

# State Of J&K And Others vs Mohd. Kafeel on 21 December, 2022

**Author: Rajnesh Oswal**

**Bench: Rajnesh Oswal**

HIGH COURT OF JAMMU, KASHMIR AND LADAKH  
AT JAMMU

Reserved on : 01.12.2022  
Pronounced on: 21.12.2022

CFA No. 12/2018(0&M)  
c/w  
CCROS No. 10/2018(0&M)

State of J&K and others

.....Appellant(s)/Petitioner(s)

Through: Mr. Amit Gupta, AAG

Vs

Mohd. Kafeel

..... Respondent(s)

Through: Mr. R. P. Sharma, Advocate

Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

## JUDGEMENT

1. This civil 1st appeal has been filed by the appellants against the judgment and decree dated 29.05.2017 passed by the learned Principal District Judge, Poonch (hereinafter to be referred as the trial court) whereby the suit filed by the respondent has been partly decreed and the appellants have been directed to pay an amount of Rs. 7,43,600/- as compensation along with interest at the rate of 7.5% per annum from the date of the institution of the suit till realization.

2. Cross-Objections have also been filed by the respondents for enhancement of the compensation.

3. The judgment/decreed has been impugned by the appellants on the grounds inter alia that the learned trial court has not rightly appreciated the evidence and the plea taken by the appellants in their written statement that the respondent while committing theft of oil from the transformer installed in the land of his ancestors received electric shock has not been considered at all by the trial court. It is also stated that there is absolutely no basis or justification for awarding compensation by the trial court in favour of the respondent.

4. The respondent has filed the cross-objections to the appeal by stating that the compensation awarded in favour of the respondent is insufficient and contrary to the law laid down by the Hon'ble

Apex Court.

5. Mr. Amit Gupta, learned AAG appearing for the appellants vehemently argued that the learned trial court has not considered the pleadings of the appellants and further there was no evidence before the trial court for granting compensation for an amount of Rs. 7,43,600/- in favour of the respondent.

6. Per contra, Mr. R. P. Sharma, learned counsel for the respondent vehemently argued that no evidence was led by the appellants before the learned trial court and the respondent had led the evidence only and as such, learned trial court has rightly returned the finding with regard to negligence of the appellants but the learned trial court has not rightly awarded the quantum of compensation as the respondent was entitled to higher compensation.

7. Heard and perused the record.

8. A perusal of the record reveals that the respondent was permitted to sue the appellants as an indigent person vide order dated 23.10.2013. It was pleaded by the respondent that on 08.04.2009 while he was grazing cattle in the land of his grandfather due to electric transformer that was installed for PHE lift scheme Uchhaad Nabana, he suffered an electric shock. The wires were not made live initially and the respondent and his father were told by the appellants that before making the electric wires live, they would inform them well in time but without informing the respondent and his father, the appellants made the wires live and the height of the wires was only 4-5 ft from the earth and that too without any fencing. Due to negligence of the appellants, the respondent got an electric shock in his right arm, which was amputated during treatment at Government Medical College, Jammu. It was also pleaded by the respondent that at the time of this incident, he was studying in 10th class and due to electric shock, the respondent has suffered a lot and could not continue his education. Further that the respondent became handicapped and was examined by the board of doctors who declared the respondent as suffering the disability of 70% of the right upper limb. It was also pleaded by the respondent that his future has been spoiled and further that he would have earned more in his life and achieve higher status in life but for this incident.

9. The written statement was filed by the appellants before the trial court pleading therein that the occurrence had not taken place because of lapse on the part of the appellants but due to the mala fide intention of the respondent to commit theft of oil from the transformer and while doing so, he suffered a shock. It was also pleaded that the family of the respondent had provided the land for installation of the transformer for public purpose to the PHE Department and the suit was not maintainable in view of absence of necessary party.

10. On the basis of the pleadings by the parties, the learned trial court has framed following issues:

"1. Whether the suit of the plaintiff is not maintainable, if yes, how....? OPD

2. Whether Mohd Kafeel received electric shock on 08.04.2009 at Uchhad Tehsil Mendhar while grazing cattle in his grandfather land and was disabled up to 70% on

account of negligence of the employees of the electricity Deptt....? OPP

3. In case issues No. 2 is proved in affirmative what is the amount of compensation to which plaintiff is entitled and from whom...?OPP

4. Relief...? O. P. Parties."

11. The respondent besides examining himself, also examined PW Irshad Hussain, Mohd. Din and Dr. Niyaz Ahmed in his support. The appellants did not choose to lead any evidence and as such, the learned trial court after hearing both the sides, passed the judgment and decree, that is the subject matter of the present appeal and cross-objections.

12. Issue No. 1:-

Whether the suit of the plaintiff is not maintainable, if yes, how....? OPD

13. In the written statements, preliminary objection was raised by the appellants that the suit is not maintainable as the respondent had not arrayed the PHE Department which was the necessary party as the electric transformer was under the control of PHE department. The respondent has pleaded in his plaint that the electric transformer was installed for PHE Scheme Uchhad Nabani and it has no where been pleaded by him that the said transformer was under the control of PHE department. The onus to prove the said fact was upon the appellants but the appellants did not lead any evidence to prove the fact that the electric transformer was under the control and management of PHE Department for their lift scheme. The learned trial court has considered this issue and has come to the conclusion that appellants have failed to prove that the electric transformer was under the control and management of the PHE Department and as such decided the issue in favour of the respondent. This Court does not find any reason to interfere with the said finding as the issue No. 1 has been rightly decided in favour of the respondent/plaintiff.

14. Issue No.2:-

Whether Mohd Kafeel received electric shock on 08.04.2009 at Uchhad Tehsil Mendhar while grazing cattle in his grandfather land and was disabled up to 70% on account of negligence of the employees of the electricity Deptt....? OPP In order to prove this issue, the respondent-Mohd. Kafeel appeared as his own witness and he categorically stated that on 08.04.2009 while he was grazing cattle in his ancestral land, he suffered electric shock. It was also stated by him that the said transformer was installed for the lift scheme of the PHE Department and initially the wires were not live. The appellants had asked him and his family members that they would inform them before the said wires are made live and also they would raise the height of wires those were hanging at the height of 5 ft only. He suffered electric shock from the wires Some persons came there and took him to Poonch Hospital, from where, he was referred to GMC, Jammu. His arm was amputated. FIR was also registered in respect of the said incident. Rs. 40,000/- was spent on his treatment and he was on

medication continuously. As a result of electric shock, he has become disabled and is unfit for Government job. As a result of this incident, his whole career has been spoiled and he is unable to perform his daily routine chores. In cross examination, he stated that one criminal case is pending in the court and his father was not serving in the PHE Department. Transformer was installed by Power department and not by PHE but the said transformer was installed for PHE scheme. The statement of the respondent has been corroborated by witness of the respondent namely Irshad Hussain who has also deposed on the similar lines as those of respondent. He has deposed that the wires were made live without informing villagers.

15. PW Mohd Din has also corroborated the statement of the plaintiff/respondent and further stated that he took the respondent to SDH Mendhar along with some other persons and FIR was also registered about this incident. He also stated that he was present on spot when the incident took place. Respondent witness Dr. Nayaz Ahmed proved the disability certificate issued by the medical board on 14.05.2011(ExPW-NA). Though in cross examination, he admitted that he was not posted in District Hospital, Poonch on 14.05.2011.

16. It is the case of the respondent that the appellants made the electric wires live without informing them and the appellants have not disputed this version of the respondent by cross-examining the respondent as well as his witnesses on the said issue and have not even put their defence in cross-examination to the respondent and his witnesses that the respondent suffered electric shock while committing theft of oil from the transformer. In *Muddasani Venkata Narsaiah v. Muddasani Sarojana*<sup>1</sup>, Apex Court has held as under:

"15. Moreover, there was no effective cross-examination made on the plaintiff's witnesses with respect to factum of execution of sale deed, PW 1 and PW 2 have not been cross-examined as to factum of execution of sale deed. The cross-examination is a matter of substance not of procedure one is required to put one's own version in cross-examination of opponent. The effect of non- cross-examination is that the statement of witness has not been disputed. The effect of not cross-examining the witnesses has been considered by this Court in *Bhoju Mandal v. Debnath Bhagat* [AIR 1963 SC 1906] . This Court repelled a submission on the ground that the same was not put either to the witnesses or suggested before the courts below. Party is required to put his version to the witness. If no such questions are put the Court would presume that the witness account has been accepted as held in *Chuni Lal Dwarka* (2016) 12 SCC 288 *Nath v. Hartford Fire Insurance Co. Ltd.* [1957 SCC OnLine P&H 177 :]"

17. From the evidence as mentioned above, the respondent has proved that he suffered an electric shock from the wires of the transformer that was installed in the land given by his family for the purpose of installation of electric transformer to be used for PHE supply scheme and further that the appellants without informing him as well members of his family made the electric wires live. It is also proved that the respondent suffered 70% disability of affected limb. The appellants have not led any evidence in rebuttal to prove their defence that the respondent suffered electric shock when he

was trying to steal the oil from the transformer. In view of this, this Court does not find any infirmity in the finding returned by the learned trial court that the respondent suffered an electric shock on 08.04.2009 while grazing cattle in his grandfather's land and suffered 70% disability on account of the negligence of the employees of the appellants.

18. Issue No. 3:

In case issues No. 2 is proved in affirmative what is the amount of compensation to which plaintiff is entitled and from whom...? OPP As already discussed above as the respondent has suffered amputation of his limb as is evident by ExPW-NA(medical board certificate) wherein it has been stated as under:

"case of above elbow amputation (R) upper limb permanent disability of (R) upper is 70% (seventy%)."

Thus, it is established that the respondent has suffered 70% disability of the affected limb.

19. Now the only issue that is required to be examined is the quantum of compensation to be awarded in favour of the respondent. It is well settled that the yardsticks for grant of compensation as are applicable in the motor accidents claims cases can be applied for the purpose of grant of compensation in electrocution cases as well. While examining the quantum of compensation of Rs. 7.43 lacs as determined by the trial court, this court finds that the court has not properly determined the quantum of compensation. The court has deducted 50% of the monthly income as personal expenses that could not have been done as it was not the case where compensation was to be awarded on account of death caused in the incident. Since the respondent has not disputed the sum of Rs. 3,000/ as his notional income, so the monthly income of the respondent is taken as Rs. 3,000/ per month. As per National Insurance Company Ltd. vs. Pranay Sethi 2, the monthly income was required to be enhanced at the rate of 40%. Thus the monthly income of the respondent comes out to be Rs. 4,200. The annual income would be Rs. 50,400/. Further as per the certificate, the deceased has suffered 70% disability of affected limb. In Pappu Deo Yadav v. Naresh Kumar<sup>3</sup>, Apex Court has observed as under:

"20. Courts should not adopt a stereotypical or myopic approach, but instead, view the matter taking into account the realities of life, both in the assessment of the extent of disabilities, and compensation under various heads. In the present case, the loss of an arm, in the opinion of the court, resulted in severe income earning impairment upon the appellant. As a typist/data entry operator, full functioning of his hands was essential to his livelihood. The extent of his permanent disablement was assessed at 89%; however, the High Court halved it to 45% on an entirely wrong application of some 'proportionate' principle, which was illogical and is unsupportable in law. What is to be seen, as emphasized by decision after decision, is the impact of the injury upon the income generating capacity of the victim. The loss of a limb (a leg or arm) and its severity on that account is to be judged in relation to the profession, vocation or business of the victim; there cannot be a blind arithmetic formula for ready application. On an (2017) 16 SCC 680 2020(6) JKJ(SC) 297 overview of the principles outlined in the previous decisions, it is apparent that the income generating

capacity of the appellant was undoubtedly severely affected. Maybe, it is not to the extent of 89%, given that he still has the use of one arm, is young and as yet, hopefully training (and rehabilitating) himself adequately for some other calling. Nevertheless, the assessment of disability cannot be 45%; it is assessed at 65% in the circumstances of this case.

21. This court is also of the opinion that the courts below needlessly discounted the evidence presented by the appellant in respect of the income earned by him. Working in the informal sector as he did, i.e. as a typist/data entry operator in court premises in Delhi, his assertion about earning Rs. 12,000/- could not be discarded substantially, to the extent of bringing it down to Rs. 8,000/- per month. Such self employed professionals, it is noticeable, were not obliged to file income tax returns for AY 2011-2012, when no levy existed for anyone earning less than Rs. 1,60,000/- per annum.<sup>29</sup> The advocate who deposed about the earnings of the appellant was believed to the extent that the tribunal fixed the appellant's monthly earnings at Rs. 8,000/-. If one takes into account contemporary minimum wages for skilled workers (which was in the range of Rs. 8,500/-) the realistic figure would be Rs. 10,000/- per month. Adding future prospects at 40%<sup>30</sup>, the income should be taken as Rs. 14,000 for the purpose of calculation of compensation. Accordingly, this court finds that the compensation payable for the disability of loss of an arm (assessed at 65%) would be Rs. 19,65,600/- (i.e., Rs. 14,000/-  $\times$  12  $\times$  65%  $\times$  18) or Rupees Nineteen lakhs sixty five thousand six hundred only."

20. The respondent was student and he claims that whole of his career has been spoilt because of the negligence of the appellants. By placing reliance upon the judgment of the Apex Court in "Pappu Deo Yadav v. Naresh Kumar", (supra) the disability for the purpose of determination of compensation on account of loss of future earnings is assessed at 65%. The respondent was 18 years of the age at the time of accident as such the multiplier would be 18. Therefore the compensation on account of future loss of earnings is payable at Rs. 5,89,680/. The medical expenses for an amount of Rs 40,000/ on the basis of bills have been rightly determined by the trial court. The respondent had to travel to Jammu for medical treatment and must have been accompanied with attendant and also prescribed special diet. Thus the sum of Rs. 1 lac is awarded under the head of conveyance charges, attendant charges and diet and nutrition charges. Further sum of Rs. 3 lacs is awarded under the head of pain and sufferings and loss of amenities of life, as he has suffered lot of pain and agony because of amputation of his arm. Thus the total compensation payable by the appellants to respondent is as under:

a. Loss of Future earnings:	Rs. 5,89,680/
b. Medical expenses:	Rs. 40,000/
c. Attendant, travel and Special Diet Expenses:	Rs. 1,00,000/

d. Pain and Sufferings and Loss of amenities of life: Rs. 3,00,000/ Total compensation: Rs. 10,29,680/

21. Accordingly, the judgment dated 29.05.2017 of the trial court is modified and the respondent is held entitled to receive compensation of Rs. 10,29,680/ (Ten lacs twenty nine thousand six hundred and eighty only) from the appellants jointly and severally. The interest shall be payable on an amount of Rs. 4,40,000/ at the rate of 7.5% per annum from the date of institution of suit till the amount is paid. No interest shall be paid for the compensation awarded on account of loss of future earnings. The court fee be deducted at the time of final payment to the respondent.

22. The appeal is dismissed and the cross-objections allowed partly. Registry to prepare the decree sheet accordingly. The trial court record be sent back forthwith.

23. Disposed of.

(RAJNESH OSWAL) JUDGE Jammu 21.12.2022 Rakesh Whether the order is speaking: Yes  
Whether the order is reportable: Yes