

# RAJASTHAN HIGH COURT

A.V.V.N.L.

Vs.

Smt. Sarli

S.B. Civil Regular First Appeal No. 191 of 2000

(A.C. Goyal, J.)

09.12.2004

## JUDGMENT

**A.C. Goyal, J.**

1. This is the first appeal filed by the defendants against the judgment and decree dated 26.4.2000 whereby the learned Additional District Judge, NeemKa Thana, awarded a sum of Rs. 1,33,700/- with interest @ 12% per annum from 3.6.1996 till payment, as compensation.

2. The material facts alleged in the plaint are that, on 19.6.1996, at about 8-9 PM, Raji Ram, aged 45 years, while returning to his village, came in contact with electric wire lying there resulting into his death at the spot. Raji Ram, on account of darkness, could not see the live electric wire. This all happened on account of negligence of the officers, i.e., Defendants Nos. 2 to 4, of the defendant No. 1 the then Rajasthan State Electricity Board. The claimants are the mother, wife, sons and daughters of deceased Raji Ram. They made a claim of Rs. 24,95,800/- with interest @ 24% per annum.

3. Vide written statement, all the averments made in the plaint were denied with a plea that on account of heavy rains, an act of God, the Tar-top had fallen and tape-pin insulator busted and on account of that the incident took place which was beyond the control of the defendants.

4. Issues were framed, the evidence was recorded and the learned Trial Court decreed the suit as stated hereinabove.

5. On the basis of the submissions made by the learned counsel for the parties, two points arose for consideration:

(1) Whether Raji Ram died on account of heavy rains and thus it was a case of natural calamity and not a negligent act on the part of the appellants ?

(2) Whether interest @ 12% per annum is unreasonable ?

6. *First Point :*

Learned counsel Mr. Garg appearing for the appellants, contended that there was specific plea in the written statement which was proved by evidence but the Trial Court did not consider the evidence in a proper manner and thus, the appellant Nigam and its officers cannot be held guilty of negligence. Reliance is placed upon the judgment in *W.B. State Electricity Board and Ors. v. Sachin Banerjee and Ors.*,<sup>1</sup> wherein it was held that two victims were electrocuted because of an illegal hooking for the purpose of theft of electricity and thus the Electricity Board cannot be held guilty. Mr. Sunda, learned counsel appearing for the respondents, contended that the findings of the Trial Court are based upon proper appreciation of evidence and evidence of the defendants is contrary to the plea taken in the written statement. He placed reliance upon the judgments in *Kerala State Electricity Board v. Kamalakshyamma*,<sup>2</sup> *State Electricity Board v. Bhona*,<sup>3</sup> and *M.P. State Electricity Board v. ShailKumari&Ors.*<sup>4</sup>

7. I have considered the rival submissions. The cause of death of Raji Ram is not in dispute. In additional para No. 2 of the written statement, the plea taken is that on account of heavy rains, this incident happened which was beyond their control. According to the statement of DW-1 Mali Ram, there was storm in the evening of 19.6.1996 and on account of that, insulator bursted and the wire fell down and for that the defendants were not responsible. Similar is the statement of DW-2 PrabhatiLal. Both of them were employees of the defendant-appellant No. 1. Thus, a bare perusal of their statements goes to show that it was on account of storm while as per written statement, it was on the account of heavy rains. Thus, evidence of the defendants on this point is different from the plea taken in the written statement. The plaintiffs' witnesses, PW-1 Smt. Sohni, PW-2 ShriSatveer, PW-3 Prabhat Ram, PW-4 Banshi and PW-5 Devi Sahai, all have denied the fact of any such storm or heavy rains. Therefore, the decision of the Trial Court with regard to the first point does not call for any interference in this appeal.

8. *Second Point :*

Learned counsel for the appellants contended that interest @ 12% per annum is excessive. Reliance is placed upon the judgment in *United India Insurance Co. Ltd. v. Patricia Jean Mahajan&Ors.*,<sup>5</sup> It was also a case of compensation arising out of motor accident. In para No. 38 of the judgment, two judgments of the Hon'ble Supreme Court were referred wherein interest @ 6% per annum and 9% per annum from the date of application was allowed respectively and vide the said judgment the rate of interest was reduced to 9% per annum in place of 12% per annum. The date of application in this case is 3.8.1996. Learned counsel for the respondents contended that there is no ground to interfere with the discretion exercised by the Trial Court in awarding the interest.

9. I have considered the above submissions. In view of the above referred judgments of the Hon'ble Supreme Court, interest @ 9% per annum seems to be reasonable. Thus, this point is decided accordingly that the claimants are entitled to interest @ 9% per annum from the date of application, i.e., 3.8.1996.

10. Consequently, this appeal is partly allowed, from the point of interest while maintaining the impugned judgment and decree for the amount of compensation, the interest @ 9% per annum in place of 12% per annum is awarded from the date of application, i.e., 3.8.1996, till payment is made. No order as to costs.

Appeal partly allowed.

Cases Referred.

1. AIR 2000 SC 3629
2. 1987 ACJ 251 (Kerala) M.P
3. 1994 ACJ 58 (M.P)
4. 2002(1) RCR(Crl) 433 (SC) : WLC Civil 2002 (SC) 134 : RLW 2002(1) SC 189
5. 2002(3) RCR (Civil) 534 (SC) : 2002 ACJ (SC) 1441 : RLW 2002(4) SC 526