

HIGH COURT OF TRIPURA
AGARTALA
RFA 25 of 2017

1. **The Tripura State Electricity Corporation Limited**,
represented by the Chairman-cum-Managing Director,
Bidyut Bhawan, Banamalipur, B.K. Road, Banamalipur, Agartala
P.S. East Agartala, District- West Tripura
2. **The Senior Manager (Electrical)**,
Tripura State Electricity Corporation Limited, Chawmanu Sub-Division,
P.O. – Chawmanu, P.S. Chawmanu, District- Dhalai, Tripura

....**Defendant-Appellants**

VERSUS

1. **Smt. Hemamala Tripura**,
wife of Sri Uttam Tripura, resident of Krishnarai Royaja Para,
P.O.- Chawmanu, P.S. Chawmanu, District- Dhalai, Tripura
at present residing at: Jirania, P.S. Jirania, District- West Tripura
2. **Sri Uttam Tripura**,
son of Sri Nabin Kumar Tripura, resident of Krishnarai Royaja Para,
P.O.- Chawmanu, P.S. Chawmanu, District- Dhalai, Tripura
at present residing at: Jirania, P.S. Jirania, District- West Tripura

... **Plaintiff-Respondents**

For Defendant-Appellant (s) :	Ms. S. Debgupta, Advocate
For Plaintiff-Respondent (s) :	Mr. P.S. Roy, Advocate
Date of hearing & delivery of Judgment & Order :	06.07.2020
Whether fit for reporting :	Yes

HON'BLE MR. JUSTICE ARINDAM LODH
JUDGMENT & ORDER

1. Heard Ms. S. Debgupta, learned counsel appearing for the defendant-appellants (here-in-after referred to as the appellants), Tripura State Electricity Corporation Limited (for short TSECL). Also heard Mr. P.S. Roy, learned counsel appearing for the plaintiff-respondents (here-in-after referred to as the plaintiffs).
2. The pleaded case of the plaintiffs and the appellants, TSECL, as narrated by the learned trial court, is as follows:

(i) *The case of the plaintiffs is that due to negligence of maintenance of the electrical wire by the defendant-appellants, the appellants herein, one broke live electric wire was hanging from top of electric post and was touching the ground of road at Nizachandra Karbari Para under*

Chawmanu PS. On 27.09.14 at about 06:30 am when Majesh Tripura, the son of the plaintiffs, was going towards his school at that time suddenly he came in contact with the said live torn electric wire and got electrocuted and fell down on the road. Immediately, some local people who had seen the incident and sent said Majesh Tripura to the nearest Chowmanu Primary Hospital on 27.09.14 by a vehicle, wherein after examination, the attending doctor of the hospital declared said Majesh Tripura as dead. Accordingly, postmortem was held on 27.09.14 and, the doctor opined that said Majesh Tripura died due to cardiac arrest resulting from such electrocution which is accidental in nature. According to the plaintiffs, the accident of electrocution and death of the victim Majesh Tripura occurred due to gross negligence and carelessness of the electrical staffs. According to the plaintiffs, though the local people informed the same to the local electric office to remove and repair the torn live wire but the electrical staffs did not pay any heed to the request of the local people. According to the plaintiffs, if the electrical staffs had removed the torn live electric wire in proper time, then the son of the plaintiffs would not have died but, the electrical staffs according to the plaintiffs were so careless and negligent in their duties resulting which the said accident took place. According to the plaintiffs after the occurrence of the accident and after getting information of the electrocution and death of the victim Sri Majesh Tripura, the electrical staffs came to the spot and removed the torn live electric wire immediately. Based on the above facts on 27.09.14, Sri Uttam Tripura, the father of the deceased lodged an FIR at Chawmanu PS which has been registered as Chawmanu PS case No. 1-201/14 under section 174 of Cr.P.C. According to the plaintiffs, the victim Majesh Tripura was nine years old at the time of his death. He was a brilliant student and his ambition was to become a doctor in future. He was very hard working boy and sincere and he used to look after the business affairs of a poultry

farm and used to assist his parents i.e. the plaintiffs in running the business. According to the plaintiffs the monthly income of their deceased son, Majesh Tripura was about Rs. 5,000/- and they were dependent upon their deceased son. Since the plaintiffs were suffering from various ailments so the business of the poultry farm used to be supervised by their deceased son. Accordingly, the plaintiffs demanded a sum of Rs. 5,00,000/- only as compensation for the death of their son which caused due to negligence and carelessness on the part of the appellants alongwith 15% interest from the date of the accident till realization of the awarded compensation money. The plaintiffs also claimed Rs. 50,000/- only for funeral expenses and shradhya ceremony. For loss of love and affection, the plaintiffs claimed Rs. 1,00,000/- only. The plaintiffs have also served Advocate notice upon the appellants on 03.07.15 but the appellants did not give any response to the said notice. So, finding no other alternative, the plaintiffs have filed this suit for getting compensation of Rs. 5,00,000/- along with 15% interest.

(ii) Per contra, appellants, being defendant-opposite parties No. 3 and 4 contested the case by filing written statement whereas as per record the defendant-opposite parties No. 1 and 2 did not contest the case. The appellants had denied all the assertions made by the plaintiffs in their plaint. According to the appellants the suit filed by the plaintiffs is not maintainable and the suit is bad for mis-joinder and non-joinder of the parties. According to the appellants, TSECL is a company registered under the Companies Act. A company has got legal and separate entity. So company is a necessary party in the suit, but, in the present suit TSECL has not been made party for which the suit is bad for non-joinder of parties. According to the appellants, since TSECL is a company registered under the Companies Act, the State of Tripura and the Secretary, Department of Power are not the necessary parties

in any claim or suit filed against the TSECL. So, according to the appellants the suit is also bad for misjoinder of parties. According to the appellants, the present suit has been filed beyond the jurisdiction of the learned Court as because the alleged accident / incident took place under the Dhalai District and the instant suit has been filed before the Civil Judge (Senior Division) Court No.4, West Tripura, Agartala, so, the suit filed by the plaintiffs for getting the compensation is not maintainable due to lack of jurisdiction. According to the appellants, there is no allegation in the instant suit by the plaintiffs that due to actionable wrong on the part of the appellants, the son of the plaintiffs had died, which is mandatory as per section 1(A) of the Fatal Accident Act. Since the plaintiffs filed the suit under Section 1(A) of the Fatal Accident Act, hence in absence of actionable wrong on the part of the appellants any claim of the plaintiffs' is not entertainable as per the provisions of law. The appellants also denied the age of the deceased since the age of the deceased has not been proved by submitting school certificate. According to the appellants, as per the FIR and other police report as well as internal report of the Sr. Manager and report of the Electrical Inspector, the age of the deceased was seven years at the time of the alleged accident. The appellants also denied the assertion made by the plaintiffs that the deceased had monthly income of Rs. 5,000/- and the occupation was poultry farm, as because, according to the appellants, a boy of seven years cannot run a poultry farm. So, according to the appellants the statement regarding the profession and income of the deceased are false and fabricated and hence those statements cannot be considered by the court. According to the appellants, the assertion made by the plaintiffs that there was serious negligence and carelessness on the part of the appellants and due to negligence of maintenance of the torn live electric wire by the

appellants, the deceased was electrocuted and died, are not correct and strongly denied by appellants. According to the appellants, there was no negligence and carelessness on their part. Moreover, there is no actionable wrong for the alleged accident and no such allegation has been brought by the plaintiffs though the instant suit has been filed under the provision of section 1(A) of the Fatal Accident Act. According to the appellants they are not responsible for the alleged accident and also not liable for making any compensation, as claimed by the plaintiffs in this suit. According to the appellants, since they are not responsible for the alleged accident, the suit of the plaintiffs is liable to be dismissed without any consideration.

3. On the basis of the aforesaid facts, the learned court had framed the following issues:

- (i) Whether the suit is maintainable in its present form and nature?**
- (ii) Whether there is any cause of action for filing of the suit by the plaintiffs?**
- (iii) Whether the accident of electrocution caused death of Majesh Tripura on 07.09.14?**
- (iv) Whether the said accident of electrocution occurred due to gross negligence and carelessness of the defendants?**
- (v) Whether the plaintiff is entitled to get the relief as prayed for?**
- (vi) What are the relief the plaintiff is entitled to?**

4. During trial, the plaintiffs had adduced two witnesses, as PW-1, namely, Smt. Hemamala Tripura and, PW-2, namely, Sri Chan Mohan Tripura. They have introduced some documents.

5. It transpires from the records that despite enough opportunities given to the TSECL, they did not adduce any evidence.

6. The main argument of Ms. Debgupta, learned counsel appearing for the appellants is that, the learned trial court has wrongly quantified the compensation due to the death of the son of the plaintiff-parents. The learned counsel disputed the fact that the parents of the deceased were the cultivators and they had a poultry farm. She further disputed that the son, being aged about 7/9 years would have

been in a position to assist his parents to cultivate the land and to run the poultry farm. Lastly, Ms. Debgupta, learned counsel has submitted that the judgment passed by the learned trial court is erroneous and is liable to be quashed. According to her, learned court ought not to have fixed the notional income of the deceased at Rs. 30,000/- per annum.

7. On the other hand, Mr. PS Roy, learned counsel appearing for the plaintiffs, who claimed Rs. 5 lakh due to the death of their son has submitted that he has adduced evidence to substantiate the pleading that the deceased son of the plaintiffs used to assist them in cultivation and running the poultry farm. Learned counsel has relied upon the judgment of the Hon'ble Supreme Court in ***Kishan Gopal and another vs. Lala and others*** reported in ***2013 ACJ 2594***, wherein the Supreme Court has considered the notional income at Rs. 30,000/- per annum. Accordingly, the learned counsel appearing for the plaintiffs has defended the judgment and decree passed by the learned trial court.

8. I have given my thoughtful consideration to the evidence on record and the findings returned by the learned trial court while rendering the judgment.

9. It is revealed from the evidence, as adduced by the plaintiffs, that two witnesses, namely, PW-1 and PW-2 in their deposition have stated that the deceased son of the plaintiffs used to help and assist them to cultivate their land and also assist them in their day to day activities required to run the poultry farm. Further, they deposed that the deceased son used to earn Rs. 5,000/- per month.

10. On the other hand, the appellant-TSECL, did not come forward to controvert the evidence, as led by the plaintiffs in regard to the fact that the deceased son of the plaintiffs was not in a position to assist the plaintiffs to cultivate the land and to run the poultry farm. The appellant also has failed to adduce any evidence to show that the income of the deceased son of the plaintiffs was not Rs. 5,000/- per month. The accident out of electrocution was not disputed by the appellants.

11. Ms. Debgupta, learned counsel for the appellants has strenuously urged that under Section 163-A of the Motor Vehicles Act, notional income for compensation

to those persons who have no income prior to accident is guided by *clause (6)* of the said provision, which states as under:

“6. Notional income for compensation to those who had no income prior to accident:

xxx xxx xxx

(a) Non-earning persons- Rs. 15,000 p.a”

According to Ms. Debgupta, learned counsel, the learned trial Judge has committed error of law while awarding compensation in favour of the plaintiffs in regard to fixation of notional income @ Rs. 30,000/- per annum

13. In view of this submission of the learned counsel for the appellant, I have perused the judgment of the Hon'ble Supreme Court passed in *Kishan Gopal (supra)*, which observed thus:

“ 18. For this purpose, it would be necessary for us to refer to Second Schedule under Section 163-A of the M.V. Act, at clause No.6 which refers to notional income for compensation to those persons who had no income prior to accident. The relevant portion of clause No.6 states as under:

“6. Notional income for compensation to those who had no income prior to accident:

xxx xxx xxx

(a) Non-earning persons - Rs.15,000/- p.a.”

The aforesaid clause of the Second Schedule to Section 163-A of the M.V. Act, is considered by this Court in the case of *Lata Wadhwa v. State of Bihar* [2001 ACJ 1735 (SC)], while examining the tortious liability of the tort-feasor has examined the criteria for awarding compensation for death of children in accident between age group of 10 to 15 years and held in the above case that the compensation shall be awarded taking the contribution of the children to the family at Rs.12,000/- p.a. and multiplier 11 has been applied taking the age of the father and then under the conventional heads the compensation of Rs.25,000/- was awarded. Thus, a total sum of Rs.1,57,000/- was awarded in that case. After noting the submission made on behalf of TISCO in the said case that the compensation determined for the children of all age groups could be double as in its view the determination made was grossly inadequate and the observation was further made that loss of children is irrecompable and no amount of money could compensate the parents. Having regard to the environment from which the children referred to in that case were brought up, their parents being reasonably well-placed officials of TISCO, it was directed that the compensation amount for the children between the age group of 5 to 10 years should be three times. In other words, it should be Rs.1.5 lakhs to which under the conventional heads a sum of Rs.50,000/- should be added and thus total amount in each case would be Rs.2 lakhs. Further, in the case referred to supra it has observed that in so far as the children of age group between 10 to 15 years are concerned, they are all students of Class VI to Class X and are children of employees of TISCO and one of the children was employed in the Company in the said case having regard to the fact the contribution of the deceased child was taken Rs.12,000/- p.a. appears to be on the lower side and held that the contribution of such children should be Rs.24,000/- p.a. In our considered view, the aforesaid legal principle laid down in *Lata Wadhwa's* case with all fours is applicable to the facts and circumstances of the case in hand having regard to the fact that the deceased was 10 years' old, who was assisting the appellants in their agricultural occupation which is an undisputed fact. We have also considered the fact that the rupee value has come down drastically from the year 1994, when the notional income of the non-earning member prior to the date of accident was fixed at Rs.15,000/-. Further, the deceased boy, had he been alive would have certainly contributed substantially to

the family of the appellants by working hard. In view of the aforesaid reasons, it would be just and reasonable for us to take his notional income at Rs.30,000/- and further taking the young age of the parents, namely the mother who was about 36 years old, at the time of accident, by applying the legal principles laid down in the case of *Sarla Verma v. Delhi Transport Corporation*[2009 ACJ 1298 (SC)], the multiplier of 15 can be applied to the multiplicand. Thus, $30,000 \times 15 = 4,50,000$ and 50,000/- under conventional heads towards loss of love and affection, funeral expenses, last rites as held in *Kerala State Road Trans. Corpn. v. Susamma Thomas*[1994 ACJ 1 (SC)], which is referred to in Lata Wadhwa's case and the said amount under the conventional heads is awarded even in relation to the death of children between 10 to 15 years old. In this case also we award Rs.50,000/- under conventional heads. In our view, for the aforesaid reasons the said amount would be fair, just and reasonable compensation to be awarded in favour of the appellants. The said amount will carry interest at the rate of 9% p.a. by applying the law laid down in the case of *Municipal Corporation of Delhi v. Association of Victims of Uphaar Tragedy*[2012 ACJ 48 (SC)], for the reason that the Insurance Company has been contesting the claim of the appellants from 1992-2013 without settling their legitimate claim for nearly about 21 years, if the Insurance Company had awarded and paid just and reasonable compensation to the appellants the same could have been either invested or kept in the fixed deposit, then the amount could have earned five times more than what is awarded today in this appeal. Therefore, awarding 9% interest on the compensation awarded in favour of the appellants is legally justified”.

14. It is the responsibility and liability of the appellant-TSECL to take due care to avert any sort of accident out of electrocution and to undertake all possible safety measures so that there is no wastage of electric energy. If they are found negligent to preserve such noble act in the present days, they will be definitely liable under the law of *Torts* for the injuries suffered by any person irrespective of the nature of negligence.

15. In the case of *S.K. Shangring Lamkang and anr. Vs. State of Manipur and ors.* reported in *AIR 2008 Gauhati 46* that death that occurred due to electrocution and live wire getting snapped and falling on the road which occurred to any person, in such a case, electricity board is liable to pay compensation on the principle of strict liability. The defence taken that is the exception to the said rule of strict liability being an act of God that is due to lightning and stroke or storm and not due to negligence of Electricity Board will not be available to the electricity board.

16. In the instant case, the plaintiffs have been able to prove that the death of their son occurred due to coming in contact with live torn electric wires on his way to school on 27.09.2014 at about 6.30 am and, due to such contact with the live torn electric wires, the victim was electrocuted, fell down and died due to cardiac

arrest. Thus, it is clear that the death of the victim occurred out of electrocution due to gross negligence and carelessness of the appellant-TSECL in maintaining the torn live electric wires across the road. It is noticed that the learned trial judge referring to the case of *Kishan Gopal (supra)* has observed thus:

“I find that the deceased victim was aged 10 years was assisting his father in his agricultural work. Both the father and mother are aged 36 years. The Apex Court taking into consideration all aspects of the case, assessed the notional income of the deceased at Rs. 30,000/- per annum adopted a multiplier of 15 and awarded Rs. 4,50,000/- + Rs. 50,000/- under conventional heads towards loss of love and affection, funeral expenses etc., the total amount of compensation was awarded came to Rs. 5,00,000/-.

In the present case also, the deceased was aged 7 years and was admittedly a student. Under the circumstances, I will not see why a notional income of Rs. 30,000/- should not also be fixed in the case of the deceased herein. The notional income of the deceased is, therefore, fixed at Rs. 30,000/- per annum. Applying a multiplier of 15 it comes to Rs. 30,000/- x 15 = Rs. 4,50,000/- to which shall be added a sum of Rs. 40,000/- for loss of expectation of life and another sum of Rs. 10,000/- for funeral expenses. Therefore, the total amount of compensation payable to the victim comes to Rs. 5,00,000/-. The interest payable to the victim shall be 9 per cent per annum from the date of filing of the claim petition.

So, issue No. (v) is decided in the light of the above observation”.

17. I do not find any wrong in the said finding of the learned trial Judge. Accordingly, the instant appeal is bereft of any merit and, is accordingly dismissed.

18. Before parting with the record, I could not resist myself to express my agony as well as anxiety that the responsible Officers of TSECL are found to be apathetic in discharging their obligations towards the department. They have forgotten that they are engaged in a coveted job and they have the responsibility and liability towards the society by way of saving valuable energy. Furthermore, they are also under the obligation to look after the interest of the department from which they are earning their livelihood and maintaining their family. In many cases, I find that the Officers of TSECL do not discharge their duty and are not taking up the matters seriously. They do not inquire into the matter. For example, in the instant case, the Officers who were posted at that place at the relevant time could inquire as to whether the plaintiffs were having any land to cultivate or they have any poultry farm and adduce the same in course of evidence to controvert the claim of the plaintiffs. They also could procure the date of birth to prove the exact age of the deceased son of the plaintiffs at the time of occurrence but, they failed to discharge their liability and responsibility. The reason for such observation

made by me is that the management from now onward should look into the matter and issue necessary instruction or guideline to do the needful as observed here-in-above as well as other instructions to combat such problem of the Corporation. It is further requested that the management should definitely assist their engaged Counsel for adducing evidence in each and every cases to protect the interest of the Corporation as well as the public exchequer.

19. With the above observation and direction, the instant appeal stands dismissed and the judgment and decree passed by the learned Civil Judge (Senior Division) Court no. 4, West Tripura, Agartala is affirmed and upheld.

Send down the LCRs forthwith.

JUDGE



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