

**HIGH COURT OF JUDICATURE FOR RAJASTHAN BENCH AT
JAIPUR**

S.B. Civil First Appeal No. 328 / 2001

1. Asstt Engineer Ajmer Vid.Vitran Nigam Limited, Nawalgarh, Distt. Jhunjhunu.
2. Executive Engineer, Ajmer Vidhyut Vitran Nigam Limited, Nawalgarh.
3. Superintending Engineer, Ajmer Vidhyut Vitran Nigam Limited, Jhunjhunu.
4. Secretary, Ajmer Vidhyut Vitran Nigam Limited. Ajmer.

----Appellant

Versus

1. Parwati Wd/o Late Shri Makkhan lal, b/c Mali, Resident of Keshavdas Ka Dhani, (Chobdaro Ki Dhani) Tan Nawaldi, Tehsil Nawalgarh, Distt. Jhunjhunu (Raj.)

2. Mukesh

3. Rakesh

4. Vinod

5. Vimlesh

No.2 to 5 all sons of late Shri Makkhan lal, by caste Mali, Residents of Keshavdas Ki Dhani (Chobdaro Ki Dhani) Tan Nawaldi, Minors, through their Natural Guardian Mother Smt. Parvati Devi, Respondent No.1.

--Plaintiffs--Respondents

For Appellant(s) : Mr. Vinod Singhal

For Respondent(s) : Mr. SK Singodiya

HON'BLE MR. JUSTICE GOVERDHAN BARDHAR

Judgment

06/09/2017

This Civil First Appeal has been filed under section 96 of CPC against the judgment and decree dated 10.09.2001 passed by the District Judge, Jhunjhunu in Civil Suit (Fatal Accident) No. 40/97 whereby decree of Rs. 3,60,600/- has been passed in in favour of

plaintiff claimants along with interest @ 9% p.a.

The brief facts of the case are that the plaintiffs-respondents filed a suit under Fatal Accident Act stating therein that late Shri Makkhan Lal aged 37 years, on 23.06.96 in the morning at 5.00 a.m., went to his field to bring a spade, where a current wire of L.T. line was lying in the field, Makhkhanlal came in touch with the live wire and due to electric current, Makhkhanlal died on the spot. A report to this effect was also lodged at the police station Nawalgarh. Post mortem of late Shri Makkhan Lal was got conducted. The claimants filed the suit claiming a sum of Rs. 27,01,000/- as compensation.

On the basis of the pleadings of the parties, the learned trial court framed as many as 4 issues and recorded the evidence. After recording of evidence of the parties, decree in favour of claimants-respondent has been passed as stated above.

Learned counsel for the appellants has submitted that the court below has committed serious error of law as well as error of fact in deciding issue No. 1 & 2 against the defendants. Counsel has further submitted that on 23.06.96 there was no complaint of any nature regarding breaking of L.T. line wire in the field of Makkhan Lal. It is further submitted that if there would have been any complaint regarding breaking of wire, the defendants could have repaired the line immediately. The defendants had no information regarding any accidental death of late Shri Makkhan Lal. In such circumstances, the suit filed by the plaintiffs under Fatal Accident Act was based on false and frivolous averments and not maintainable. Counsel has further submitted that the learned

court below has further committed illegality in deciding issue no. 3 with regard to the quantum of compensation. Counsel has further submitted that there was no solid proof regarding income of the deceased and the court below awarded compensation on higher side.

Per contra, learned counsel for the plaintiffs respondents has submitted that case of the plaintiffs is covered by doctrine of res ipsa loquitor. Ex. 9, the site map, prepared under Section 174 Cr.PC proceedings which reveals that L.T line wire had broken in the field of late Shri Makkhan Lal and according to post-mortem report, he died due to electrocution. It is specific case of plaintiffs respondents that despite complaint made by the deceased and Keshardev, defendants did not repair the broken electric wire. Therefore, court below has rightly awarded compensation in favour of plaintiffs.

Heard learned counsel for the parties and perused the relevant material placed before me

It is specific case of the plaintiffs respondents that on 23.06.1996 in the morning at about 5 a.m., late Shri Makkhan Lal went to his field to bring a spade, where electric wire was lying in the field which came in touch with live wire and due to electric current, late Shri Makkhan Lal died on the spot. Plaintiffs respondents examined PW-1 Smt.Parvati, PW-2 Sagar Mal, PW3 Keshardev Saini, PW 4 Rameshwar Lal Saini and PW 5 Pawan and all of them stated that Makkhan Lal came in touch with live wire and due to electric current, he died on the spot. Post-Mortem of late Shri Makkhan Lal got conducted and as per the post-mortem

report Ex. 8, cause of death is under cardiac arrest due to electric current shock. Perusal of site map Ex. P-9 reveals that between poles situated in the field of Makkhan Lal, broken L.T. live wire was lying in the field. Witnesses have clearly stated that due to negligent act of defendants, the said accident had taken place, and prior to the incident, Makkhan Lal and Keshherdev had lodged a complaint about broken wire with the defendants but the defendants did not repair the same. As per the statement of witnesses, on 23.06.1996, in the morning at about 5 AM, Makhkhan Lal came in touch with the electric wire of L.T line, in which current was flowing. According to the post-mortem report, he died due to electric shock. Makhkhanlal died due to electrocution as obviously electric flow was there when he came in touch with the electric wire. In a case reported of Madhya Pradesh Electricity Board vs Shail Kumari And Ors. reported in 2002(2) SCC 162, it has been observed as under:

"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.

9. The doctrine of strict liability has its origin in English Common Law when it was propounded in the celebrated case of Rylands v. Fletcher (1868 Law Reports (3) HL 330). Blackburn J., the author of the said rule had observed thus in the said decision: (All ER p.7E-F)

"The rule of law is that the person who, for his own purpose, brings on his lands and collects and keeps there anything likely to do mischief if it escapes, must keep it at his peril; and if he does so he is prima facie answerable for all the damage which is the natural consequence of its escape."

In view of above, there is no perversity or illegality in the impugned judgment.

Consequently, the appeal being devoid of merits is hereby dismissed.

(GOVERDHAN BARDHAR),J.

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