

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

S.B. Civil First Appeal No. 147/1998

1. The Rajasthan State Electricity Board, having its Head Office at R.C. Dave Road, Jyoti Nagar, Jaipur, through the Chairman/Secretary.
2. The Executive Engineer-Cum-Executive Officer, Rajasthan State Electricity Board, Baran.

----Appellants-defendants

Versus

1. Badri Bai wife of Kishan Lal alias Madan Lal, resident of Gopal Colony, Baran
 - 2/1. Raju son of Madan Lal alias Kishan Lal, resident of Gopal Colony, Baran
 - 2/2. Anita daughter of Madan Lal alias Kishan Lal, resident of Gopal Colony, Baran
 - 2/3. Santu daughter of Madan Lal alias Kishan Lal, resident of Gopal Colony, Baran
 - 2/4. Sita daughter of Madan Lal alias Kishan Lal, resident of Gopal Colony, Baran
 - 2/5. Pawan son of Madan Lal alias Kishan Lal, resident of Gopal Colony, Baran
- No.2/2 to 2/5 being minors are represented by their mother and natural guardian Smt. Badri Bai respondent No.1, 2/1 to 2/5 are the legal representatives of the original plaintiff No.2 Madan Lal already on record.
3. The Municipal Board, Baran, through its Executive Officer

----Respondents-plaintiffs

Connected With

S.B. Civil First Appeal No. 109/1999

Municipal Board, Baran through its Executive Officer.

----Appellant-defendant

Versus

1. Badri Bai wife of Kishan Lal alias Madan Lal, resident of Gopal Colony, Baran
- 2/1. Raju son of Madan Lal alias Kishan Lal, resident of Gopal Colony, Baran
- 2/2. Anita daughter of Madan Lal alias Kishan Lal, resident of Gopal Colony, Baran

2/3. Santu daughter of Madan Lal alias Kishan Lal, resident of Gopal Colony, Baran

2/4. Sita daughter of Madan Lal alias Kishan Lal, resident of Gopal Colony, Baran

2/5. Pawan son of Madan Lal alias Kishan Lal, resident of Gopal Colony, Baran

No.2/2 to 2/5 being minors are represented by their mother and natural guardian Smt. Badri Bai respondent No.1, respondent No.2/1 to 2/5 are the legal representatives of the original plaintiff No.2 Madan Lal.

----Respondents-plaintiffs

3. The Rajasthan State Electricity Board, having its Head Office at R.C. Dave Road, Jyoti Nagar, Jaipur, through the Chairman/Secretary.

4. The Executive Engineer-Cum-Executive Officer, Rajasthan State Electricity Board, Baran.

-----respondents-defendants

For Appellant(s)	:	Mr. S N Bohra for appellants in CFA No.147/1998 & for respondents No.3 and 4 in CFA No.109/1999 Mr. Manoj Sharma for appellant in CFA No.109/1999 & for respondent No.3 in CFA No.147/1998
For Respondent(s)	:	Mr. Sandeep Mathur with Mr. Kapil Sharma

HON'BLE MR. JUSTICE SUDESH BANSAL

Judgment

Reserved on

November, 28th 2022

Pronounced on

December, 9th 2022

BY THE COURT

1. Both these first appeals have been filed under Section 96 CPC assailing the judgment and decree dated 31.3.1998 passed in Suit No.20/96 by the District Judge, Baran, whereby and whereunder the plaintiff's suit under the Fatal Accidents Act, 1855 for compensation of Rs.3,30,000/- along with interest @12% per

annum has been decreed to be paid by defendants jointly and severally.

Since the Municipal Board, Baran has also been held liable to pay the compensation alongwith the Electricity Department, these two appeals have been filed by both of them.

2. The facts of the case are that on 9.6.1996 at 7:00 AM while plaintiff's daughter Seema was taking bath, she accidentally touched the wall wherein electric current was flowing and she stuck with the wall and became unconscious. She was taken to Baran Hospital for her treatment of electrocution from where on 10.6.1996 she was referred to Kota but in the way she succumbed. The incident was reported to police station Baran but no steps were taken. It was stated that Seema was eldest unmarried daughter in family and 8th class passed and was earning Rs.100/- per day for the family by selling vegetables. It was stated that defendants installed electric pole near the house of plaintiffs and for straightening the pole, one separate wire (stag) was fixed in the house premises of plaintiffs and this stag wire was passing through the wall of bathroom of plaintiffs. In that stag wire, the electric current flowed and the fatal accident occurred due to which plaintiff has died because of electrocution. Therefore, the suit for compensation Rs. 3,60,000/- has been filed.

3. On issuing notices appellants-defendants No.1 and 2 filed written statement and denied the death of Seema due to electrocution. It was stated that the wire for strengthening the pole was already fixed and the plaintiffs by encroaching upon took that wire in the bathroom for which the plaintiffs themselves are responsible. It was impossible for the department to fix the wire in

any house. Plaintiffs never moved any application for removing the wire nor any application was moved for maintaining the wire. It was stated that the incident of electrocution was not reported to the department, therefore, no compensation shall be awarded. It was further stated that on the electric pole municipality Baran has installed tube-light and other features to maintain the same, the responsibility was of Municipality Baran and plaintiffs have not impleaded Municipality Baran, therefore the suit was liable to be dismissed.

Later on plaintiffs also impleaded, Municipal Board, Baran as defendant No.3 in the suit.

4. Defendant No.3 Municipality Baran filed written statement and submitted that Municipality has wrongly been impleaded. It was the duty of Electricity Department to maintain electric poles and the suit against Municipality be dismissed.

5. On the basis of rival pleadings, the trial court framed six issues.

First, whether on 9.6.1996, plaintiffs' daughter Seema died because of electric current in wall?

Second, whether the electric current flow in the wall of the plaintiffs' house from the wire fixed for support of the electric pole, plaintiffs requested to remove the same but defendants did not remove the wire nor maintained the same?

Third, whether plaintiffs were entitled for compensation of Rs.3,60,000/- from defendants?

Fourth, whether plaintiffs themselves construct the bathroom illegally capturing the stag of electric pole, therefore, they themselves are responsible for the accident?

Fifth, whether the electric pole is within jurisdiction of Nagar Palika, Baran, it is necessary party?

Six, Relief?

6. Plaintiffs examined two witnesses and exhibited documents, Defendants examined two witnesses.

7. The trial Court considered oral and documentary evidence led by both parties, concluded that Seema died because of electrocution and the issue No.1 was decided in favour of plaintiffs. Issue No.2 regarding request by plaintiffs for removal of stag was considered. AW-2 Jamuna Lal stated to move applications for removal of the stag but neither the stag was removed nor any inspection of the site was conducted. The evidence of DW-2 Abdul Wahid states that usually between stag and the pole insulators are fixed but on the pole in question there was no insulator and due to absence of insulator, current might have passed in the stag wire. DW-2 Abdul Wahid and DW-1 Dineshwar Jha both admitted that no steps were taken to install the insulator. Consequently, the issue No.2 was decided in favour of plaintiffs. Issue No.4 regarding illegal construction of bathroom, the trial court held that defendant's witnesses failed to prove that plaintiffs raised an illegal construction therefore, the issue was decided against defendants. Issue No.3 regarding compensation, the trial court considering the age of deceased Seema to be 22 years and her income as Rs.3,000/- per month and calculated the amount as Rs.4,50,00 to have earned in her life and after deduction 1/3rd amount for personal expenses the compensation amount has been assessed as Rs.3,00,000/-. Since the deceased died during treatment therefore, for the medical expenses and love and affection the trial court has also awarded Rs.30,000/- as such Rs.3,30,000/- has been awarded from 23.08.1996 with interest @12% per annum vide judgment dated 31.03.1998. The liability to pay compensation has been fasten upon Electricity Department and Municipal Board, Baran jointly and severally.

8. Hence, being aggrieved of the judgment and decree dated 31.03.1998, the two present first appeals have been filed.

9. This court vide order dated 15.05.1998 passed in Civil First Appeal No.147/1998, directed that the appellant-RSEB shall deposit Rs.1,00,000/- in the trial court and the execution of the judgment shall remain stayed. On 14.10.1998, respondents-plaintiffs were allowed to withdraw the deposited amount. On 4.12.1998, this Court directed the appellant-RSEB to deposit remaining decretal amount and plaintiffs were allowed to withdraw Rs.50,000/- therefrom.

10. Heard learned counsel for parties and perused the impugned judgment and decree as also other material available on record.

11. Learned counsel for Electricity Department and Municipal Board have impugned the judgment and prayed to set aside the judgment.

12. Per contra, counsel for plaintiffs submitted that due to the negligence of defendants, current was flowed in the stag wire and passed through in wall of bathroom of plaintiffs and their daughter died due to electrocution, hence, defendants are liable to pay compensation and the trial court has rightly awarded so.

13. Heard considered.

14. Following points fall for consideration in present appeals:

(i) Whether deceased Seema died due to electrocution?

(ii) Whether Rajasthan Electricity Board and Municipal Board both are responsible for the electrocution?

(iii) Whether any interference is required by the first Appellate Court in the determination of compensation to the tune of Rs.3,30,000/-?

(iv) Whether rate of interest at the rate of 12% is excessive?"

15. Plaintiff-Badri Bai (Aw-1) who happens to be mother of deceased Seema has deposed in her evidence that her daughter stuck to the wall of bathroom wherein the electric current flowed through stag wire (supported wire) fastened by the Electricity Department to support the electric pole. She stated that as soon as her daughter Seema stuck with the bathroom wall due to electric current she cried and Jamna Lal and Jagdish reached there, Jamna Lal had rescued her daughter. Thereafter, she was hospitalized, then she was referred to Kota in the meanwhile, her daughter died. The incident was reported to police and FIR (Ex-1), site map (Ex-2), Medical Reports (Ex-3, 4 and 5) and Death Certificate (Ex-6). In her cross-examination she stated that the stag wire was fixed in her house premises and touching the wall of bathroom. Electric pole was installed since 20 years ago. She denied that her daughter died due to sickness and not because of electrocution. She denied that her daughter was married but only talks for her marriage were held. Cross-examination was made by counsel for both defendants- Electricity Board and Municipal Board, Baran. Another witness Jamna Lal (Aw-2) is eye witness and he corroborated the evidence of Aw-1 and deposed his statement to prove the incident. Aw-2 stated that electric pole was installed in the house of neighbour Dev Lal and to erect the same stag wire was fixed to the house of plaintiff Badri Bai. He stated that due to flowing of electric current in stag wire the current flowed to wall of the bathroom to which Seema came into contact

of electricity and stuck. He stated that applications were moved to remove electric pole and stag wire. He stated that the incident occurred due to negligence and fault of the Electricity Department. In cross-examination Aw-2 stated that it is true that stag wire was fasten in the bathroom wall and the stag wire was touching the bathroom wall. He stated that he was not having copies of application submitted to the Electricity Department. He admitted that it is true that on the electric pole tubelight was fixed and tubelight was turned loose due to air pressure and touched with the stag wire. He admitted that tubelight was fixed on the electric pole by Municipal Board, Baran.

In rebuttal, Electricity Department examined Dw-1 Dineshwar Jha and Dw-2 Abdul Wahid. No witness was examined from the side of Municipal Board, Baran. Dw-1 Dineshwar Jha did not dispute the fact that deceased Seema died due to electrocution and electric current flowed in the stag wire which touched to the bathroom wall. Dw-1 stated that electric current flowed in the electric pole and stag wire due to the tubelight fixed by Municipality Baran and that tubelight turned loose and touched to the stag wire due to which current flowed in the stag wire. Thus, as per statement of Dw-1 it was the fault of Municipal Board, Baran due to which current flowed in the stag wire. In cross-examination he could not clarify that the stag wire was not touching the bathroom wall and was not fixed in the plaintiffs' house. Dw-1 also admitted to have received applications and complaint of electric current. Dw-2 Abdul Wahid also stated in his evidence that Municipal Board, Baran was responsible for the accident as tubelight fixed on electric pole was loose and touched

to the stag wire. Further in his cross-examination he admitted that it is the responsibility of the Electricity Department to take care of electric pole and wires. He admitted that in order to prevent flowing of electric current in the stag wire insulators are fixed. Dw-2 has nowhere stated that deceased Seema did not die because of electrocution.

16. On appreciation of evidence on record, this is not proved that the bathroom in the house of plaintiffs was constructed later on after fixing the stag wire on the Government land. The evidence of Aw-1 and Aw-2 that the stag wire was fixed by the Electricity Department in the plaintiffs' house which was touching bathroom wall remained unrebutted. The evidence that deceased Seema stuck with the bathroom wall due to flowing electric current is unrebutted. Medical reports of deceased Seema show that she sustained electrocution. As per evidence on record, it cannot be held that the trial Court has committed any illegality or perversity in deciding the issue No.1 in favour of plaintiffs and issue No.4 against defendants, therefore, this Court affirms the finding of the trial Court in respect of issues No.1 and 4 that deceased Seema died due to electrocution.

17. As per evidence available on record, as discussed hereinabove, it is undisputed fact that electric pole was installed nearby the plaintiffs' house and the stag wire fixed in the house of plaintiffs and the same was touching to bathroom wall of plaintiffs. It has also come on record that no insulator was fixed between the electric pole and stag wire to prevent flowing of electric current. From the evidence of Aw-1 and Aw-2, it is clear that electric current passed through the stag wire in bathroom wall to which

Seema came in contact of electric current and stuck. Dw-1 and Dw-2 witnesses of Electricity Department have stated that electric current in the electric pole and stag wire passed due to loose tubelight which was fixed by the Municipal Board, Baran. No witness has appeared from the Municipal Board, Baran. Thus, as per evidence on record, it is the negligence or fault either on the part of Electricity Department or Municipal Board, Baran, who are liable for the electrocution of deceased Seema. There was no negligence on the part of deceased Seema who died due to electrocution. Initially plaintiffs instituted the present suit only against Electricity Department, however, when Electricity Department objected about the responsibility of Municipal Board, Baran, the Municipal Board, Baran has been impleaded as defendant No.3 and the issue No.5 has been decided by the trial Court accordingly. As per evidence of Dw-1 and Dw-2 sole responsibility cannot be shifted on the Municipal Board, Baran. According to evidence of Aw-1 and Aw-2, coupled with statement of Dw-1 and Dw-2, the trial Court has held that Electricity Department as well as Municipal Board jointly and severally liable for the incident and pay compensation. This Court, does not find any illegality or perversity in such finding, therefore, findings in respect of issues No.2 and 5 are hereby affirmed.

18. As far as determination of compensation is concerned evidence of Aw-1 and Aw-2 is specific that deceased Seema was eldest daughter in their family. She was earning Rs.100/- per day by selling vegetables. Though, counsel for defendants tried to cross-examine that Seema had been married but it was denied and stated that talks for her marriage were going on but her

marriage was not finalized. Her age was 22 years. The trial Court while determining compensation deducted 1/3rd share on account of livelihood of the deceased and calculated the compensation to the tune of Rs.3,00,000/- and for love and affection, funeral expenses and for other miscellaneous heads Rs.30,000/-. Thus, the determination of compensation to the tune of Rs.3,30,000/- is well within permissible limits of law as also as per evidence on record which does not warrant any interference by this Court. As such finding in respect of issue No.3 are hereby affirmed.

19. In respect of the issue of awarding interest at the rate of 12% on the determined compensation from the date of filing the suit 23.8.1996, this Court finds that the rate of interest is excessive and the ends of justice would be served by reducing the rate of interest from 12% to 6%.

20. This Court in case of State of Rajasthan Vs. Guddi Bai, S.B. Civil First Appeal No.393/2015 decided on 27.07.2022 considering Chapter IV of the Indian Electricity Rules, 1956 relating to General Safety Requirements and Rules 29 and 77(3) thereof and relying on judgments in cases of **Parvati Devi Vs. Commissioner of Police Delhi [(2000)3 SCC 754]**, **M.P. Electricity Board Vs. Shail Kumar [AIR 2000 SC 551]**, **Kumari Kani Vs. Rajasthan State Electricity Board [2016(3) CDR 1499 (Raj.)]**, **Raman Vs. State of Haryana [2015 ACJ 484]** and **the Executive Engineer Vs. Pramod [2015(1) KCC R 850]** wherein the Court held that "the Electricity Board cannot absolve liability on grounds that accident took place due to illegal act on part of victim in trying to draw power from mainline unauthorizedly when once the death is to be in the context of functioning of Board. Principle of

strict liability applies and Board is bound to compensate the claimants", this Court upheld the judgment of trial court of awarding compensation.

21. Having considered factual and legal aspect of the present case, this Court is not inclined to interfere with the impugned judgment awarding compensation to the tune of Rs.3,30,000/- in favour of plaintiff-respondents. However, the rate of interest is reduced from 12% to 6%.

22. As a result, first appeals are partially allowed and the impugned judgment 31.3.1998 stands modified to the extent that the compensation of Rs.3,30,000/- would carry interest at the rate of 6% from the date of filing the suit i.e. 23.8.1996, instead of 12%. The impugned judgment is modified accordingly.

23. The compensation amount, if deposited before the trial Court in compliance of order passed by this Court be released forthwith to plaintiff-respondents.

If amount deposited founds to be extra be refunded to appellant, who deposited the amount.

24. All pending application(s), if any, stand(s) disposed of.

25. Record of the trial Court be sent back forthwith.

(SUDESH BANSAL),J