



IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 30TH DAY OF JUNE, 2023

BEFORE

THE HON'BLE MRS. JUSTICE M.G.UMA

REGULAR FIRST APPEAL NO.4088/2012

BETWEEN:

1. THE EXECUTIVE ENGINEER HESCOM,
KPTCL, RANEBENNUR - 581 115.
2. ASSISTANT EXECUTIVE ENGINEER,
HESCOM, RANEBENNUR.
PIN NO: 581 115.
3. SECTION OFFICER, HESCOM,
TUMMINAKATTI (KPTCL)
PIN NO. 581 115.

...APPELLANTS

(BY SRI GURUDEV I. GACHCHINAMATH, ADVOCATE)

AND:

1. SMT. MANJAVVA W/O. MARUTI KOTIHAL,
AGE: 29 YEARS, OCC: HOUSEHOLD WORK,
2. VINAYAK MARUTI KOTIHAL,
AGE: 10 YEARS, OCC: STUDENT,
3. LAXMI MARUTI KOTIHAL,
AGE: 2 YEARS, OCC: NILL,
RESPONDENT NO.2 AND 3 ARE MINORS
REPRESENTED BY NATURAL MOTHER
APPELLANT NO.1.
4. GANGAVVA W/O. HANUMAPPA KOTIHAL,
AGE: 70 YEARS, OCC: HOUSEHOLD WORK,
ALL ARE R/O: KUPPELUR,





TQ: RANEBENNUR, DIST: HAVERI.
PIN NO. 581 115.

5. THE SECRETARY,
CHIEF SECRETARY, K.E.B., KAVERI BHAVAN,
BANGALORE.

6. DEPUTY COMMISSIONER,
DIST: HAVERI, PIN NO. 581 115.

...RESPONDENTS

(BY SRI N.P. VIVEKMEHTA, ADVOCATE FOR R1 TO R3;
RESPONDENT NO.2 AND 3 ARE
MINORS REPRESENTED BY R1;
APPEAL AGAINST R4 IS ABATED;
NOTICE TO R5 AND R6 IS SERVED)

THIS RFA IS FILED UNDER SECTION 96 OF CPC.,
AGAINST THE JUDGMENT AND DECREE DATED 01.03.2012
PASSED IN O.S.NO.45/2011 ON THE FILE OF THE ADDITIONAL
SENIOR CIVIL JUDGE, RANEBENNUR, DECREETING THE SUIT
FILED FOR DAMAGES.

THIS RFA, COMING ON FOR FINAL HEARING, THIS DAY,
THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

Defendant Nos.1 to 4 in O.S.No.45/2011 on the file of
the learned Additional Senior Civil Judge, Ranebennur
(hereinafter referred to as the 'Trial Court'), have preferred
this appeal being aggrieved by the impugned judgment and
decree dated 01.03.2011 decreeing the suit of the plaintiffs
and awarding damages of Rs.7,68,000/- with interest at 6%
per annum from defendant Nos.1 to 4 jointly and severally.



2. The parties are referred to as per their ranks before the Trial Court for the sake of convenience.

3. Brief facts of the case are that the plaintiff Nos.1 to 4 being the legal representatives of the deceased Maruti Kotihal have claimed damages from defendant Nos.1 to 5 contending that they are the wife, children and mother of the deceased. The deceased was doing Mason work and also a petty business. On 02.10.2008 at 7:15 PM, while he was proceeding towards the river, came in contact with a live wire laying on the ground. As a result of which, he was electrocuted and died at the spot. It is stated that due to the negligence on the part of defendant Nos.1 to 4, the live wire was laying on the ground which resulted in the mishap. An UDR was registered, inquest and the spot punchnama was held. Since defendant Nos.1 to 4 are responsible for the death of the deceased, they are liable to pay the compensation. Accordingly, they prayed for decreeing the suit.

4. Defendant No.2 filed the written statement denying the contentions taken by the plaintiffs including the



relationship of the plaintiffs with the deceased. It is denied that the deceased died due to the negligence of the defendants or that he came in contact with the live wire laying on the ground at the time of the incident. Therefore, they prayed for dismissal of the suit with costs.

5. On the basis of these pleadings, the following issues were came to be framed:

"೧. ದಿನಾಂಕ: ೨-೧೦-೨೦೦೮ ರಂದು ಸಾಯಂಕಾಲ ೨-೧೫ ಗಂಟೆಗೆ ಪೋಲಿ ಮಾರುತಿ ತನ್ನ ಕೆಲಸದ ನಿಮಿತ್ತವಾಗಿ ಮನೆಯ ಮುಂದೆ ಸಂಧಿಸಿದುದುಕೊಂಡು ಹೊಳೆಯ ಕಡೆಗೆ ಹೊರಟಿದ್ದನು, ೧ ರಿಂದ ೪ನೇ ಪ್ರತಿವಾದಿ ವಾದಿಯರು ನಿರ್ಮಿಸಿದ ಕರೆಂಟ್ ಕಂಬದ ಹತ್ತಿರ ನಡೆದುಕೊಂಡು ಹೋಗುತ್ತಿರುವಾಗ ಗಾಳಿಗೆ ತೂಗಾಡಿದ್ದ ಕರೆಂಟ್ ಕಂಬದ ತಂತಿ ಮಾರುತಿಗೆ ತಗುಲಿ ಕರೆಂಟ್ ಶಾಖ ಹೊಡೆದಿದ್ದರಿಂದ ಪೋಲಿ ಮಾರುತಿ ಸ್ಥಳದಲ್ಲಿ ಮೃತಪಟ್ಟ ಬಗ್ಗೆ ವಾದಿಯರು ಸಿದ್ಧ ಮಾಡುತ್ತಾರೆಯೇ?

೨. ೧ ರಿಂದ ೪ನೇ ಪ್ರತಿವಾದಿಯ ನಿರ್ಲಕ್ಷ್ಯತನದಿಂದ, ಸದರಿ ಪೋಲಿ ಮಾರುತಿ ಮೃತಪಟ್ಟ ಬಗ್ಗೆ ವಾದಿಯರು ಸಿದ್ಧ ಮಾಡುತ್ತಾರೆಯೇ?

೩. ದಾವೆಯಲ್ಲಿ ಕೇಳಿದಂತೆ ಪರಿಹಾರ ಹಣ ಪಡೆಯಲು ವಾದಿಯರು ಸಿದ್ಧ ಮಾಡುತ್ತಾರೆಯೇ?

೪. ವಾದಿಯರು ತಮ್ಮ ಗ್ರಾಮದಲ್ಲಿ ಸ್ಥಿರ ಆಸ್ತಿಗಳು ಇದ್ದು, ವಾದಿಯರಿಗೆ ನ್ಯಾಯಾಲಯದಲ್ಲಿ ಶುಲ್ಕ ಕಟ್ಟಲು ಸಾಮರ್ಥ್ಯ ಇದೆ ಎನ್ನುವದನ್ನು ೫ನೇ ಪ್ರತಿವಾದಿ ಸಿದ್ಧ ಮಾಡುತ್ತಾರೆಯೇ?

೫. ಯಾವ ಡಿಕ್ರಿ ಮತ್ತು ಆದೇಶ?"

6. Plaintiff No.1 examined herself as PW.1, examined PWs.2 and 3 and got marked Exs.P.1 to P.24 in support of her contentions. Defendants have not led any evidence in support of their defence.



7. The Trial Court after taking into consideration of all these materials on record, answered issue Nos.1 and 2 in the affirmative, issue No.3 partly in the affirmative, issue No.4 in the negative and decreed the suit of the plaintiffs awarding compensation of Rs.7,68,000/- with interest at 6% per annum, jointly and severally payable by defendant Nos.1 to 4.

8. Being aggrieved by the same, defendant Nos.1 to 4 have preferred this appeal.

9. Heard Sri. Gurudev I.Gachchinamath, learned counsel for the appellants and Sri. N.P.Vivekmehta, learned counsel for respondent Nos.1 to 3.

10. Learned counsel for the appellants contended that the incident had not occurred as contended by the plaintiffs. In the newspaper dated 04.10.2008, it is reported that the deceased died due to electrocution when he was electrifying and assisting the lighting decoration in Durgadevi Temple. Moreover, the investigation held by the defendants disclosed that the death was not due to the negligence of any of the



defendants, but some miscreants might have cut the live electric wire, as a result of which, the same was laying on the ground. In either situation, defendants are not liable to pay the compensation.

11. Learned counsel submitted that defendants could not need their evidence by producing material documents before the Trial Court. Therefore, I.A.No.1/2017 was filed with three documents to be considered while deciding the appeal. Learned counsel prays for allowing the I.A.No.1/2017 by permitting to produce the additional documents and to allow the appeal by setting aside the impugned judgment and decree passed by the Trial court.

12. *Per contra*, learned counsel for the respondents opposing the appeal submitted that the mishap had occurred on 02.10.2008 at 07:15 PM. There was prompt reporting of the mishap which had occurred at 9 'O' Clock and accordingly as per Ex.P.5, the report was registered in UDR.No.21/08. The inquest mahazar and post mortem examination of the body was conducted. The finding in all these documents are supporting the contentions taken by the plaintiffs. Plaintiff



No.1 examined herself as PW.1 and also examined the punch witness to the spot mahazar as PW.2. PW.3 is an eyewitness who rushed to the spot on hearing the cry of the deceased. There is no rebuttal to any of these documents. Therefore, the Trial court was right in decreeing the suit of the plaintiffs.

13. Learned counsel further submitted that no grounds as required under Order 41 Rule 27 of the Code of Civil Procedure is made out. There is no explanation as to why these documents were not produced before the Trial Court and the same cannot be taken into consideration by this Court. Hence, he prays for dismissal of I.A.No.1/2017 and also the appeal.

14. Perused the materials on record.

15. In view of the above, the point that would arise for my consideration is:

Whether the impugned judgment and decree passed by the Trial Court require interference of this Court?



16. My answer to the above point is in the negative for the following:

REASONS

17. It is the specific contention of the plaintiffs before the Trial Court that they are the legal representatives of the deceased Maruti Kotihal. Ex.P.5 is the report registered in UDR.No.21/08, under Section 174 of the Cr.P.C., on 02.10.2008 at 09:30 PM. It is specifically referred to in the report that while the deceased was proceeding towards river on 02.10.2008 at 07:15 PM, a live electric wire had fallen on the ground, he came in contact of the same and died at the spot due to electrocution. This report came into existence within 2 hours of the incident referring to the cause with which the deceased had died. Ex.P.4 is the charge sheet submitted by the Investigating Officer according to which the deceased came in contact of the live wire fallen on the road and died due to electric shock. Ex.P.6 is the inquest mahazar where the punchas noted the burn injuries on the left palm of the deceased. Ex.P.11 is the postmortem examination report according to which the cause of death was due to



paralysis of respiratory centres secondary to electric shock. All these documents invariably support the contention taken by the plaintiffs.

18. During cross-examination of PW.1, it is suggested that the deceased had died somewhere else due to his own negligence and his dead body was brought and thrown by the side of the road, the live wire was cut and a scene was created only to get compensation from the defendants. The said suggestion was denied by PW.1. During cross-examination of PW.2, it is suggested that the deceased himself had bitten the live wire while doing decoration in Devi Jatre and was electrocuted. The suggestion was denied by the witness. During cross-examination of PW.3 also similar suggestion was made and the same was denied.

19. The defendants have not examined any witness nor they have produced any document to probabalize their witnesses. In fact in the written statement, no specific defence is raised except denying the plaint averments word by word and sentence by sentence.



20. The appellants filed I.A.No.1/2017 under Order 41 Rule 27 of the CPC producing three additional documents before this Court.

21. The first document is the report submitted by the Assistant Executive Engineer, Electrical, HESCOM, Ranebennur which do not bear any date or time. The report refers to some miscreants who have cut the live wire which was laying on the ground. It also refers to a news report in Praja Vani daily newspaper dated 04.10.2008 to the effect that the deceased Maruti Kotihal died while he was doing electric decoration in Durgadevi Temple, but strangely the said newspaper is not produced before the Court till today.

22. The second document is the report submitted by the Deputy Electrical Inspectorate which is dated 07.01.2009 i.e., about three months after the incident, according to which, a phase wire of the street light was cut and was laying on the ground and it was reported by the relatives that the deceased had came in contact with the same, as a result of which, he died. A spot inspection was held where the live wire was found on the ground. The wire was found



cut by using a cutting plier. As per the news report in Praja Vani daily newspaper dated 04.10.2008, the deceased died while he was attending the light decoration work. Therefore, it is opined that the cause of death of the deceased was not due to electrocution as claimed by the plaintiffs.

23. The third document produced by the appellants is the spot punchanama drawn by the Section Officer of the defendants. But strangely this document also does not bear any date and time on which it was drawn. However it refers to the reasons assigned earlier as the cause of death. However from these documents, one thing is clear that the live electric line was cut and was laying on the ground. Defendants were trying to project that some miscreants have cut the wire by using a cutting plier and therefore the same was laying on the ground, but admittedly, the defendants have not lodged any complaint with the Police against such unknown person, who played the mischief according to them. The earliest document i.e., Ex.P.5 discloses that the cause of death is due to electrocution from the live wire which was laying on the road. I do not find any reason to disbelieve the



said version. The additional documents now produced do not bear any date and time and moreover those are the documents prepared by the defendants at a later point of time, to safeguard themselves. Much reliance cannot be placed on them. Moreover, there is no valid reason assigned as to why these documents were not produced before the Trial court and why nobody was examined on behalf of the defendants. There is also no reason for non production of the newspaper referred to in the reports.

24. In view of all these facts and circumstances, I am of the opinion that the appellants have not made out any ground either to allow I.A.No.1/2017 or to allow the appeal.

25. I have gone through the impugned judgment and decree passed by the Trial Court. It has taken into consideration all the materials on record and has arrived at a right conclusion. I do not find any reason to interfere with the same. Hence, I answer the above point in the negative and proceed to pass the following:



ORDER

- 1) The appeal is dismissed with costs.
- 2) The impugned judgment and decree dated 01.03.2012 passed in O.S.No.45/2011 by the learned Additional Senior Civil Judge, Ranebennur is confirmed.

Send back the trial Court records along with a copy of this judgment.

**SD/-
JUDGE**

RH
List No.: 1 Sl No.: 21