

Registered on : 18/03/2005
Decided On : 20/08/2019
Duration Y. M. Days
Ex.

**IN THE COURT OF ADDITIONAL SENIOR CIVIL JUDGE
AT GONDAL – RAJKOT DISTRICT**

SPECIAL CIVIL SUIT NO.12 OF 2005

Plaintiff:

- 1. VIRENDRASINH JUVANSINH DABHI,**
Hindu, Adult, Service,
Sukhnathnagar, B/h.Govt. Hospital,
Gondal, Dist. Rajkot.

VERSUS

Defendants:

- 1. PASCHIM GUJARAT VIJ COMPANY LTD.,**
Through the Secretary,
PGVCL, Race Course,
Vadodara.
- 2. PASCHIM GUJARAT VIJ COMPANY LTD.,**
Through Deputy Engineer,
PGVCL, Town Division,
Power House, Gondal.
- 3. DIPAKBHAI K. PATEL,**
Hindu, Adult, Contractor,
"Ashirvad", 4-Raj Nagar,
Nana Mava Road, Rajkot.

Appearance:

D.K.PATEL, The Learned Advocate for Plaintiff.
M.C.DAVE, The Learned Advocate for Defendants No.1&2.
S.N.PARMAR, The Learned Advocate for Defendant No.3.

// J U D G M E N T //

1. The plaintiff has filed the present suit

against the defendants to recover sum of Rs.1,50,000/- together with interest at the rate of 18% p.a. from the date of the suit till its realization on account of injuries sustained by him due to fall of electric pole on him.

2. The short facts of the plaintiffs case are that the plaintiff is residing at Gondal and he has completed Electric Mechanic course in ITI, Gondal. It is averred that on 06/01/2005, the men of the defendants No.1 & 2 were installing cement pole in Gondal City and when the plaintiff was going on his bicycle from ITI to Saurabh Telephone, at that time all of sudden, cement pole fallen on him and he has sustained severe bodily injuries on his right hand palm and fingers. It is averred that it is the duty of the defendants to take utmost care and caution while installing cement poles and if any unwanted incident happens in that case, the defendants are solely liable for it. But, in the present case, the defendants have not taken any care or safety measures and due to their carelessness and negligence, cement pole fallen on bicycle of the plaintiff and hence, the incident has happened. Thereafter, the plaintiff has informed Gondal City Police as well as the office of the defendant No.2 and the Police has carried out panchnama and other procedures. It is averred that after the incident, the plaintiff was immediately

taken to the hospital of Dr.Jogi and he has remained as indoor patient and due to such incident, he has sustained injuries on his right hand palm and fingers and for that he had to incur Rs.18,000/- towards medical expenses. Thereafter, the plaintiff has issued legal notice dated 28/02/2005 to defendants to pay compensation. But, the defendants have denied to pay compensation. It is further averred that at the time of accident, the plaintiff was aged about 17 years and studying in 10th standard and also doing course of electric mechanic in ITI, Gondal. Due to such injuries, the plaintiff has sustained permanent disability and therefore, considering the minor age of the plaintiff, he has prayed to consider his notional income of Rs.2000/- per month and thereby considering all aspects, he has prayed to grant compensation of Rs.1,50,000/- from the defendants. Lastly, he has prayed to allow the suit with costs.

3. The defendants are duly served with the summons / notices of the suit. The defendants No.1 & 2 have appeared before the court and have filed their written statement at Ex.14 and contended that the suit is not legal and bonafide. It is not admitted that at the time of incident, the plaintiff was minor and studying in ITI, Gondal. It is contended that all the procedure of installing cement pole was given to the contractor and therefore, the defendants No.1 & 2

are not responsible for the incident. It is contended that the defendants No.1 & 2 have given the contract to defendant No.3 by way of executing agreement and indemnity bond. Therefore, if any compensation is required to be paid to the plaintiff in that case, the defendant No.3 is liable to pay compensation to the plaintiff and not the defendants No.1 & 2. It is contended that there is no negligence on the part of defendants No.1 & 2. But, with a view to get false compensation from the defendants No.1 & 2, the plaintiff has joined them as parties to the suit. It is contended that after submission of completion report by the contractor, the defendants No.1 & 2 have to maintain the line and electric pole. Even though, the defendants No.1 & 2 have taken sufficient care and caution. It is contended that incident has happened due to an Act of God and therefore, the defendants No.1 & 2 are not liable and responsible for the same. Lastly, they have prayed to dismiss the suit with costs.

4. The defendant No.3 was subsequently been joined in the current suit proceedings and he has appeared before the court and filed his written statement at Ex.85. It is contended that the suit of the plaintiff is not legal, proper and bonafide; he has admitted that he has taken the work of contract from defendants No.1 & 2. He has also replied the

notice on dated 04/07/2005 issued by defendants No.1 & 2 in the year, 2005. It is contended that as per the contract dated 01/03/2004, it was one of the conditions that if during the entire work if any worker of defendant No.3 met with any accident in that case, the defendant No.3 will be responsible for compensation and not defendants No.1 & 2. But in the instant case, the injured plaintiff is not the worker of the defendant No.3. Hence, the defendant No.3 is not responsible and liable to pay compensation. It is contended that the defendants No.1 & 2 are liable for maintenance of work and not by defendant No.3. Hence, the defendant No.3 is at all not responsible for the incident and compensation. Lastly, he has prayed to dismiss the suit with costs.

5. In view of above pleadings, following issues are framed at Ex.20 by my predecessor.

-// I S S U E S \\-

1. Whether the plaintiff proves that the cement pole of the defendants Board fell on the cycle of the minor son of the plaintiff and he sustained injuries on his right hand palm and fingers?
2. Whether the plaintiff proves that the incident has happened due to carelessness and negligence on the part of men of defendants Board?
3. Whether defendants prove that the defendants Board has entered into contract/agreement to indemnity with contractor Dipakbhai K. Patel to install poles of cement and therefore, the

defendants are not liable for the incident?

4. Whether defendants prove that the incident is an Act of God and they are not liable to pay compensation and indemnify the contractor?

5. Whether the plaintiff is entitled to get compensation with interest as prayed for?

6. What order and decree?

6. My findings to the above issues are as under:-

1. In the affirmative.
2. In the affirmative.
3. Partly in affirmative.
4. Partly in affirmative.
5. Partly in affirmative.
6. As per final order.

// **R E A S O N S** //

7. In support of his case, the plaintiff has produced following documentary and oral evidences.

Sr. No.	Particular of evidences	Ex. No.
1.	Affidavit of examination in chief of plaintiff filed under the provision of O.XVIII R.4 of C.P.C.	33
2.	Deposition of Dayabhai Jivabhai Sagathiya	54
3.	Copy of legal notice issued to defendants No.1 & 2	36
4.	Postal acknowledgment receipts of defendants No.1 & 2.	37
5.	Copy of Station Diary Entry	39
6.	Copy of panchnama	38

7.	Copy of injury certificate	40
8.	Disability certificate of plaintiff	41

8. The plaintiff has filed evidence closing pursis at Ex.55. Thereafter, the matter was kept for producing evidences by the defendants.

9. In support of their case, the defendants No.1 & 2 have produced following documentary and oral evidences.

Sr. No.	Particular of evidences	Ex. No.
1.	Affidavit of examination in chief of Himanshubhai Bhikhabhai Dhaduk, the Deputy Engineer, PGVCL, Town Sub-Division, Gondal on behalf of defendants No.1 & 2 filed under the provision of O.XVIII R.4 of C.P.C.	61
2.	Copy of letter given to contractor	64
3.	Copy of indemnity bond executed by contractor	65
4.	Copy of agreement executed by contractor	66
5.	Copies of letters written by Deputy Engineer	67 & 68
6.	Copy of reply of notice given to plaintiff	69
7.	Copy of receipt of notice	70

10. The defendants No.1 & 2 have filed evidence closing pursis at Ex.88. Thereafter, the matter was kept for producing evidence by defendant No.3.

11. In support of his case, the defendant No.3 has produced following documentary and oral evidences.

Sr. No.	Particular of evidences	Ex. No.
1.	Affidavit of examination in chief of defendant No.3 filed under the provision of O.XVIII R.4 of C.P.C.	92
2.	Copy of notice issued by PGVCL	94
3.	Copy of reply of notice.	95
4.	Copy of work order agreement	96

12. Thereafter, the defendant No.3 has filed his evidence closing pursis at Ex.97. Read the plaint, written statement of defendants No.1 & 2 and defendant No.3 and perused the documentary and oral evidences produced by both the parties. I have heard the arguments of learned advocates for the plaintiff and defendants. The discussion of arguments and evidences have been clubbed in the reasons.

13. **ISSUES NO. 1 TO 5:-**

All the issues are interconnected to each other, hence, to avoid the repetition of discussion of evidence and arguments and for the sake of convenience and brevity, all the four issues are discussed conjointly.

14. In the arguments, L. Advocate for plaintiff

has argued that, looking to evidence produced by plaintiff, he has proved that cement electric pole was fall on plaintiff. He has sustained injury due to that. The certificate of injury and disability is already produced on record. The act was due to joint and some negligence of defendants and therefore, it is prayed to grant relief as prayed for by fixing liability of defendants of joint and several.

15. On the other hand, L. Advocate for P.G.V.C.L. has argued that, at the relevant time, work order was given to defendant no.3. The liability of them could not be affixed. It is the sole liability of defendant no.3 only. Thus, it is prayed to dismiss the suit.

16. On behalf of defendant no.3, it is argued that, looking to his work order with defendants no. 1 and 2, his liability cannot be fixed. His liability was not part of third party injury but limited to the injury to the workers during work. Thus, his liability must be exonerated.

17. I have cogitated the rival submission of both the sides. Also, perused the evidence produced by both the sides.

The copy of janvajog police station diary entry produced at Ex-39 speaks that, plaintiff was injured due to fallen of pole on relevant day. It is

dated 06/01/2005.

The copy of panchnama produced at Ex-38 also speaks that, the pole was fallen on the cycle and the cycled damaged due to the negligent act.

The copy of medical certificate produced at Ex-40 clearly speaks that, plaintiff has sustained injury on his right hand and palm of hand, injury was also found of index finger and little finger.

The certificate for the disability with this regard to has been produced at Ex-41, as per that certificate, disability was found of **"Right upper extremity in about 12 % (Twelve) only"**.

The work order given to defendant no.3 by rest of the defendants has been produced on record at Ex-64, 96 which clearly establishes that, order to dig polls was given to defendant no.3.

The above documentary evidence has been supported by the oral evidence of plaintiff. Thus, it is proved by plaintiff that, the cement pole of the defendants Board fell on the cycle of the minor son of the plaintiff (son of Plaintiff got majored during suit) and he sustained injuries on his right hand palm and fingers. It is also proved that, the incident has happened due to carelessness and negligence on the part of men (word 'men' also includes defendant no.3) of defendants Board. It is also proved by defendant's no. 1 and 2 that, the defendants Board has entered into contract/agreement

to indemnity with contractor Dipakbhai K. Patel (defendant no.3) to install poles of cement. The defendants no.1 and 2 have come with a defence that as per work order, liability would be of defendant no.3 and not of them. As per their say, the base of their defence is Ex-64. Upon perusing said document, the clause 7 was kept for undertaking in case of injury. That clause is limited to workers only and not extended to injury occurred to third party. By virtue of that clause, defendant no.4 is saying that he cannot be held liable. It is true that, the clause limited to workers and not extended to third party injury or damaged. Even if there is no such work order or clause, it doesn't mean that, defendant no.4 have no liability because, ultimately when the incident was happened, defendant no.4 was doing work of fixing pole as per work order itself. It is his responsibility to dig and fix pole properly. In cross examination, the plaintiff has asked to defendant no.1 in Ex-61 that, it is true that, હાલના કામે કોન્ટ્રાક્ટરે અમને કમ્પ્લીઝન સર્ટીફિકેટ આપેલ નથી. એ વાત ખરી છે કે, કમ્પ્લીઝન સર્ટીફિકેટ પહેલા લાઇનના મેઇન્ટેનન્સની જવાબદારી અમારી નથી. This cross examination speaks that, plaintiff himself is fixing the responsibility of defendant no.3 excluding rest of the defendants. As It is already said earlier that none clause in work order regarding third party injury itself is not enough to exclude the responsibility of moral as well as legal liability of defendant no.3 who is

contractor at the relevant point of time. Moreover, it is also required to be seen that, officers of defendants no.1 & 2 are also has to supervise the relevant work and defendant no.3 has clearly deposed in his evidence about this. Looking to cross examination of defendant no.3 in Ex-92, he has clearly stated that, એ વાત ખરી છે કે, હાલનો બનાવ કામ ચાલુ હતુ ત્યારે બનેલ. એ વાત ખરી છે કે, કામચાલુ હતુ ત્યારે કામગીરી કામને લગત અમારે કરવાની હતી. એ વાત ખરી નથી કે, દરેક પોલ ઉભો કરવા માટે ફાઉન્ડેશન ભરવું પડે. સાહેબ જણાવે છે કે, પી.જી.વી.સી.એલ. ના નાયબ ઈજનેર જગ્યા જોઈને ફાઉન્ડેશન ભરવુ કે કેમ તે જણાવે છે. This, cross examination leads to inference that, if the deputy Ex. Engineer has given instruction to make foundation, the pole might not be fall on the plaintiff. Moreover, no clause was kept in working order so far fixing liability in case of third party. Thus, both i.e. P.G.V.C.L and contractor seems to be equally liable. Contractor has also acted negligently otherwise poll would not be fallen. Thus, liability of both is required to be fixed 50 % each.

18. Now, it is required to be seen that what is the amount of compensation. The applicant has stated in his affidavit that at the time of incident, the plaintiff was aged about 17 years and he was studying in 10th standard and also doing course of Electrical Mechanic. Therefore, considering his age and study, his notional income of Rs.2000/- should be considered. But, in support of his say, the

applicant has not produced any evidence to prove that at the time of accident, he was studying in 10th standard and doing course of Electrical Mechanic. But, looking to the records of the case and considering the fact that at the time of incident, the applicant was aged about 17 years and considering the fact that the incident has happened in the year, 2005, his notional income of Rs.1500/- per month would be just, proper and reasonable amount to be believed. Now, it appears from the disability certificate produced at Ex.41 that the applicant has sustained 12% permanent disability body as a whole. But, it would be just, proper and reasonable to consider 10% disability body as a whole. So, monthly loss of income to plaintiff would come to Rs.150/- ($1500 \times 10\%$). So, the annual loss of income to plaintiff would come to Rs.1800/- (150×12). It appears from the plaint and record that at the time of incident, the plaintiff was aged about 17 years and therefore, the plaintiff is entitled to get multiplier of 18 years as he is falling in age group of 15 to 20 as per the judgment of **SARLA VARMA CASE REPORTED IN 2010(1) GLR PAGE NO.17**. So, the future loss of income to the applicant would come to Rs.32,400/-. Therefore, the plaintiff is entitled to get Rs.32,400/- towards future loss of income.

So far as pain, shock and suffering is concerned, it appears from disability certificate

produced at Ex.41, the applicant has sustained fracture injury on his right hand and also sustained other bodily injury. In the opinion of this court, it would be just and proper to award Rs.5,000/- towards pain, shock and suffering because he has sustained fracture injury and other bodily injury. Hence, I award the same.

So far as amount of Medical Expenses are concerned, it appears from the record that the applicant had undergone for fracture operation and also taken medical treatment and follow up treatment. But, in support of his say, the plaintiff has not produced any medical bills, prescriptions, vouchers etc. So, considering the fracture injury and medical treatment, the plaintiff is entitled to get lump sum amount of Rs.5000/- towards medicines and medical treatment.

So far as other heads of special diet, transportation and attendants charges are concerned, the plaintiff has not produced any documentary evidence to prove such facts. Therefore, considering the nature of injury and age of the plaintiff, he is entitled to get lump sum amount of Rs.8000/- under the head of special diet, transportation and attendants charges.

Therefore, the applicant is entitled to compensation under various heads:

Rs.	32,400/-	Future Loss of Income
Rs.	5,000/-	Pain, shock and suffering
Rs.	5,000/-	Medical Expenses
Rs.	8,000/-	Transportation, Special Diet and Attendants.
Rs.	50,400/-	Total Compensation

So far issue of interest is concerned, as per Sec.34, plaintiff is entitled to get interest at the rate of 6 % p.a from the date of the suit, till its realization.

19. Thus, reply of all the issues are given accordingly. Considering all the facts, pleading, evidence, arguments, following final order is passed in the interest of justice.

// F I N A L O R D E R //

- 1.The present suit is hereby partly allowed.
2. The defendants are hereby ordered to pay an amount of **Rs.50,400/-** in total to the plaintiff towards compensation (**Defendants no. 1 & 2 Rs. 25,200/- and defendant no.3 Rs.25,200/-**) together with interest at the rate of 6% per annum from the date of the suit till its realization.
3. On depositing the amount of compensation with interest by the defendants, said amount be paid to the plaintiff by an account payee cheque, after due verification.
4. The defendants do pay the cost of the suit to plaintiff and bear their own cost of the suit.

5. Decree to be drawn accordingly.

Signed and pronounced in the open court to day on
this 20th DAY OF AUGUST, 2019 at Gondal.

Date :-20/08/2019

(PRASHANT NARENDRAKUMAR RAVAL)

Additional Senior Civil Judge

Place:- GONDAL

G O N D A L.

JUDGE CODE-GJ-00-708