

**IN THE COURT OF THE SENIOR CIVIL JUDGE, AIZAWL
DISTRICT, AIZAWL MIZORAM**

Civil Suit No.40/2007

Lalngurliana,
S/o R.Lalchhawna(L)
Serchhip Venglai

.....Plaintiff.

-Versus-

1. The State of Mizoram
Through the Chief Secretary to the Govt. of Mizoram
Mizoram, Aizawl.
2. The Secretary to the Govt. of Mizoram
Power & Electricity Deptt., Aizawl
3. The Chief Engineer,
Power & Electricity Deptt., Aizawl,
Govt. of Mizoram.
4. The Executive Engineer,
Power & Electricity Deptt.,
Serchhip Division, Serchhip.

.....Defendant.

BEFORE

R.VANLALENA, Senior Civil Judge-2

For the Plaintiff : Shri A.Rinlian Malhotra & ors., Advocates .
For the Defendants: Asst. Govt. Advocates.
Date of Judgement: 29.3.2012.

JUDGEMENT

29.3.2012

The facts of the case leading to the filing of the present suit as reflected in the plaint may be briefly stated as below:-

That the plaintiff is the father of David Lalrinawma 20 years of age, a resident of Serchhip Venglai, Serchhip, Mizoram. His son David Lalrinawma was found dead on 19.06.2005 near the Electric Transformer owned by the Power & Electricity Department, Government of Mizoram at

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around 5:00 AM nearby his residence. At the time of the accident, Smt. Lalthlanfeli, mother of David Lalrinawma was standing not so far from the place of incident and saw her son holding live-wires from the said Transformer and cried for help. As a result of the electrocution, David Lalrinawma died and his dead body was taken to Civil Hospital, Serchhip for further necessary actions. The matter reported to the Officer-in-Charge of Serchhip Police Station. The Police conducted inquest over the dead body of David Lalrinawma and also conducted inquiry over and around the place where the Transfer 250 KVA Power Distribution Sub-Station was located. Serchhip Police registered U.D. case No.3 of 2005 dt.19.06.2005 vide GDE No.286 dt.19.06.2005 at 12:30 PM. The dead body was sent to the Civil Hospital, Serchhip for Post Mortem Examination. Dr.Lalremmawii, Medical Officer on duty conducted PME on the dead body of David Lalrinawma. As per the PME reports, the cause of death could be cardiac arrest as a result of electric shock. Consequent upon the death of his son, the present plaintiff approached the Power & Electricity Department, Serchhip by submitting a representation dated 20.07.2005 requesting payment of compensation due to the death of his son caused by electrocution. However, the said representation was rejected by the said authority (defendants) vide letter No.C.18015/02/2001-CE(P)/104 dt.18.10.2005 on the ground that the report submitted by the Electrical Inspector revealed that the cause of death of David Lalrinawma was due to his own fault as he opened the gate of the transformer sub-station fencing and thus got electrocuted. On 25.07.2007, the plaintiff served a legal notice u/s 80 Code of Civil Procedure 1908 to the defendants claiming compensation for death of his son but there was no response from the defendants. The cause of action arose on 19.06.2005 when the deceased was electrocuted and again arose on 1.7.2005 when the inquiry report was submitted by Serchhip Police. This court has pecuniary as well as territorial jurisdiction to entertain and try this suit.

On being aggrieved by the accident and by irresponsible attitude of the defendants, the plaintiff filed the present suit and thus prayed the following reliefs :-

- a) For a decree in favour of the plaintiff and against the defendants.

- b) For a decree declaring that the plaintiff's son David Lalrinawma had died due to electrocution because of the negligence of the defendants.
- c) For a decree declaring that the plaintiff is entitled to payment of compensation amounting to Rs.5,00,000/- alongwith interest @ 9% per annum from the date of electrocution i.e. 19.06.2005 till payment is made by defendants.
- d) For costs of suit.
- e) For any other relief (s) as the Hon'ble court may deem fit and proper in the facts and circumstances of the case.

On the other hand, the defendants contested the present suit by filing written statements. In their written statements, the defendants stated that the suit is not maintainable in its present form and style, there is no cause of action in favour of the plaintiff and against the defendants, the suit has not been properly verified in accordance with law. In their objection on merit, the defendants stated that due to death of David Lalrinawma, the defendants are not liable to pay compensation to the plaintiff as the electrocution/accident was occurred purely due to mischief and negligence of the deceased who entered the Gate of the 250 KVA Power Sub-Station Transformer. At the relevant time, the Gate was tied with GI wires and cannot be opened easily. However, the deceased entered into the said Gate which led to his untimely death. The defendants are not liable to pay compensation due to the wrongful act of deceased as there had been a sign and Danger Notice displayed in the said Sub-station. Defendants further died due to his own fault and wrongful act by intruding into the Sub-station which was Goat proof fenced as he was fully capable of knowing the possible consequences of what he was doing since he was neither a mentally handicap nor minor person. Hence principle of strict liability does not apply to the case of deceased David Lalrinawma.

On the basis of pleadings of the parties, the following issues are framed :-

- 1) Whether there is any cause of action in favour of the plaintiff and against the defendants ?
- 2) Whether the death of plaintiff's son by electrocution was due to the negligence on the part of the defendants ?
- 3) Whether the plaintiff is entitled to the relief claimed, if so, to what extend ?

The plaintiff examined three witnesses including himself while the defendants produced two witnesses.

Issue No 1: Whether there is any cause of action in favour of the plaintiff and against the defendant ? The defendants in their written statement stated that there is no cause of action in favour of the plaintiff and against the defendants. On the other hand, the plaintiff stated in his plaint that the cause of action arose on 19.06.2005 in his favour and against the defendants when his son David Lalrinawma was died due to electrocution in the Sub-station of 250 KVA Power distribution station. Evidence of plaintiff revealed that the deceased while touching live-wires of distribution sub-station got electrocuted. Plaintiff's evidence revealed that the electrical accident took place in the said Sub-station inside the fencing area by electrocution which was caused by live-wires from the Transformer. The investigation into the said accident revealed that the dead took place inside the said fencing area but was not properly looked and could be easily entered into. As per evidence of Pw No.2 namely Shri Lalnunsiana Pachuau, members of the public had made complaints about the insecure and unsafety conditions of the fencing of the said Transformer even before the death of the deceased, no action whatsoever was done by the defendants to repair the fencing. From evidence available on record, it was proved that the accident took place by electrocution in the Sub-station owned and maintained by the defendants. Hence issue No.1 is decided in favour of the plaintiff.

Issue No.2 : Whether the death of the plaintiff's son by electrocution was due to the negligence on the part of the defendants ? The plaintiff insisted that the death of his son was purely due to negligence on the part of the defendants while the defendants denied that the death of plaintiff's son was not due to their negligence but due to the wrongful act of the son who entered into the fencing area which was locked and tied with GI wires. In his evidence, the plaintiff stated that the death of his son by electrocution was due to gross negligence on the part of defendants. In fact, the death could have been avoided if the defendants had taken reasonable care with minimum safety requirements. To support his evidence, he produced Pw 2 Shri Lalnunsiana who was the Member of Village Council Court, Serchhip –IV at the relevant time who deposed that the said Electric Transformer was located nearby the residence of the plaintiff and the said Transformer was not

properly locked. Even before this incident, the Village Council received complaints about the improperly fenced power Sub-station and was not in safety condition. After the incident the Village Council wrote a letter to the SDO, RE, Sub-Division, Power & Electricity Department, Serchhip requesting to properly lock the fencing, but to no avail. In his cross examination, the plaintiff (Pw-1) admitted that to enter the Gate of Transformer is illegal and also admitted that "Danger Notice was fitted above the Gate of Transformer at the time of the said accident of electrocution, however the sign plate was old and worn out. The plaintiff further admitted that employees of the Power & Electricity Department regularly came for inspection early in the morning at around 5:00AM and late in the evening and was not sure about the inspection duty at the time of the accident. In his cross examination, Pw-2 stated that the deceased was addicted to drugs and liquor consumption. Pw-3 namely J.Rokima deposed that he conducted necessary inquiry into the accident of electrocution which revealed that the fencing gate of Transformer was not properly locked and could be easily entered into. In his cross examination, he stated that there was no locked on the fencing gate of the Transformer. He further stated that the incident occurred due to negligence on the part of defendants. On the other hand Dw No.1 namely Shri Vanlawma deposed that he was the in-charge of looking after the Transformer, checking the area, switching on and off the street lights fed from the said Transformer. He added that on that date i.e. 19.06.2005, after he finished his daily duty as aforementioned, the accident of electrocution took place which resulted into the death of the plaintiff's son. He knew the said deceased and was a habitual trespasses into the danger area who was a dendrite addict and often had scolded and warned him to stay out of the Transformer area in the previous times. Before he left the Transformer, he properly locked the fencing by trying the gate with GI wires which could not be opened by stray domestic animals and even by strong winds.

Inspite of this, the said David Lalrinawma entered into the fencing area of the Transformer and was electrocuted. His death was due to neglect of Danger Notice fitted on the fencing and even verbal warnings. Therefore, the accident of electrocution was purely negligence on the part of

the deceased. In his cross examination, D.w No.1 denied that he never scolded the deceased and also denied that the deceased was not addicted to dendrite. In his further cross examination, D.w No-1 admitted that the fencing of the Transformer was not locked but properly tied with GI wires. D.w No.2 namely Shri K.Duhsanga deposed that he was the SDO, Power & Electricity Department, Serchhip at the relevant time. On enquiry of the alleged accident of electrocution, he learnt that the Transformer was properly fence with Goat proof fencing net with fabricated Gate tied with GI wires and that the deceased seemed to be opening the tied gate at his own will and thus unfortunately electrocuted. He reported the matter to the higher authority. He stated that the deceased was addicted to abuse of drugs, Dendrite and others substances as disclosed by his father at the funeral function. The deceased entered into the fencing Gate of Transformer at his own will and met his untimely death for which the defendants are not responsible since proper care and maintenance of the Transformer was observed on the morning of the alleged accident. In his cross examination , Dw No.2 admitted that the Gate of transformer was not locked with a lock and key but tied with GI wires. He also admitted that the said Gate was to be locked properly with lock and key as per mandatory Rules and Regulation from the evidence of the plaintiff and the defendants, it was clearly mentioned that the deceased had ever been scolded and warned by the Dw-1 for his intrusion into the fencing area of the Transformer. The evidence on record revealed that the said Transformer was properly fenced with Goat proof fencing net and used to tied its fabricated Gate with GI wires. The evidence on record also revealed that the said Gate was not locked with lock and key as mandated by relevant Rules and Regulations. As the evidence revealed that the said Gate was not properly locked with a lock and key, the issue No.2 is decided in favour of the plaintiff.

Issue No 3: Whether the plaintiff is entitled to the relief claimed, If so to what extent ? The plaintiff in his evidence stated that his son was about 20 years old and read upto Class-VIII. As soon as the a accident of electrocution took place, he informed the Police for necessary action. The Police conducted inquest over the dead body of the plaintiff's

son and found multiple injury marks on his body. Also conducted inquiry over the place of occurrence, and found that the Gate of Transformer was not locked and Danger sign not seen. The dead body was sent to Serchhip Civil Hospital for Post Mortem Examination which indicated that the cause of death could be cardiac arrest as a result of electric shock. However, the Medical Officer who conducted the PME was not examined as witness. The plaintiff in his deposition did not mention as to whether the Gate of Transformer was properly locked and tied before the incident of electrocution. However, evidence of Pw-2 stated that members of the locality had ever made complaints about the improper maintenance of the fencing of the said Transformer but nothing documentary evidence was adduced. From the evidence of the plaintiff and his witnesses, nothing was revealed clearly about the Gate of the Transformer as to whether it was properly locked before the incident of electrocution.

On the other hand, the defendants produced two witnesses who both stated that the Transformer was properly fenced with Goat-proof fencing net and properly tied with GI wires in order to prevent entry of animals into the fencing area as the same area is danger to human beings and animals. Danger Notice was also fitted on the fencing wall to warn off any intrusion. In his cross examination, Dw-2 (SDO, P & E Department) stated and admitted that the fabricated Gate of the Transformer was not locked with a lock and key but was properly tied with GI wires to prevent intrusion into fencing area. He also admitted in his cross examination that as per relevant Rules and Regulation, the fencing of the Transformer was to be properly locked with a lock and key.

After hearing rival counsels and on careful perusal of materials available on records, it is evident that the Gate of Transformer was not locked with a lock and key but was properly tied with GI wires. It is also revealed that the Danger Sign was fitted on the fencing wall but was old and worn out. It was further revealed that the deceased who entered inside the fencing area of the Transformer was not mentally handicapped and not a minor who could have a reasonable understanding and knowledge of what could have happened if he entered inside the fencing area of unsafe place. It is crystal clear that the defendants are not complying with the best safety

measures as required by the relevant Rules and Regulation. At the same time, the plaintiff's son was also not careful enough to enter into a dangerous place. Being a major, he was expected to know the consequence of what he was doing. However, life is precious. Lost of life is lost of everything. Had the defendants locked the Gate with a lock and key, the plaintiff's son could have avoided lost of his life in spite of his known behavior. Hence, issue No.3 is decided in favour of the plaintiff.

The following documents are exhibited by the plaintiff without objection.

1. Exb. P-1 is the copy of FIR dt.19.6.05 submitted by me and Exb. P-1 (a) is my signature.
2. Exb. P-2 is the Inquest Report dt.19.6.05 dt. 19.6.05 of SI J.Rokima.
3. Exb.P-3 is the Enquiry Report dt.1/7/05 of SI J.Rokima.
4. Exb. P-4 is the copy of PME Report dt.1/7/05.
5. Exb. P-5 is the copy of letter dt.22/6/05.
6. Exb. P-6 is the copy of Representation dt.20/7/05
Exb. P-6(a) is my signature.
7. Exb. P-7 is the copy of letter dt.18/10/05.
8. Exb. P-8 is the copy of Notice dt.25/7/07.

The following documents in continuation of my examination-in-chief are exhibited by the plaintiff.

1. Exb.D-1 is letter No.C.18015/103/09-CE(P)/9 dt.24.9.07.
2. Exb.D-2 is parawise comment on Notice u/s 80 CPC.
3. Exb.D-3 is letter No.T.11011/5/2001-SEI/54 dt.28.9.05.
4. Exb. D-4 is letter No. T.11011/15/03-AEI/6 dt.19.9.05.
5. Exb.D-5 is Report on Electrical Accident dt.22.6.05.
6. Exb. D-6 Detailed Report on Accident dt.22.6.05.

In view of the findings in all the issues, this court is of the considered opinion that the plaintiff is not entitled to the full amount of compensation claimed i.e.Rs.5,00,000/- (Rupees five lakhs) only with 9% interest per annum from the date of electrocution due to the facts that the cause of death of the plaintiff's son was due to negligence partly on the defendants and partly on the deceased himself. However, life is precious and lost of it is lost of everything. Had the defendants kept the Gate of Transformer under a lock and key, the accident of electrocution could have been avoided in spite of the carelessness of the deceased. By reason of which, this court is of the considered opinion that the defendants are liable to some extent and are thus liable to pay sum amount of money to the plaintiff.

Thus the suit is finally decided and decreed as follows:

1. The defendants No.1-4 shall pay a sum of money amounting to Rs.2,50,000/- (Rupees two lakhs and fifty thousand) only to the plaintiff as a solatium due to the untimely death of his son within a period of two months with interest at a rate of 5% per annum from the date of electrocution and till payment in full is made.
2. Parties are to bear their own costs.

The suit having been decreed as above is thus disposed of.

29th March, 2012.

Given under my hand and seal of this court on this

Sd/-R.VANLALENA
Senior Civil Judge – II
Aizawl District : Aizawl.

....10/-

Memo No. /SCJ-I I(A)/2012: Dated Aizawl the 29th March, 2012.

Copy to:

1. The District and Sessions Judge, Aizawl District, Aizawl, Mizoram.
2. Lalngurliana, S/o R.Lalchhawna(L), Serchhip Venglai through his counsels A.Rinliana Malhotra & ors.
3. The State of Mizoram through the Chief Secretary to the Govt. of Mizoram through Asst. Govt. Advocates.
4. The Secretary to the Govt. of Mizoram, Power & Electricity Deptt., Aizawl through Asst. Govt. Advocates.
5. The Chief Engineer, Power & Electricity Deptt., Aizawl, Govt. of Mizoram through Asst. Govt. Advocates.
6. The Executive Engineer, Power & Electricity Deptt., Serchhip Division, Serchhip through Asst. Govt. Advocates.
7. Shri A.Rinliana Malhotra & ors., Advocates concerned.
8. Shri R.K.Malsawmkima and Shri Joseph Lalfakawma, Asst. Govt. Advocates.
9. Registry Section.
10. Case record.

PESHKAR

