

IN THE GAUHATI HIGH COURT
(The High Court of Assam, Nagaland, Meghalaya,
Manipur, Tripura, Mizoram and Arunachal Pradesh)

AIZAWL BENCH

RFA No. 4 of 2012

1. The State of Mizoram
Represented by the Chief Secretary to
the Government of
Mizoram, Aizawl-796 001
2. The Secretary to the Government of
Mizoram, Power & Electricity Department, Aizawl.
3. The Engineer-in-Chief, Power & Electricity
Department, Aizawl. Mizoram.
4. The Superintending Engineer, Power &
Electricity Department, Aizawl. Mizoram.
5. The Executive Engineer, Power &
Electricity Department, Maintenance
Division, Aizawl. Mizoram.

....Appellants/ Defendants.

-Versus-

Shri Laldawngkima (minor)
Through his father Sh. Thangzuala,
R/o. Tualbung, P.S. Saitual, Mizoram.

..... Respondent/ Plaintiff.

BEFORE
HON'BLE MR. JUSTICE C.R. SARMA

For the appellants : Mr. A.K. Rokhum, Addl. Advocate
General, State of Mizoram.

For the respondents : Mr. L.H. Lianhrima, Advocate.

Date of hearing : 22.01.2013.

Date of delivery of
judgment & order : 24.01.2013

JUDGMENT & ORDER (CAV)

1. Heard Mr. A.K. Rokhum, learned Addl. Advocate General, Mizoram, appearing for the appellants and Mr. L.H. Lianhrima, learned counsel appearing for the respondent.

2. This appeal, under section 17(2)(b) of Mizoram Civil Court Act, 2005, read with Section 96 and order 41 Rules 1 and 2 of Code of Civil Procedure, 1908, is directed against the judgment and decree, dated 13.06.2011, passed by the learned Civil Judge, Senior Division No. 2, Aizawl District, Aizawl, Mizoram, in Money Suit No. 25/2010.

By the impugned judgment and decree aforesaid the learned Civil Judge, Senior Division No. 2, Aizawl, has awarded compensation of Rs. 6,40,000/- with interest, thereon, at the rate of Rs. 12% from the date of institution of the suit (25.05.2010) till realization, on the ground that the plaintiff/ respondent suffered injury due to electrocution, resulting amputation of his right arm, on account of fault/ negligence, on the part of the Power and Electricity Department, Aizawl, Mizoram.

3. The material facts, necessary for the purpose of disposal of this appeal, may, in brief, be stated as follows :-

On 26.12.2007, the respondent i.e. the plaintiff, who was a minor (5 years old), along with his elder brother and others, was playing, near an electric transformer, installed by the appellants, in connection with celebration of Christmas. The said transformer was not guarded by proper fencing, cover and door etc. Due to absence of any safety measures, the plaintiff, who was a minor, entered the enclosure, where the transformer was installed and got electrocuted sustaining burn injury by coming into contact with live electric wire of the transformer. Due to the said injury, the plaintiff became un-conscious and he was taken to the hospital for treatment. During the course of his medical treatment, in connection with the said incident, the right arm of the plaintiff was amputated, on 25.01.2008. The Medical Board certified that he suffered 65% disability due to the said injury. As the transformer was not protected by erecting proper fencing, gate and putting danger sign, warning the public, from entering the enclosure, the plaintiff sustained the said injury, which was the result of negligence, on the part of the appellants.

The plaintiff, who used to attend Anganbadi Centre at Tualbung having promising career, could not prosecute further study due to the said incident, and, thus, got deprived from many amenities and prospect of life. Therefore, the plaintiff, through his father Sh. Thanzuala, instituted the said money suit, claiming compensation amounting to Rs. 36 lakhs, under the following heads :-

"A. Pecuniary Damages

(a)	Loss of earning capacity	Rs. 5,00,000/-
(b)	Loss of amenities of life	Rs. 2,00,000/-
(c)	Loss of matrimonial prospect	Rs. 3,00,000/-
(d)	Special Diet	Rs. 1,00,000/-

B. Non-Pecuniary Damages

(a)	Loss of expectation of life	Rs. 5,00,000/-
(b)	Loss of amenities of life	Rs. 4,00,000/-
(c)	Impairment of physiological Functions	Rs. 5,00,000/-
(d)	Impairment of anatomical Structures	Rs. 5,00,000/-
(e)	Pain and suffering	Rs. 3,00,000/-
(f)	Mental suffering	Rs. 3,00,000/-

	Rs. 36,00,000/- "
Total	

4. The plaintiff suit was contested by the defendant authorities (appellants) by filing written statement.

Raising the questions regarding maintainability, mis-joinder and non-joinder of necessary parties, non-issuance of notice under Section 80 CPC, the answering defendants, denied the plaintiff's claim that the transformer was not properly fenced. The defendants further averred that the accident could take place

due to the negligence, on the part of the plaintiff as well as his father.

Upon the pleadings of both the parties, the learned Trial Judge framed the following issues :-

1. Whether the suit is maintainable in its present form and style ?
2. Whether the plaintiff is entitled to the relief claimed or not, if so, to what extent ?

The plaintiff i.e. the respondent examined as many as 4 witnesses including the Investigating Police Officer (PW-4) and exhibited certain documents, in support of the claim. On behalf of the defendants/ appellants, one witness, namely, Mr. Zothansanga, who was the SDO, P&E, during the relevant period, was examined as DW No.1.

After hearing both the parties and considering the evidence, on record, the learned Trial Judge decreed the suit in favour of the plaintiff/respondent directing the appellants to pay the compensation as indicated above.

5. Being aggrieved by the said judgment and decree, the defendants, as appellants, have come up with this appeal.

Though the appellants took as many as 6 (six) grounds in this appeal, Mr. A.K. Rokhum, learned Addl. Advocate General, representing the appellants, attacked the impugned judgment and decree only on 4 (four) counts.

Firstly, it has been submitted that the accident had taken place due to negligence of the victim, who had entered the enclosure, where the electric transformer was installed and that the said incident could take place due to carelessness, on the part of the father of the victim, inasmuch, as the said father had allowed his son to play near the transformer, which was not a safe place for the children.

The second ground urged by the learned Addl. Advocate General, is that none of the witnesses saw the incident and as such there is nothing, on record, to show that there was any lapse or fault on the part of the appellants, in keeping the transformer.

Thirdly, it is contended that there is discrepancy regarding name of the victim and the date of the incident.

The fourth contention raised, on behalf of the appellants, is that the amount of compensation and the interest fixed are very high and without any basis.

6. Mr. L.H. Lianhrima, learned counsel, appearing for the respondent, has submitted that from the evidence, on record, it has been clearly established that the transformer was installed without any fencing and proper gate and without putting any danger sign prohibiting others from entering the enclosure. Therefore, it is argued that there is sufficient evidence to show that the appellants were negligent in keeping the said transformer and that due to the said lapse, on the part of the

appellants, the accident, resulting amputation of the right hand of the minor, who was aged about 5 years, could take place.

7. The learned counsel, appearing for the respondent, has strenuously argued that the plaintiff, who was aged about 5 years, was not aware of the fact that entry into the enclosure, where the transformer was kept, would bring such misery to his life. He had no capacity of understanding that one should not go near an electric transformer. Therefore, it is submitted that, considering the age of the minor, no fault can be found with him and as such, there was no question of contributory negligence, on his part. The learned counsel has further submitted that the fact that the said minor, who was unaware of the impending danger, could come into the contact with the transformer, abundantly, indicates that the transformer was kept unguarded and as such there was lapse and negligence in keeping the same in such unsafe condition.

Supporting the impugned judgment and decree, the learned counsel, appearing for the respondent, has submitted that the learned Trial Judge has considered entire aspect of the matter and passed the judgment and decree, on the basis of materials, on record, and as such the same does not require any interference.

8. Having heard the learned counsel appearing for both the parties, I have carefully perused the records of the court below. There is no dispute that the plaintiff's right arm had to be amputated resulting 65% disability. The appellants, by stating in

ground No. IV, that the plaintiff was liable to bear 50% of the decretal amount, admitted the accident as alleged by the plaintiff.

9. Mr. Zothansanga, who was the SDO, P&E during 2007, deposing as DW-1, admitted that the electrical accident had taken place, on 26.12.2007 at 3-30 p.m. and that he had visited the plaintiff in connection with the said injury, sustained by him. The DW-1, further admitted that though there was little confusion regarding name of the plaintiff, it stood clarified that the plaintiff had really met with the electrical accident, on the said date and that he had sustained grievous injury requiring amputation of his right hand. From the said evidence, given by the DW-1, it stood clearly established that the accident, as alleged by the plaintiff, took place, on 26.12.2007, and his right hand had to be amputated.

10. Now, the question is as to whether the said occurrence took place due to negligence, on the part of the appellants (defendants). The learned Trial Judge, relying on the evidence of PW-2, who was the President of YMA, Tualbung Branch and PW-3 the President of the Village Council, Tualbung Village came to the findings that the electrical transformer was not guarded by erecting proper fencing and that the same had no proper cover on the door. The father of the plaintiff, deposing as PW-1, stated that his son, while playing near the electric transformer, came into contact with live wire and sustained the injuries. He also stated that the accident had taken place due to failure, on the part of the department, in erecting fencing around the

transformer. Mr. T. Thinlaihnama, who was the President of the Village Council, Tualbung, deposing as PW-3, stated that the fencing, erected by the electricity department around the transformer at Tualbung, was found to be broken and that there was no proper gate for which the minor i.e. the plaintiff could met with the accident, by coming into contact with the transformer. He clearly stated that, had the electrical department maintained the transformer with proper fencing, the plaintiff would not have met with the accident. The said evidence, given by PW-3, who was a responsible person of the society, remained un-challenged. As indicated by the learned Trial Judge, the President of YMA, Tualbung Branch, who deposed as PW-2 also stated in tune with PW-3.

From the above evidence, it stood established that the transformer was not guarded with proper fencing and that the broken fencing gave entry to the enclosure. In view of the said evidence, there is no difficulty in understanding that the electricity department failed to properly maintain the transformer and such lapse, on the part of the department, resulted the injury, sustained by the said minor i.e. the plaintiff. In view of above, considering entire aspect of the matter, I am of the opinion that the learned Trial Judge committed no error by fixing the liability on the defendants.

11. Regarding amount of compensation, fixed by the learned Trial Judge, it is found that the learned Trial Judge has calculated the award at Rs. 6,40,000/- under various heads, as indicated below :-

"A. Pecuniary Damages

(i)	Loss of earning capacity	Rs. 2,55,000/-
(ii)	Loss of matrimonial prospect	Rs. 20,000/-
(iii)	Medical, hospital and nursing expenses	Rs. 5,000/-
(iv)	Special Diet	<u>Rs. 5,000/-</u>
	Sub-total	Rs. 2,85,000/-

B. Non-Pecuniary Damages

(a)	Loss of expectation of life	Rs. 50,000/-
(b)	Loss of amenities of life	Rs. 50,000/-
(c)	Impairment of physiological Functions	Rs. 1,00,000/-
(e)	Impairment of anatomical Structures	Rs. 1,00,000/-
(e)	Pain and suffering	Rs. 5,000/-
(f)	Mental suffering	<u>Rs. 50,000/-</u>
	Sub-Total	Rs. 3,55,000/- "

12. In support of the said award, the learned counsel, appearing for the respondent, has relied on the judgment and order, passed by a learned Judge of this Court, in RFA No. 8/2008. In the said case, a minor boy, aged about 7 years, while playing foot-ball, came into contact with an electric transformer,

installed by the electricity department and sustained grievous injuries resulting 100% disability. The plaintiff, in the said case claimed compensation of Rs. 48 lakhs. The suit was contested by the department and the learned Trial Judge awarded compensation of Rs. 14,35,000/- with interest thereon at the rate of 6% per annum. An appeal being preferred against the said judgment and order, the learned Single Judge, referring to a catena of decisions, modified the compensation fixing the amount at Rs. 9,35,000/- with interest at the rate of Rs. 6% per annum thereon. In the said case the learned Trial Judge fixed the income of the victim, who was not earning any amount at the time of accident, at Rs. 15,000/- per annum and this Court held that the learned Trial Judge had rightly calculated the said amount and used the multiplier 15, in ascertaining the total loss of earning capacity. Towards non pecuniary damages, the learned Single Judge fixed the amount at Rs. 5,00,000/-.

In the case of Javid Vs. Lalji Yadav reported in 2002 ACJ 702, a minor (aged about 5 years), was knocked down by a mini bus as a result of which he had to undergo amputation, in respect of his left leg below the knee and thus he sustained permanent disability. The tribunal awarded compensation of Rs. 1 (One) lakh for pain and suffering and Rs. 12,000/- on other counts. Thus, the total amount of compensation, awarded in the suit was Rs. 1,12,000/- only. In appeal, the compensation was enhanced fixing the same at Rs. 5,00,000/- as non-pecuniary compensation for loss of amenities of life, discomfort, disappointment, frustration and mental distress in life.

13. In the case at hand also a boy aged about 5 years, who was studying in Anganbadi Centre, having future prospect in career and high expectation to excel in life, had to undergo amputation, that too in respect of his right arm, resulting 65% disability. There can be no dispute that the said minor, whose right arm had to be amputated, at the age of 5 years, stood deprived from many amenities and enjoyment in his future life. No amount of compensation would be sufficient to restore his physical fitness and compensate his deprivation and mental sufferings, which he would be required to bear through out his life. Therefore, he is entitled to receive good amount as compensation towards non-pecuniary damages for his rehabilitation.

Admittedly, the plaintiff was a non-earning person. Therefore, it would be just and proper to fix his notional income at Rs. 15,000/- per annum. Applying the multiplier 15 the total amount, towards the loss of earning capacity, would come to Rs. 2,25,000/- (Rs. 15,000.00 x 15).

The learned Trial Judge has fixed the loss of earning capacity at Rs. 2,55,000/-. He has not given any reason or basis in fixing the said amount. Therefore, the said amount is liable to be modified and fixed at Rs. 2,25,000/-. There is no dispute regarding the amount towards medical expenses, loss of matrimonial prospect and special diet, which have been fixed at Rs. 25,000/-, 5,000/- and 5,000/- respectively. Therefore, the total pecuniary damages should be Rs.2,60,000/-(2,25,000/- +25,000/- +5,000/- +5,000/- =2,60,000/-).

The learned Trial Judge has reasonably fixed non-pecuniary damages at Rs. 3,55,000/-. Therefore, the total compensation would come to Rs. 6,15,000/- (Rs. 2,60,000.00 + 3,55,000.00) instead of Rs. 6,40,000/-.

The learned Trial Judge has also awarded interest at the rate of 12% per annum from the date of filing of the suit i.e. 25.05.2010 till the date of realisation.

There is no basis for fixing such high rate of interest i.e. Rs. 12% per annum. The said rate is found to be too high. In my considered opinion, interest at the rate of 9% per annum would be sufficient and appropriate to meet the ends of justice. Accordingly, the rate of interest is modified fixing the same at Rs. 9% per annum.

No interference is made in respect of the costs, awarded by the learned Trial Judge.

14. Considering the future need and welfare of the minor child, it is directed that 50% of the awarded amount shall be kept in fixed deposit (term deposit earning interest) for a period of 15 years or till the plaintiff attains his majority, whichever is earlier.

With the above modifications, as indicated above, the appeal is partly allowed.

15. Parties are to bear their respective costs.

Send down the LCRs to the concerned court below forthwith.

JUDGE.

AS.