



IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 19TH DAY OF AUGUST, 2025

BEFORE

THE HON'BLE MR. JUSTICE ASHOK S. KINAGI

REGULAR FIRST APPEAL NO. 100143 OF 2018 (-)

C/W

RFA CROSS OBJ NO. 100001 OF 2024

IN RFA NO. 100143 OF 2018

BETWEEN:

1. CHAIRMAN AND MANAGING DIRECTOR
HUBBALLI ELECTRICITY SUPPLY COMPANY,
HUBBALLI-580001.
2. EXECUTIVE ENGINEER (ELECTRICAL)
O & M, DIVISION, HESCOM,
KARWAR-581301.
3. ASSISTANT EXECUTIVE
ENGINEER (ELECTRICAL), O & M,
SUB DIVISION, HESCOM, BHATKAL-581320.

...APPELLANTS

(BY SRI. SHIVAKUMAR S. BADAWADAGI, ADV)

AND:

1. HANUMANT S/O CHITTIRAY DEVADIGA
AGE. 35 YEARS, OCC: NIL,
R/O. CHITTE-HAKLA, MAVINAKATTA,
BENGRE, TQ: BHATKAL,
DIST: KARWAR-581301.
2. ABDUL MOOBEEN SHOUDAGAR
AGE. 51 YEARS, OCC: CONTRACTOR,
R/O. USMAN NAGAR, 32/7, RAILWAY
ROAD, BHATKAL, DIST: KARWAR-581301.

...RESPONDENTS

(BY SRI. J.S SHETTY, ADV FOR C/R1,
SRI. H.R. GUNDAPPA, ADV FOR R2)

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THIS RFA IS FILED UNDER SEC. 96 OF CPC., 1908, AGAINST THE JUDGMENT AND DECREE DTD:12.01.2018 PASSED IN O.S. NO.5/2017 ON THE FILE OF THE SENIOR CIVIL JUDGE, BHATKAL, PARTLY DECREERING THE SUIT FILED FOR DAMAGES.

THIS APPEAL, COMING ON FOR FURTHER DICTATION,

IN RFA CROSS OBJ NO. 100001 OF 2024

BETWEEN:

1. SRI. ABDUL MOOBEEN SHOUDAGAR
AGE. 56 YEARS, OCC. CONTRACTOR,
R/O. USMAN NAGAR, 32/7, RAILWAY
ROAD, BHATKAL-581301, DIST. KARWAR.

...CROSS OBJECTOR

(BY SRI. H.R. GUNDAPPA, ADV)

AND:

1. SRI. HANUMANT CHITTIRAY DEVADIGA
AGE. 39 YEARS, OCC. NILL,
R/O. CHITTE-HAKLA, MAVINKATTA
BENGRE, TQ. BHATKL-581301, DIST. KARWAR.
2. CHAIRMAN AND MANAGING DIRECTOR
HUBBLI ELECTRIC SUPPLY COMPANY,
HUBBALLI 582221, DHARWAD DISTRICT.
3. EXECUTIVE ENGINEER (ELECTRICAL)
O & M DIVISION, HESCOM,
KARWAR- 581301, KARWAR DIST.
4. ASSISTNANT EXECUTIVE
ENGINEER (ELECTRICAL), O & M DIVISION,
HESCOM, BHATKAL-581320, KARWAR DIST.
5. THE STATE OF KARNATAKA
THROUGH DEPUTY COMMISSIONER,
KARWAR-581301.

...RESPONDENTS

(BY SRI. J.S. SHETTY, ADV FOR R1,
SRI. S.S. BADAWADAGI, ADV FOR R2 TO R4,
SRI. ABHISHEK MALIPATIL, HCGP FOR R5)



NC: 2025:KHC-D:10418
RFA No. 100143 of 2018
C/W RFA.CROB No. 100001 of 2024

THIS RFA.CROB IN RFA NO.100143/2018 IS FILED U/O.41 RULE 22 R/W SEC.96 OF CPC, AGAINST THE JUDGMENT AND DECREE DATED 12.01.2018 PASSED IN O.S.NO.5/2017 ON THE FILE OF THE SENIOR CIVIL JUDGE, BHATKAL, PARTLY DECREERING THE SUIT FILED FOR DAMAGES.

THIS CROSS OBJECTION APPEAL, COMING ON FOR ADMISSION, THIS DAY, THE JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: THE HON'BLE MR. JUSTICE ASHOK S. KINAGI

ORAL JUDGMENT

(PER: THE HON'BLE MR. JUSTICE ASHOK S. KINAGI)

1. This appeal is filed by the defendant Nos.2 to 4 challenging the Judgment and decree dated 12.01.2018 passed in O.S.No.5/2017 by the learned Senior Civil Judge, Bhatkal (for short 'the trial Court'). Defendant No.1 has filed a cross-objection challenging the very same Judgement and decree in RFA Crob No.100001/2024.

2. For convenience, the parties are referred to as per their ranking before the trial Court.

3. In RFA No.100143/2018, the appellants were defendants No.2 to 4. Respondent No.1 is the plaintiff and



respondent No.2 was the defendant No.1. In RFA CROB No.100001/2024, the cross-objector is defendant No.1 and the respondents are the plaintiff and other defendants.

4. Brief facts leading rise to filing of this appeal and cross-objection are as follows;

The plaintiff filed a suit against the defendants for recovery of damages. It is the case of the plaintiff that, he was working as a coolie for his livelihood under defendant No.1. On 10.02.2010, on the instructions of defendant No.1, he went to Moosa Nagar, Bhatkal along with defendant No.1 and two other workers, namely, Sri.Abbas and Sri.Ansar for electric work and to fix the streetlight and to draw electric line. At about 03.45 p.m., defendant No.1 instructed the plaintiff to climb the electric pole to connect the electric wire and he was informed that he told the KPTCL officials to make power cut in the said line. Believing the words of defendant No.1 and as per his direction, the plaintiff climbed the electric pole and while



he was connecting the electric wire, at that time the plaintiff's head touched the upper line of the said electric pole. Suddenly, the plaintiff received an electric shock and he was thrown from the pole. He sustained a head injury and sustained a permanent disability. He was shifted to KMC Hospital, Manipal for treatment. The plaintiff was under the care of his wife and his relatives, while he was taking the treatment. Due to the said incident, he is unable to speak or work. He is totally bedridden and spent a huge amount of more than Rs.6,00,000/- for the medical treatment. It is contended that the incident occurred due to the irresponsible and negligent act of defendants No.1 to 4. The defendants have not taken precautionary measures. The defendants are solely responsible for the injuries sustained by the plaintiff. The plaintiff requested the defendants to pay the damages, but they refused to pay damages. Instead of paying the damages, they engaged in creating a false document to escape from the liability. Hence, prays to decree the suit.



5. Defendant No.1 filed a written statement contending that he is an electrical contractor and used to engage the plaintiff for his contract work on daily wages. On 10.02.2010, a contract was taken by him within the municipal town limits of Bhatkal. He got it done through the plaintiff and two other workers on that day till 2.00 p.m. only. Thereafter, as he stopped the work at 2.00 p.m. itself, he came back. The plaintiff was engaged by another contractor on the same day who took a similar contract work outside the municipal town limits of Bhatkal from 3.00 p.m. onwards and even that a contractor got the work done through the plaintiff by 3.45 p.m. in the presence of HESCOM authorities. He left his cutting player over the electric lines with the pole without informing any said person or HESCOM authorities. He directly climbed the pole and his head touched the electric line to which current was flowing. On the account of this, he fell from the pole and sustained injuries. It is contended that the original contractor to whom the electrical works were



entrusted by defendant Nos.2 to 4 outside the municipal town limits is not made as a party in the suit filed by the plaintiff and the suit is not maintainable for non-joinder of necessary party. Hence, prays to dismiss the suit against defendant No.1.

6. Defendant Nos.2 to 4 have jointly filed a written statement denying the averments made in the plaint and it is contended that defendant No.1 obtained a contract from Town Municipality for the extension of street lines in Moosa Nagar, Bhatakai. For the said work, there was necessity for the power clearance in the 11 KV line. Accordingly, the Section Officer made a line clearance from 3.00 p.m. to 3.45 p.m. on the request of defendant No.1. After the completion of the work of defendant No.1, he asked the Section Officer to charge the 11 KV line. Accordingly, he charged 11 KV line and thereafter he went near Amar Deepa saw-mill to inspect another work. In the meanwhile, the plaintiff, recollected that he had left the cutting player on the electric pole, climbed the electric



pole to get it back. He came in contact with the 11 KV line and due to electric shock, fell down and sustained grievous injuries. It is contended that there is no fault on the part of defendant Nos.2 to 4, but the accident occurred due to the sole negligence of the plaintiff. It is further contended that the plaintiff was an employee of defendant No.1 and the incident occurred due to sole negligence of the plaintiff himself and hence, prays to dismiss the suit against the defendant Nos.2 to 4.

7. The Trial Court, based on the pleadings of the parties, framed the issues and additional issues.

ISSUES

1. *Whether the plaintiff proves that on 10-2-2010 at 3.45 p.m. at Moosa Nagar of Bhatkal, he sustained serious injuries by electric shock, due to the negligence of the defendant No.1 to 4 ?*
2. *Whether the defendant No.3 and 4 prove that the plaintiff sustained injuries due to his own negligence?*



3. *Whether plaintiff is entitled for damages as prayed?*
4. *What order or decree?*

ADDITIONAL ISSUES ON 06-03-2015

1. *Whether the defendant No.1 proves that plaintiff was not working under him at the time of incident?*
2. *Whether the defendant No.1 proves that the plaintiff sustained injuries due his own negligence?*

8. The plaintiff, to substantiate his case, examined himself as PW-1 and marked 447 documents as Exs.P1 to P447. In rebuttal, defendant No.1 was examined as DW-1, the Chief Officer, Bhatkal was examined as DW-2, the colleague of plaintiff was examined as DW-3, the Executive Engineer was examined DW-4 and HESCOM lineman was examined as DW-5. The Section Officer of defendants No.2 to 4 was examined as DW-6 and 27 documents were marked as Exs.D1-D27.



9. The trial Court, after recording the evidence and hearing both sides and on the assessment of verbal and documentary evidence, answered Issue No.1 in the affirmative, Issue No.2 and Additional Issue Nos.1 and 2 in the negative, Issue No.3 partly in the affirmative and Issue No.4 as per the final order. The suit of the plaintiff was decreed in part. It is declared that the defendant Nos.1 to 4 are directed to pay damages of Rs.10,00,000/-, with interest at the rate of 9% per annum from the date of suit to the plaintiff within 30 days from the date of decree. Defendant No.1 was directed to pay 50% of the decree amount to the plaintiff. Defendant Nos.2 to 4 were directed to pay the remaining 50% of the decree amount to the plaintiff. Defendant Nos.2 to 4, aggrieved by the Judgment and decree passed in O.S.No.5/2017 preferred an appeal in RFA No.100143/2018. Defendant No.1 also filed a cross objection in RFA CROB No.100001/2024, challenging the same Judgement and decree.



10. Heard the arguments of the learned counsel for the defendants and the plaintiff.

11. Learned counsel for defendant No.1 submits that at the time of incident the plaintiff was not working under defendant No.1 and there was no relationship of employer and employee between the plaintiff and defendant No.1. He submits that he had completed the work at 2.00 p.m. and thereafter the plaintiff went and worked under another contractor. Hence, he submits as the said contractor is not arrayed as a defendant in the suit, the suit filed by the plaintiff is not maintainable for non-joinder of necessary party. He submits that there was negligence on the part of the officials of defendant Nos.2 to 4, in that without ascertaining whether the plaintiff was on the pole, they supplied electricity to the 11 KV line. Due to which, when the plaintiff's head touched to the electric line and he sustained grievous injuries. There is no negligence on the part of defendant No.1. The trial Court committed an error in fastening 50% liability on defendant



No.1. Further, to buttress his argument he has placed reliance on the Judgment of the Hon'ble Apex Court in the case of ***M.P.Electricity Board Vs. Shail Kumari and others*** reported **AIR 2002 SC 551**. Hence, on these grounds, he prays to set-aside the Judgment fastening the liability on defendant No.1 and dismiss the suit against defendant No.1, by allowing the cross-objection.

12. Learned counsel for the defendant Nos.2 to 4 submits that the plaintiff was not the employee of the defendant Nos.2 to 4 and further, there was no negligence on the part of the officials of defendant Nos.2 to 4. He submit that, on the instructions of the defendant No.1, the plaintiff climbed the pole. He submits that defendant No.1 is liable to pay the damages and there was no negligence on the part of the officials of defendant Nos.2 to 4. He also submitted that the quantum of compensation awarded by the trial Court is exorbitant. Hence, on these grounds, he prays to allow the appeal and dismiss the suit against defendant Nos.2 to 4.



13. *Per contra*, learned counsel for the plaintiff submits that the plaintiff was working under defendant No.1 on the date of the incident. He submits that, on the instructions of defendant No.1, he climbed the pole and defendant No.1 had informed his officials of defendants No.2 to 4 to switch off the line. On the instructions of defendant No.1, he climbed pole and immediately his head came in contact with the electric line and fell down from the pole and sustained grievous injuries. He also submits that the plaintiff has suffered a permanent disability and he is bedridden and unable to move. He further submits that defendant No.1 examined the DW-3, who has deposed that on the date of incident, the plaintiff was engaged in his work as per the instructions of defendant No.1. He also submits that the officials of defendants No.2 to 4 were not present at the time of incident. He submits that the trial Court was justified in passing the impugned Judgment fastening the liability on both defendant No.1 and other defendants. Hence, he submits that the



Judgment and decree passed by the trial Court are just and proper and do not call for any interference. On these grounds, he prays to dismiss the appeal and the cross-objection.

14. Perused the records and considered the submissions of the learned counsel for the parties.

15. The points that arise for consideration are as follows:

- (1) Whether the plaintiff proves that on 10.02.2010 at Moosa Nagar, Bhatkal, he sustained grievous injuries by electric shock due to the negligence of defendants No.1 to 4?*
- (2) Whether defendants No.3 and 4 prove that the plaintiff has sustained injuries due to his own negligence?*
- (3) Whether defendant No.1 proves that, the plaintiff was not working under him at the time of accident?*



(4) Whether the defendants prove that, the judgment and decree passed by the Trial Court is perverse and arbitrary?

(5) What order or decree?

Point No.1:

16. It is the case of the plaintiff that, on 10.02.2010 on the instructions of defendant No.1, he went to Moosa Nagar, Bhatkal Town along with two other workers to fix street lights at about 03:45 p.m. Defendant No.1 asked the plaintiff to climb the electric pole to connect electric wire and he was also informed that defendant No.1 has instructed the Officials of KPTCL to cut the power in the said line. Believing the said words defendant No.1, the plaintiff climbed the electric pole and he came in contact with upper wire and because of the same, he sustained burn injuries all over the body and he was thrown out from the electric pole. To prove that the accident had occurred due to the negligence on the part of defendant No.1 and the Officials of the other defendants,



the plaintiff has produced the certified copy of FIR and the complaint, which are marked as Exs.P1 and P2, wherein one Ganapati Devadiga has lodged a complaint before the Bhatkal Town Police Station on 15.02.2010 and the Police registered FIR in No.35/2010 for the offence punishable under Section 338 of IPC. Ex.P3 is the wound certificate issued by Kasturba Hospital, Manipal which discloses that, the plaintiff has sustained head, neck, back and front of trunk, both upper and right lower extremities and the injuries sustained by the plaintiff are grievous in nature. Ex.P4 is the treatment certificate issued by Kasturba Hospital, Manipal which discloses that, the Doctor has diagnosed 26% electrical contact burn, TBSA sacral pressure ulcer, quadriplegia. Ex.P5 is the statement of PW-1, wherein the Police has recorded the statement of plaintiff under Section 161 of Cr.PC. Ex.P6 is the certified copy of the charge sheet, which discloses that, the accident occurred due to the negligence on the part of Officials of the defendants. Ex.P7 is the contract licence



which discloses that, the contract work was awarded to defendant No.1 and Ex.P8 is the list showing the reasons for removal of electricity. Ex.P9 is the sketch. Ex.P10 is the treatment certificate issued by Kasturba Hospital, Manipal on 16.11.2010. Exs.P11 to 447 are the medical bills of Kasturba Hospital and Vijaya Medicals.

17. In the cross-examination, it is elicited that, there are many electrical contractors in Bhatkal and defendant No.1 is one among them. Defendant No.1 is working under the name and style of 'Soudagar Enterprises'. In January 2010, contractor firm called Soudagar Enterprises got the contract work for installing street-lights within the municipality limits of Bhatkal Municipality. The municipality gave the work order for installation of street-lights within the municipality limits and he was working as a daily wages worker under the electrical contractors and he was getting Rs.300/- as wages per day. He pleads ignorance that Moosa Nagar is a place outside the Bhatkal Municipality. Defendant No.1



had taken the contract work from the Bhatkal Municipality in February 2010 on 10.02.2010. Defendant No.1 called PW-1 to work on a daily wage basis. When working on electric pole, he alone cannot work. Other workers i.e., Sri. Abbas and Sri. Ansar came to the work with PW-1 on that day. Three of them were working together. On that day, they worked till 02:00 p.m. After finishing the work, he had lunch at hotel and after lunch, the Section Officer came to the place where they were working and then, defendant No.1 also came there and asked the plaintiff to climb the electric pole to fix the street-light. He fell down from the pole and at that time, no one was present. Sri. Abbas was near another pole at that time. Sri. Abbas and Sri. Ansar saw the plaintiff and came near the plaintiff and informed about the incident to defendant No.1. He lost consciousness the moment he fell down from the pole. Then, he was shifted to Government Hospital. The Section Officer was responsible for not providing electric connection until plaintiff climbed the pole on that day and



completed the repair work and came down from the pole. The Section Officer did not perform his responsibility properly and provided electricity connection at once, which led to his accident and the accident happened due to carelessness and lack of timeliness.

18. In rebuttal, defendant No.1 was examined as DW-1. He reiterated the written statement averments in the examination-in-chief and to prove his defence, defendant No.1 produced the following documents: Ex.D1 is the work order dated 16.01.2009 issued by the Bhatkal Municipality to defendant No.1. Ex.D2 is the work order dated 23.03.2010 issued by the Bhatkal Municipality. Ex.D3 is the evidence of defendant No.3 in the criminal case in CC No.693/2010. Ex.D4 is the certified copy of the statement recorded by the Police under Section 161 of Cr.PC. Ex.D5 is the certified copy of the FIR, wherein one Ganapati had lodged a complaint against the Officials of the defendants. Ex.D6 is the certified copy of the statement of Sri. Ganapati recorded by the Police. Ex.D7



is the statement of Sri. Hanumant. Ex.D8 is the certified copy of the charge sheet. Ex.D9 is the certified copy of the deposition of Sri. Ganapati i.e., the complainant in criminal case. Ex.D10 is the certified copy of the deposition of Sri. Anwar Gouse Dhama. Ex.D11 is the deposition of Sri. Hanumanth. Ex.D12 is the certified copy of the order issued by the Executive Engineer. Ex.D13 is the statement of Sri. Abdul Mubin Soudagar i.e., defendant No.1. Ex.D14 is the incident report issued by the Assistant Executive Engineer. Ex.D15 is the statement of the Section Officer. Ex.D16 is the statement of the Lineman. Ex.D17 is the copy of notice issued by the Police Officer. Ex.D18 is the reply notice. Ex.D19 is the copy of log book. Ex.D20 is the copy of the intimation. Ex.D21 is the receipt. Ex.D22 is the copy of estimate. Ex.D23 is the receipt. Ex.D24 is the copy of estimate. Ex.D25 is the form-A. Ex.D26 is the letter of intimation. Ex.D27 is the endorsement. In the cross-examination, he denied that, on the day of incident, the plaintiff was working under him



and while working, he fell from the electric pole and got injured. It is elicited that, on the day when the electric contract work is to be done, the Officials will send a Lineman with them and the Lineman stops the electricity flow on the line and the Lineman himself informs their office about the power cut and the workers were not allowed to work in the evening hours. The contractor gives instructions verbally to the Lineman to stop the electricity flow. On the date of incident, defendant No.1 went to the Office of defendants No.2 to 4 and he has not stated that, the plaintiff did not work under him on 10.02.2010 or before that and he did not inform his Lawyer about the said fact that the plaintiff did not come to work on 10.02.2010. He admits that, on the date of incident, he worked upto 02:00 p.m. and he does not know that the plaintiff climbed the electric pole again because the KEB Section Officer had instructed him and he admits that, the plaintiff is bed-ridden and is not in a condition to do his daily work and his wife and children



have to do his work and he received the treatment and he admits that if he wants to do a contract work, he has to hire a worker to climb an electric pole and if the plaintiff had worked for a day, he would have got Rs.300/- to Rs.400/- per day and it is elicited that, defendant No.1 taken the plaintiff on the work on the date of incident.

19. Defendant No.1 examined one Ramesh.M.G who was working as a Chief Officer of the Bhatkal Municipality as PW-2. He deposed that, he was working as a Chief Officer at Bhatkal Municipality for the last four months and Moosa Nagar does not come under the jurisdiction of the Bhatkal Municipality and the Municipality itself carries out the installation and repair work of street-lights in the solid waste disposal premises and in 2009, the Bhatkal Municipality awarded the contract for installation and repair of street-lights within the Municipality to Soudagar Enterprises and Abdul Khalid Soudagar is the Proprietor of Soudagar Enterprises and again they awarded the work to Armaan Electricals in the year 2010.



In the cross-examination, he had not remembered who was the Chief Officer of Bhatkal Municipality in the year 2009-10 and he admits that he was not the Chief Officer during that period and he admits that he has not produced any documents to show the extent of Municipality and he was unable to say exactly which area comes under Municipality jurisdiction and he admits that there is an entry in their records that, the plaintiff fell and injured himself while installing electric street-lights between 16.03.2009 and 23.03.2010.

20. Defendant No.1 examined one Abbas S/o Hamza as DW-3. He has deposed that, he was working in Armaan Electricals and Soudagar Electricals since 1994 and he submits that, on the date of incident, they worked from 10:00 a.m. to 01:30 p.m. and on the same day from 02:30 p.m. till 03:00 p.m. The work was finished at 01:30 p.m. He has deposed that, the Section Officer of KEB had called the plaintiff and DW-3 to work from 02:30 p.m. to 03:30 p.m. and they took money and worked from 02:30



p.m. to 03:30 p.m. When they were repairing the wires of an old pole on that day, there was no one else, except the plaintiff, DW-3 and another worker and the incident took place between 02:30 p.m. and 03:00 p.m. From the perusal of the evidence of DW-3, it is clear that, the plaintiff was working under defendant No.1, working on the pole and he came in contact with the live wire and he has sustained grievous injuries.

21. The Assistant Executive Engineer of defendant No.3 was examined as DW-4, who has deposed that, the accident has caused due to the negligence on the part of the plaintiff himself and there was no negligence on the part of HESCOM and the Officials of HESCOM and the Department is not concerned to the said accident at about 03:45 p.m. The defendants also examined one Parameshwara Naik who was the Lineman who accompanied plaintiff, DW-1 and DW-3. He has deposed about the alleged incident took place. The Section Officer was also examined as DW-6. From the perusal of the



entire records produced by the plaintiff, it discloses that, the plaintiff has sustained injuries due to electrocution and Sri. Ganapati has lodged a criminal case against the defendants and FIR was registered. Copy of the complaint and FIR are marked as Ex.P1 (and also Ex.D5) and defendant No.1 was not present at the time of incident, but DW-3 gave statement before the Electric Inspector as per Ex.D3. The DWs-1, 4, 5 and 6 were not present at the time of incident. From the perusal of the evidence of PW-1 and DW-3, DW-3 was present at the time of incident on the spot. Thus, the accident had occurred due to negligence on the part of the defendants and without taking any protection, permitted the plaintiff to climb on the electric pole. Thus, the plaintiff has proved that, on 10.02.2010 at 03:45 p.m. at Moosa Nagar in Bhatkal, he sustained grievous injuries due to electric shock. In view of the above discussion, I answer point No.1 in the affirmative.



Point No.2:

22. Though the defendants No.3 and 4 contended that, the plaintiff sustained grievous injuries due to his own negligence, in order to substantiate the defence, defendants No.3 and 4 have not examined any eye witnesses to prove that the plaintiff has sustained injuries due to his own negligence. On the contrary, DW-3 supported the case of the plaintiff to establish that, the incident has occurred due to the negligence on the part of the Officials of the defendants No.3 and 4 as defendants No.3 and 4 have not taken any safety measures as imposed by the statutes of the company. Section 53 (Provisions relating to safety and electricity supply) of the Electricity Act, 2003 reads as follows:

"The Authority may in consultation with the State Government, specify suitable measures for –

(a) protecting the public (including the persons engaged in the generation, transmission or distribution or trading) from dangers arising from the generation, transmission or



distribution or trading of electricity, or use of electricity supplied or installation, maintenance or use of any electric line or electrical plant;

(b) eliminating or reducing the risks of personal injury to any person, or damage to property of any person or interference with use of such property ;

(c) prohibiting the supply or transmission of electricity except by means of a system which conforms to the specification as may be specified;

(d) giving notice in the specified form to the Appropriate Commission and the Electrical Inspector, of accidents and failures of supplies or transmissions of electricity;

(e) xxx

(f) xxx

(g) specifying action to be taken in relation to any electric line or electrical plant, or any electrical appliance under the control of a consumer for the purpose of eliminating or reducing the risk of personal injury or



damage to property or interference with its use."

(Emphasis supplied)

Section 68 (Provisions relating to Overhead lines) of the Electricity Act reads as follows:

"(1) An overhead line shall, with prior approval of the Appropriate Government, be installed or kept installed above ground in accordance with the provisions of sub-section (2).

(2) The provisions contained in sub-section (1) shall not apply-

(a) in relation to an electric line which has a nominal voltage not exceeding 11 kilovolts and is used or intended to be used for supplying to a single consumer;

(b) in relation to so much of an electric line as is or will be within premises in the occupation or control of the person responsible for its installation; or

(c) in such other cases, as may be prescribed.

(3) xxx



(4) xxx

(5) Where any tree standing or lying near an overhead line or where any structure or other object which has been placed or has fallen near an overhead line subsequent to the placing of such line, interrupts or interferes with, or is likely to interrupt or interfere with, the conveyance or transmission of electricity or the accessibility of any works, an Executive Magistrate or authority specified by the Appropriate Government may, on the application of the licensee, cause the tree, structure or object to be removed or otherwise dealt with as he or it thinks fit.

(6) When disposing of an application under sub-section (5), an Executive Magistrate or authority specified under that sub-section shall, in the case of any tree in existence before the placing of the overhead line, award to the person interested in the tree such compensation as he thinks reasonable, and such person may recover the same from the licensee."

The Co-ordinate Bench of this Court in the case of **Rekha Vs. Karnataka Power Transmission Corporation Limited, Bengaluru and Others** reported in **AIR Online**



2022 KAR 5653 placing reliance on the judgment of the Hon'ble Apex Court, held as follows:

"6. The nature of liability is as follows:

a) Liability under Common Law

(i) The Power Supply Company in these matters have sought to repudiate liability on the ground that the acts of negligence by the victims was the cause or contribution for the accident or that the intervening acts by strangers/third parties were responsible for the accident.

(ii) The principle of strict liability was evolved in the case of Rylands v. Fletcher [(1868) 3 HL 330], which provides that when a person who for his own purpose brings on to his land and collects and keeps there anything likely to do mischief and if it escapes he keeps it is at his peril and he is prima-facie liable for the damage caused to the natural consequence of its escape. Though this principle admits of exception which includes act of strangers, the courts have negated the applicability of defence of strict liability in case of consequences of accidents attributed to supply and distribution of electricity.

It is a settled position that electricity has been treated to be a hazardous substance for the purpose



of applicability of the rule in Rylands v. Fletcher (supra).

(iii) The Apex Court in the case of M.C.Mehta (supra) where claims for compensation were sought on behalf of persons who had suffered consequent to escape of oleum gas from the units of Sriram Foods & Fertilizers Industries has laid down the law as regards consequences of accidents where inherently dangerous activities are carried on. The principle of absolute liability was laid down whereby liability was made absolute i.e., strict liability sans defences. The observations of the Apex Court at Para 31 is self-explanatory and reads as follows:

"....We would therefore hold that where an enterprise is engaged in a hazardous or inherently dangerous activity and harm results to anyone on account of an accident in the operation of such hazardous or inherently dangerous activity resulting, for example, in escape of toxic gas the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident and such liability is not subject to any of the exceptions which operate vis-a-vis the tortious principle of strict liability under the rule in Rylands v. Fletcher."



This principle propounded by the Apex Court in M.C.Mehta has been extended to be applicable in the case of electrical accidents also in the case of Shail Kumari (supra).

(iv) In Shail Kumari, a workman in a factory, while riding on a bicycle returning from his factory rode over a live electric wire and was electrocuted instantaneously and while considering the defence of the Power Companies, the Apex Court has observed at Para 7 and 8 as follows:

"7. It is an admitted fact that the responsibility to supply electric energy in the particular locality was statutorily conferred on the Board. If the energy so transmitted causes injury or death of a human being, who gets unknowingly trapped into it, the primary liability to compensate the sufferer is that of the supplier of the electric energy. So long as the voltage of electricity transmitted through the wires is potentially of dangerous dimension the managers of its supply have the added duty to take all safety measures to prevent escape of such energy or to see that the wire snapped would not remain live on the road as users of such road would be under peril. It is no defence on the part of the management of the Board that somebody committed mischief



by siphoning such energy to his private property and that the electrocution was from such diverted line. It is the lookout of the managers of the supply system to prevent such pilferage by installing necessary devices. At any rate, if any live wire got snapped and fell on the public road the electric current thereon should automatically have been disrupted. Authorities manning such dangerous commodities have extra duty to chalk out measures to prevent such mishaps.

8. Even assuming that all such measures have been adopted, a person undertaking an activity involving hazardous or risky exposure to human life, is liable under law of torts to compensate for the injury suffered by any other person, irrespective of any negligence or carelessness on the part of the managers of such undertakings. The basis of such liability is the foreseeable risk inherent in the very nature of such activity. The liability cast on such person is known, in law, as "strict liability". It differs from the liability which arises on account of the negligence or fault in this way i.e. the concept of negligence comprehends that the foreseeable harm could be avoided by taking reasonable precautions. If the defendant did all



that which could be done for avoiding the harm he cannot be held liable when the action is based on any negligence attributed. But such consideration is not relevant in cases of strict liability where the defendant is held liable irrespective of whether he could have avoided the particular harm by taking precautions."

xx xx xx xx xx

(ix) The trend of the state instrumentalities in attempting to unsettle the settled questions after having suffered orders and having accepted the same, requires to be frowned upon. The question of liability under common law was explained and applied in a detailed order of the Co-ordinate bench at Dharwad in Shri Nagappa Manneppa Naik (supra) at para 32 to 34 which is extracted as follows:

"C) Nature of liability of Power Supply Company

32. The Power Supply Companies have sought to repudiate liability on the ground that the claimant by his/her acts of negligence was responsible for the accident and hence the company was not liable, that there were intervening acts by strangers/third parties which were responsible for the accident. All



such contentions raised are no longer available for being canvassed in light of the law laid down by the Apex Court in the case of Madhya Pradesh Electricity Board (supra). The facts of the case was that the deceased who was riding a bicycle rode over a live wire, lying on the road which was inundated with water and the victim died of electrocution. The defence taken was that one Hari Gaikwad had taken a wire from the main supply line to pilfer power and the line got unfastened from the hook and it fell over the road which caused the accident. While the court reiterated the applicability of strict liability but explicitly ruled the inapplicability of the defences available to 'strict liability' including that of an "an act of stranger".

33. The Court while approving the law laid down in the case of M.C.Mehta v. Union of India reported in 1987 1 SCR 819 has in effect declared that there would be absolute liability i.e., strict liability as per the rule of Rylands and Fetcher without any of the exceptions.

34. This position of law has been reiterated by the Division Bench of this court in the case of Bhagyabai v. Principal Secretary, Department of Energy and Others in



W.A.No.3249/2010 and W.A.No.3540-43/2010 dated 25.10.2010. Accordingly, the contention of the Power Supply Companies regarding absence of liability while raising defences is liable to be rejected."

x. Despite having accepted such order and not having challenged the same, the petitioner before the Dharwad bench in Shri Nagappa Manneppa Naik (supra) being KPTCL and Electricity Distribution Companies and the same entities are before this court as respondents, the statement of objection however filed seeking to unsettle the very legal position that is binding upon them, reflects upon a tendency that would only contribute to increased pendency of litigation and it is time that the State entities ought to keep in mind the larger picture and having suffered orders which have attained finality, ought not to seek for re-opening the same before other benches which in effect amounts to forum shopping.

xx xx xx xx xx"

The issue involved in the present case is clearly covered by the order passed by the Co-ordinate Bench of this Court in the case of **Rekha** (supra), wherein the Co-ordinate Bench has granted compensation as claimed



by the petitioners in the said case. In view of the above discussion, defendants No.3 and 4 have failed to prove that, the plaintiff has sustained grievous injuries due to his own negligence. In view of the above discussion, I answer point No.2 in the negative.

Point No.3:

23. It is the case of the plaintiff that, as of the date of incident, he was working with defendant No.1 along with two others. But, defendant No.1 denied the said aspect contending that he being an electric line contractor, used to engage plaintiff as lineman for his contract work on daily wages and as on 10.02.2010, he made the plaintiff to work on daily wages and as on 10.02.2010, he made the plaintiff to work till 02:00 p.m., in the municipal limits and from 03:00 p.m., outside the municipal limits, another contractor engaged the plaintiff for electric work. However, defendant No.1 in his written statement nowhere stated the name of the another contractor who took electric contract in Moosa Nagar. Further, he neither



stated in which area they worked till 02:00 p.m. on the date of incident, nor placed any materials/records to show that from 03:00 p.m., some other contractor hired the plaintiff on the date of incident. Further, from the perusal of Ex.P1 i.e., the FIR along with the complaint and Ex.P6 i.e., the charge sheet, where fir was filed under Section 338 of IPC was filed against defendant No.1-the Assistant Executive Engineer and the Section Officers and after investigation, the charge sheet was filed against defendant No.1. Admittedly, the said charge sheet was not challenged by defendant No.1.

24. Further, defendants No.2 to 4 contended that, on the request of defendant No.1, these defendants cleared the 11Kv electric line between 03:00 p.m. to 03:45 p.m. and the plaintiff was working under defendant No.1. Further, the defendants examined DW-3-the Labourer of defendant No.1 who has deposed in cross-examination that, from 02:30 p.m. to 03:30 p.m., they had work on electric pole and he has seen the falling



of the plaintiff from the electric pole. DW-4 deposed in his chief examination that, on the request of defendant No.1- the Section Officer, on 10.02.2010, took him to clear the power line and they have stopped the power flow at about 03:05 p.m. and recharged the electric line at 03:45 p.m. in the presence of defendant No.1. Further, defendant No.6 also deposed that, they have made electric line clearance from 03:05 p.m. to 03:45 p.m. on request of defendant No.1. Further, the perusal of Ex.D19 discloses that, the power supply had been stopped at Moosa Nagar from 15:05 to 15:45 hours on 10.02.2010.

25. Thus, as per the above discussion, it is clear that, defendant No.1 had hired the plaintiff on 10.02.2010 for electric work. Though defendant No.1 specifically contends that he had hired the plaintiff on said date only till 02:00 p.m., neither he produced any documents nor he examined any witness to establish the same. The Trial Court has rightly held that, in the absence of proper evidence, only on the basis of oral evidence of defendant



No.1, it is not possible to come to conclusion that the plaintiff was not working under him at the time of incident. Therefore, defendant No.1 failed to establish that, the plaintiff was not working under him at the time of incident. Accordingly, point No.3 is answered in the negative.

Point No.4:

26. The Trial Court considering the entire material on record, has rightly held that, defendants No.1 to 4 are jointly and severally liable to pay the compensation and also held that defendant No.1 being a contractor, is directed to pay 50% of the decretal amount and defendants No.2 to 4 are directed to pay the remaining 50% of the decretal amount to the plaintiff. Admittedly, the plaintiff has suffered a permanent disability and is bed-ridden. Though the plaintiff did not examine the doctor, but however during the course of argument, learned counsel for the plaintiff has produced the photograph of the plaintiff, which discloses that, the plaintiff is totally bed-ridden and unable to move from the



bed. The Trial Court considering the disability suffered by the plaintiff, has awarded Rs.10,00,000/- with interest at the rate of 9% p.a. I do not find any error in the impugned judgment. Accordingly, I answer point No.4 in the negative.

Point No.5:

27. In view of the above discussion, I proceed to pass the following:

ORDER

- i. The appeal and the cross-objection are ***dismissed;***
- ii. The impugned judgment and decree dated 12.01.2018 passed by the Trial Court in OS No.5/2017 is hereby confirmed;
- iii. No order as to the costs;
- iv. In view of the dismissal of the appeal and the cross objection, pending interlocutory



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application(s), if any, does not survive for
consideration and accordingly, disposed of.

Sd/-
(ASHOK S. KINAGI)
JUDGE

RHR & PA
CT: BSB
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