supply was passed into the wire and deceased came into contact of the said earthing wire passed into it. Therefore, incident was happened. Deceased was not came into contact of the defendants' live wire and therefore, defendant Nos.1 and 2 are not liable for the compensation. He has mainly relied on the panchnama prepared by the investigating officer in criminal case produced at Exh. 44 and statement of the Kamiben wife of Rameshbhai Koli recorded by the investigating officer during the course of criminal complaint, which is produced at Exh.45 and requested to allow this appeal and defendant nos. 1 to 3 are required to be exonerated from the monitory liability.

(13) Learned Advocate Mr.M.C.Chauhan has submitted the written argument vide Exh.14. It is submitted in the written argument that learned Principal Senior Civil Judge, Limkheda has passed the judgment and decree after evaluation of the evidence produced before the Trial Court and therefore, no interference is required in the judgment and decree passed by the learned Trial Court. It is further submitted that as per the complaint, panchnama, statement recorded by the police and P.M.Note, it reveals that live wire of the defendant Nos.1 to 3 as there and minor child came into contact with the live wires and therefore, due to electrocution he died. It is further submitted that appellants are duty bound to maintain, repair and take care of the

electric lines and therefore, due to the negligence of the appellants, incident occurred. Moreover, deceased died as he came into contact with electric earthing wire in room of the defendant No.4 and as the electric supply provided by the appellants and therefore, due to the negligence of the appellants incident occurred. Lastly, it is requested to dismiss the appeal.

(14) It is cardinal principle in the civil matters, parties must pleaded their case or defence in the pleadings and there-after required to prove their case according to the principal of preponderance of probability.

(15) Defendant Nos.1 to 3 filed their written statement vide Exh.35 before the Trial Court. In para 6 of the written statement defendant Nos.3 denial the case of the plaintiff that son of the plaintiff came into contact of the live wire of the defendant Nos.1 to 3, but in written statement defendant No.3 have not raised their defence that incident was happened, while son of the plaintiff seating in the room of the defendant no.4 and at that time suddenly he came into contact of the earthing wire in which electric supply was passed and due to that son of the plaintiff died.

(16) The appellants have first time before this Court stated this facts in their appeal memo, thus in absence of the specific pleadings in written statement defendant Nos.1 to 3 neither produced evidence of this facts nor relied on evidence produced by the plaintiff.

(17) Learned Advocate for the appellants mainly relied on the panchnama of the scene of offence and statement of Kamiben wife of Rameshbhai recorded by the police.

(18) In the panchnama produced by the plaintiff at Exh.44 mentioned that eye witness (Shivabhai Patel) stated that “suddenly “electric supply passed in earthing wire therefore, accident occurred .” But, to prove this fact neither Shivabhai nor any panchas of the panchnama nor maker of the panchnama examined by the defendants. In absence of such evidence, merely this facts stated in panchnaam cannot be relied.

(19) Defendants further relied on the statement of the Kamiben wife of Rameshbhai Tikabhai recorded by police during the investigation criminal offence, which is produced vide Exh.45. In this statement witness Kamiben stated before the investigating officer that “on the day of the incident she was working in the Vaadi of the Shivabhai Patel at that time her husband Rameshbhai was also working there and her children were playing near the hut and her younger son during the play went to the small room built for placing the electric board and in which electric motor cable wire and earthing wire was pressed in the corner of the room and at about 03:00 hours accidentally her son was electrocuted. Her husband and she took her son in the room but he did not say anything.”

(20) To prove facts of this statement, defendants have neither examined the Kamiben nor investigating officer, who recorded her statement as witness. This statement is recorded under Section 161 of the Cr.P.C.

(21) It is required to refer the judgment of the Hon'ble Supreme Court in the case of **Dharmendra Kumar @ Dharmma Vs. State of Madhya Pradesh – 2024 (0) AIJEL – SC 73756** in para 65 Hon'ble Supreme Court held that

65. [Section 161](#) CrPC empowers the Police to examine orally any person who is acquainted with the facts and circumstances of the case under investigation. The Police may reduce such statement into writing also. [Section 162\(1\)](#) CrPC, nonetheless, mandates that no statement made by any person to a Police Officer, if reduced to writing, be signed by the person making it, nor shall such statement be used in evidence except to contradict a witness in the manner provided by [Section 145](#) of the IEA. However, Sub-Section (2) of [Section 162](#) CrPC carves out an exception to Sub-Section (1) as it explicitly provides that nothing in [Section 162](#) shall be deemed to apply to any statement falling within the ambit of clause (1) of [Section 32](#) of the IEA. In other words, a statement made by a person who is dead, as to the cause of his death or to the circumstances of the transaction which resulted in his death, to a Police Officer and which has been recorded

under [Section 161 CrPC](#), shall be relevant and admissible, notwithstanding the express bar against use of such statement in evidence contained therein. In such eventuality, the statement recorded under [Section 161 CrPC](#) assumes the character of a dying declaration. Since extraordinary credence has been given to such dying declaration, the court ought to be extremely careful and cautious in placing reliance thereupon. There are a catena of decisions of this Court which lend support to the inter-play between provisions of the [CrPC](#) and the IEA, as explained above⁹. 9 See: i) [Mukeshbhai Gopalbhai Barot v. State of Gujarat](#), (2010) 12 SCC 224; (ii) [Sri Bhagwan v. State of U.P.](#), (2013) 12 SCC 137; (iii) [Pradeep Bisoi v. State of Odisha](#), (2019) 11 SCC 500.

Thus, statement under Section – 161 of the Criminal Procedure Code can be used for contradiction or corroboration as per the Section 145 of the Indian Evidence Act, therefore, statement produced by the plaintiff vide Exh.45 cannot be read into the evidence. Defendants have not examined Kamiben as a witness, therefore, also this Court cannot be relied on the statement recorded under Section – 161 of the Criminal Procedure Code.

(22) As discussed above appellants – original defendants Nos. 1 to 3 raised contention before this Court have not raised defence

into the written statement before the Trial Court. Not only that appellants relied upon the document produced before the Trial Court at Exh.44 and 45 are not directly admissible into the evidence defendants have not examined any witnesses of the said documents before the Trial Court, therefore it cannot be read into the evidence. Defendants stated grounds to file this appeal are not maintainable.

(23) Defendants have not raised any grievance regarding the amount of the compensation awarded by the Trial Court.

(24) Learned Advocate for the appellants produced judgment of the Hon'ble High Court in First Appeal No. 2886 of 2025 wherein death of the minor Hon'ble High Court awarded compensation of Rs. 10,19,660/- in Motor Accident Claim.

(25) In the case on hand minor age about 07 years was came into contact with the live wire of the defendant Nos. 1 to 3 and he was died. Trial Court has awarded the compensation of Rs.11,00,000/- with the interest of 8% which is just and proper as per the above judgment of the Hon'ble High Court, therefore, also compensation awarded by the Trial Court not required to interfere.

(26) For the above going reasons stated here-in-above Trial Court appellants failed to prove their case, therefore, this appeal is deserves to be dismissed. Hence, I answer the Point Nos.1 & 2 into the negative and pass the following order.

-: ORDER :-

1. The present regular civil appeal, preferred by appellants – original defendant nos. 1 to 3 are here by dismissed.
2. The Judgment and Decree, passed by the learned Principal Senior Civil Judge, Limkheda in Special Civil Suit (New) No.16/2016, dtd.08-12-2023 are hereby confirmed.
3. Appellants pay the cost of the respondents and bear their own cost.
4. Decree be drawn up accordingly.
5. A copy of this Judgment along-with R&P of Special Civil Suit (New) No.16/2016 old No.15 of 2009 be sent back to learned Trial Court for information and necessary action.

Pronounced in the open Court, today, on this **23rd** Day of **April, 2026**.

Dt. 23/04/2026 **(HARESHKUMAR HIMMATLAL THAKKAR)**
Place : Limkheda ADDITIONAL SESSIONS JUDGE,
 DAHOD, AT. LIMKHEDA
 [CODE NO.GJ 00713]