

IN THE HIGH COURT OF TRIPURA
AGARTALA

RFA No.02 of 2023

- 1. Smti Dipali Tripura,**
wife of late Ranjit Kumar Tripura, resident
of Padmarai Karbari Para, P.O. Chhamanu,
799273, Sub-Division- Longtarai Valley,
District- Dhalai, Tripura
- 2. Miss. Bamika Tripura,**
daughter of late Ranjit Kumar Tripura,
resident of Padmarai Karbari Para, P.O.
Chhamanu, 799273, Sub-Division-
Longtarai Valley, District- Dhalai, Tripura

[Being minor be represented by her
mother, Dipali Tripura, appellant No.1]
- 3. Sri Alindra Tripura,**
son of late Debendra Tripura, resident of
Padmarai Karbari Para, P.O. Chhamanu,
799273, Sub-Division- Longtarai Valley,
District- Dhalai, Tripura

..... Appellant(s)

- V e r s u s -

- 1. The State of Tripura,**
represented by the Chief Secretary, Govt.
of Tripura, Secretariat Building, New
Capital Complex, PS- NCC, P.O. Kunjaban,
Pin-799010, Agartala, West Tripura.
- 2. The Secretary,**
Department of Education, Govt. of Tripura,
Secretariat Building, New Capital Complex,
PS- NCC, P.O. Kunjaban, Pin-799010,
Agartala, West Tripura.
- 3. The Chief Executive Officer,**
Tripura Tribal Area Autonomous District
Council, Khumlung, P.O. Jirania, District-
West Tripura, Pin-799035

- 4. The Principal Officer, Education,**
Tripura Tribal Area Autonomous District
Council, Khumlung, P.O. Jirania, District-
West Tripura, Pin-799035
- 5. The Inspector of School,**
Chhamanu, P.O. Chhamanu, Pin- 799273,
Longtharai Valley, District- Dhalai, Tripura.
- 6. The Head Master**
Padmarai K.P. Junior Basic School, Manu
Sen Karbari Para, Makar Cherra,
Chhamanu, P.O. Chhamanu, 799273,
Longtharai Valley, District- Dhalai, Tripura.

..... Respondent(s)

For the Appellant (s) : Mr. T.D. Majumder, Sr. Adv.
Mr. S. Chakraborty, Adv.

For the Respondent (s) : Mr. P. Gautam, Adv.
Mr. B. Debbarma, Adv.

Date of hearing : 26.09.2024

Date of delivery of Judgment & order : **13.12.2024**

Whether fit for reporting :

YES	NO
√	

HON'BLE MR. JUSTICE ARINDAM LODH
HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA
JUDGMENT & ORDER

[S. Datta Purkayastha, J]

The appeal arises out of the judgment of dismissal dated 01.11.2022 passed by the learned Civil Judge, Sr. Division, Court No.1, West Tripura, Agartala in case No. Money Suit 10 of 2019 and related decree thereof, whereby the claim of the plaintiffs (hereinafter referred to as the appellants) for Rs.15,00,000/- was rejected.

[2] The plaintiffs state that the deceased Ranjit Kumar Tripura along with Parendra Aslong, Hadajoy Aslong and others, were playing football in the playground of Padmarai Karbari Para J.B School on 08.04.2017 at about 5 pm. When Hadajoy Aslong was running with the football, suddenly he fell into the abandoned ring well, situated inside the said school compound and did not come out therefrom. To save Hadajoy Aslong, Parendra Aslong thereafter got down into the well and he also did not come out therefrom and then the deceased, Ranjit Kumar Tripura went inside the well to rescue his two friends and he also did not come out. Ultimately, Fire Service authority was informed by the locals and they rescued the corpse of all these three persons from the said well and all of them died due to suffocation by methyl gas emitting from said well. According to the plaintiffs, the said ring well was under the control and management of the school authority or rather the defendants and they left the well uncared condition without any fencing or protection where for the said incident occurred. It is further stated that at the time of death, Ranjit Kumar Tripura was 22 years old, earning Rs.7,500/- per month being a day labour and also by rearing cows, pigs etc. The plaintiffs sent notice dated 27.11.2017 through her Advocate to the defendants but the same fetched no positive response from them and thereafter, the suit was filed.

[3] All the defendants categorically denied their responsibility regarding the said incident vis-a-vis the responsibility to pay any

compensation. According to them, the well was not inside the school complex and it did not belong to any of the defendants. Additionally, it was also claimed that there was protective fencing around the said well and no one could go inside the well without climbing that fence. Moreover, the incident occurred after the school hours.

[4] The main ground for dismissal of the suit by the learned trial court was that first of all Hadajoy Aslong and Parendra Aslong went inside the well and did not come out and therefore, it was apparent that Ranjit Kumar Tripura did not accidentally fall into the well, rather consciously he went inside the same and therefore, it was not an accidental death and hence, the plaintiffs were not entitled to get any compensation.

[5] Learned trial court framed total 5[five] numbers of issues and the plaintiffs adduced 5[five] witnesses including plaintiff no.1 and also proved certain documents into the evidence. From the side of the defendants, 3[three] witnesses were examined but they did not lead any documentary evidence.

[6] Mr. T.D. Majumder, learned senior counsel appearing for the plaintiffs argues on the doctrine of *res ipsa loquitur* and submits that in the case of claims in respect of Hadajoy Aslong, the said court awarded compensation but in the case of claims in respect of Parendra Aslong and Ranjit Kumar Tripura, same were rejected. Therefore, the present appeal and another appeal bearing No.RFA 01

of 2023 were filed in this court. According to Mr. Majumder, learned senior counsel, from the evidence it was established that the well was inside the school complex and was under the management and control of a school authority who kept the well completely in in-secured condition, resulting to which the said accident occurred and three youths lost their lives. Therefore, they are responsible to pay compensation to the plaintiffs.

[7] Mr. B, Debbarma, learned counsel appearing for the respondents No.3 to 6 argues that the ring well was constructed by the State Government and not by his clients. More so, the death of the deceased was not an accidental death. Next point of argument of Mr. Debbarma, learned counsel is that even if it is presumed that the well was inside the school complex, still the incident occurred after a school over and therefore, the school authority has no responsibility or attribution in respect of the said deaths.

[8] Mr. P. Gautam, learned counsel appearing for the respondents No.1 to 3 submits that if any amount is awarded by the Court, the same should be borne by the respondents No.3 to 6 and not by the State Government inasmuch as the well was under the management, control and supervision of the said respondents.

[9] The substratum of the claim of the plaintiffs is on the basis of doctrine of *res ipsa loquitur*. Said principle in law of Tort fastens the liability upon the defendant(s) for damages when harm is caused to

somebody due to negligent act or omission on the part of somebody else which would not have occurred in ordinary course except for such negligent act or omission to take care of such object which has caused the harm and which was solely under his/their control.

[10] In **Ravi Kapur vs. State of Rajasthan, (2012) 9 SCC 284**, the Apex Court has observed that the court is required to adopt one parameter of 'reasonable care' in determining the question of negligence or contributory negligence. The doctrine of reasonable care imposes an obligation or a duty upon a person (for example a driver) to care for the pedestrian on the road and this duty attains a higher degree when the pedestrians happen to be children of tender years. It was also further observed that while driving a vehicle on a public way, an implicit duty cast on the drivers to see that their driving does not endanger the life of the right users of the road, may be either vehicular users or the pedestrians.

[11] While describing the general principles of law of negligence, the Apex Court in that case also cited reference of **Halsbury's Laws of England (4th Edn.), Vol. 34, Para 1 (p.3)** in the following terms:

"9.....1. General principles of the law of negligence.— Negligence is a specific tort and in any given circumstances is the failure to exercise that care which the circumstances demand. What amounts to negligence depends on the facts of each particular case. It may consist in omitting to do something which ought to be done or in doing something which ought to be done either in a different manner or not at all. Where there is no duty to exercise care, negligence in the popular sense has no legal consequence. Where there is a duty to exercise care, reasonable care must be taken to avoid acts or omissions which can be reasonably foreseen to be

likely to cause physical injury to persons or property. The degree of care required in the particular case depends on the surrounding circumstances, and may vary according to the amount of the risk to be encountered and to the magnitude of the prospective injury. The duty of care is owed only to those persons who are in the area of foreseeable danger; the fact that the act of the defendant violated his duty of care to a third person does not enable the plaintiff who is also injured by the same act to claim unless he is also within the area of foreseeable danger. The same act or omission may accordingly in some circumstances involve liability as being negligent, although in other circumstances it will not do so. The material considerations are the absence of care which is on the part of the defendant owed to the plaintiff in the circumstances of the case and damage suffered by the plaintiff, together with a demonstrable relation of cause and effect between the two."

[12] The claim of the plaintiffs have been generated on the basis of the provision of Section 1(A) of the Fatal Accidents Act, 1855 which envisages that whenever the death of a person is caused by wrongful act, neglect or default, and the act, neglect or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, the party who would have been liable if death had not ensued, shall be liable to an action or suit for damages, notwithstanding the death of the person injured and although the death shall have been caused under such circumstances as amount in law to felony or other crime. Every such action or suit shall be for the benefit of the wife, husband, parent and child, if any, of the person whose death shall have been so caused.

[13] In the case in hand, when Hadajoy Aslong was not returning from the said well, as per the evidence, Parendra Aslong went inside the well and he also was not returning from the said well and thereafter, Ranjit Kumar Tripura went inside the well to rescue

Hadajoy Aslong and Parendra Aslong without knowing the consequence thereof and ultimately lost his life. The police investigated the matter by registering an unnatural death case bearing No.03 of 2017 under Section 174 of Cr.P.C. and submitted the final report of the investigation [Exbt.2] corroborating with said allegation. The post-mortem report of Ranjit Kumar Tripura [Exbt.4] also shows that the cause of death was asphyxia as a result of suffocation. Both said investigating officer and the medical officer who conducted the autopsy, were examined by the plaintiffs as PWs-4 & 5 and nothing came out in their cross-examination to discredit such part of their respective evidences and therefore, it is established that when Hadajoy Aslong was not returning from the well, his other two friends, one after another went inside the well to rescue him and ultimately, they also lost their lives.

[14] It appears from the evidence of PW-2, Sri Padma Ranjan Chakma and PW-3, Sri Barendra Tripura, two inhabitants of that locality that the said well was an abandoned well inside the said school complex within the territorial jurisdiction of Tripura Tribal Areas Autonomous District Council. PW-2 himself was the eyewitness of the occurrence. None of these two witnesses could be discredited in their cross-examination with reference to said part of their evidence. The investigating police officer i.e. PW-4 mentioned in the related site map (Exbt.5) the point 'A' to be the place of occurrence i.e. the well and the point 'C' to be the school building and deposed that in his case

diary, it was reflected that the well was within the school boundary. In his cross-examination, he also stated that there was no boundary fencing on the boundary of the school campus.

[15] The respondents No.3 to 6 in their written statement asserted that the said school was under the TTAADC but the said ring well was beyond the school complex and on that ground, they tried to deny their responsibility.

[16] Both DW-1, Smt. Rina Shil who discharged the duties of Headmistress as an in-charge thereof and DW-2 Sri Debashis Barua, another teacher of that school stated that there was a fencing of about 3 feet to 5 feet height around the said well but during police investigation, nothing as such came out as to the existence of any such fencing around the said well. Even in the site map also, there is no indication of any such fencing. The independent witnesses, as discussed earlier, have also stated that the said well was lying in an uncared and in an abandoned condition. Therefore, the evidence of DWs-1 & 2 in this regard is not convincing. The evidence of DW.3 Amardwip Debbarma is also similar like DW.1 and DW.2 and therefore, for the reasons discussed above, his evidence in this regard is also not acceptable. Moreover, he is not a person who worked in that locality at that relevant point of time.

[17] Considering all these materials as placed into the evidence, it is established that the well was inside the said Padmarai Karbari

Para Junior Basic School and it was lying in an abandoned and uncared condition without any protective measures for which ultimately 3[three] innocent youths lost their lives while going to play football. When the well was inside the school complex, certainly it was the duty of the school authority and the defendant nos.3 to 6 to take proper care of the said well in such a manner that no such incident could occur, but they failed in their such duties exhibiting their neglects and default. Therefore, they are held responsible to pay damages to the plaintiffs.

[18] The observations of the learned trial court that consciously the deceased went inside the well despite knowing the fact that Hadajoy Aslong and Parendra Aslong were not coming from the said well and therefore, the plaintiffs were not entitled to get any compensation, are totally perverse. Firstly, when Hadajoy Aslong and Parendra Aslong went inside, it was not within the knowledge of the deceased, an illiterate person, that there would be methyl gas inside the same and that such gas could be fatal for his own life and also that already Hadajoy and Parendra were under the grief of such deadly gas. It is natural human instinct that when one friend is in trouble, another will go to save him and this is the humanity for which all thrive at.

[19] Now, coming to the determination of quantum of compensation, it is found that no birth certificate or any other satisfactory document regarding the date of birth of the deceased was

proved into evidence by the plaintiffs. However, PW-1, the wife of the deceased deposed that at the time of death, the age of the deceased was 22 years. The police investigation report as well as the post-mortem report also indicates the age of the deceased to be 22 years. Considering thus, for the purpose of calculation of damages, his age is taken to be 22 years at the time of incident. Though PW-1 stated that monthly income of the deceased was Rs.7500/- as day labour and also by rearing cows, pigs etc., but no satisfactory evidence has been led on that point. However, a casual labour or a day labour in such remote village area during the year 2017 could be expected to earn Rs.250/- per day. If it is presumed that he would get works for 22 days in a month, his monthly income comes to Rs.5,500/-. Considering the age of the deceased and to determine the loss of income *vis-a-vis* the loss of dependency, multiplier 18 is required to be applied. For personal and living expenses of the deceased, if one third is deducted therefrom, the compensation comes to Rs.3667 X 12 X 18=Rs.7,92,072/- rounded off to Rs.7,95,000/- inclusive of cost of funeral expenses and other post death rituals which the plaintiffs had to bear due to such death.

[20] In view of the above discussions, the appeal is allowed. The impugned judgment and decree of the learned trial court are set aside. The plaintiffs-appellants are held entitled to get compensation of Rs.7,95,000/- [Rupees Seven lakhs Ninety Five thousand] along with interest @ 6% per annum from the date of filing of the suit i.e.

from 12.03.2019 till payment. The respondents No.3 to 6 are held jointly and severally liable to make the payment of the said amount with interest as directed.

After the amount is paid or realised, one fourth of the same shall be paid to plaintiff-appellant no.3 through his bank account and rest amount shall be divided equally to both plaintiff-appellant nos.1 and 2. The share portion of minor plaintiff no.2 shall be kept in fixed deposit in any nationalised bank till she attains the age of 21 years, but her mother will be entitled to draw periodical interest therefrom for her up-brining. 50% from the share portion of the plaintiff no.1 shall be kept in fixed deposit for next 5 (five years) and rest amount shall be remitted to her through her bank account.

Return the trial court's records.

Registry is to prepare the decree accordingly.

Pending application(s), if any, also stands disposed of.

JUDGE

JUDGE