

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/FIRST APPEAL NO. 470 of 2012****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE HEMANT M. PRACHCHHAK Sd/-**

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Approved for Reporting	Yes	No

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PASCHIM GUJARAT VIJ CO LTD**Versus****MITHAUBHAI NAGESHI MAHESHWARI & ANR.**

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Appearance:**MR SP HASURKAR(345) for the Appellant(s) No. 1****DELETED for the Defendant(s) No. 1****MR KIRTIDEV R DAVE(3267) for the Defendant(s) No. 2****MR RAHUL K DAVE(3978) for the Defendant(s) No. 2**

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CORAM:HONOURABLE MR. JUSTICE HEMANT M. PRACHCHHAK**Date : 17/06/2025****ORAL JUDGMENT**

1. Present appeal is filed by the appellant - Paschim Gujarat Vij Co. Ltd. against the judgment and order dated 22.11.2011 passed by the learned Principal Senior Civil Judge, Kutch-Bhuj (hereinafter referred to as "trial Court) in Special Civil Suit No. 91 of 2008, whereby the trial Court has partly allowed the above Civil Suit filed by



present respondents-original plaintiffs and directed present appellant-defendant to pay Rs.6,25,000/- along with 9% interest from the date of suit till its realization to present respondents.

2. The short facts giving rise to present appeal are as under:-

2.1 On 08.03.2008 at 17.00 O'clock the son of plaintiffs named Vithaldas Muthubhai Maheshwari, aged 18 years old was standing below the trees and was cutting the plants for grazing their cattles. At that time, he was electrocuted due to electric line passing though the trees and died.

2.2 In view of the above incident, the plaintiffs - being parents of the deceased have filed suit for recovery of compensation on account of untimely death of their younger son.

2.3 The trial Court, after hearing both the sides and after evaluating the evidence placed on record as well as



considering the plethora of documents has passed the impugned judgment and order directing the present appellant to pay Rs.6,25,000/- along with 9% interest from the date of suit till its realization to present respondents.

2.4 Being aggrieved and dissatisfied with the impugned judgment and order, the appellant has preferred present appeal.

3. I have heard Mr. S.P. Hasurkar, learned counsel for the appellant and Mr. Kirtidev R. Dave, learned counsel for the respondent No.2.

4. Learned advocate for the appellant has submitted that the trial Court has, without verifying and without considering the submissions in its true and proper spirit passed the impugned judgment and order which is bad in law.

4.1 Learned advocate for the appellant has also submitted that there is no negligence on the part of the



appellant and the deceased would have been reasonable vigilant while coming closer to the live electric wires and ought to have been aware of probable danger.

4.2 Learned advocate for the appellant has also submitted that on the ground of contributory negligence trial Court ought not to have granted such huge amount by way of compensation.

4.3 Learned advocate for the appellant has submitted that trial Court has wrongly come to the conclusion that the deceased was earning Rs.4500/- viz a viz the deceased was 18 years. In fact, the birth date of the deceased was not registered in any Panchayat department, however trial Court has applied multiplier of 18 for the purpose of assessing compensation, which is not in consonance with law.

4.4 In view of the above, learned advocate for the appellant urges before the Court that present appeal may be allowed and impugned judgment and order passed by the trial Court may be quashed and set aside.



5. On the other hand, Mr. Kirtidev R. Dave, learned advocate for respondent No.2 has submitted that the father of the deceased was died during pendency of the appeal and therefore, the appeal came to be abated qua respondent No.1 vide order dated 25.03.2014 and therefore, now respondent No.2 being mother of the deceased is the sole respondent.

5.1 Learned advocate for the respondent No.2 has also submitted that the trial Court, after going through the plethora of the evidence and after hearing both the sides has passed the impugned judgment and award and rightly held that the death of 18 year's son of respondent No.2 was occurred due to negligence on part of appellant.

5.2 Learned advocate for the respondent No.2 has also submitted that the said fact was fully supported by independent witnesses and the documentary evidence placed on record.

5.3 Learned advocate for the respondent No.2 has



submitted that the trial Court, after close scrutiny of the evidence and after taking into account relevant material and documents, has rightly passed the impugned judgment and award.

5.4 In view of the above submissions, learned advocate for the respondent No.2 urges before the Court that present appeal may be dismissed and impugned judgment and award passed by the trial Court may be confirmed.

6. I have perused the material and documents available on record as well the record and proceedings. I have also gone through the impugned judgment and award passed by the trial Court.

7. The issue involved in present appeal is that; Whether the trial Court has committed any error while passing the impugned judgment and order? and Whether the impugned judgment and order passed by the trial Court is perverse and illegal in the eyes of law?

8. For the aforesaid issue, I have gone through the record

of the trial Court and relevant documents. It appears from the record that the trial Court has framed the issues at Exh.16 which reads as under:-

- (1) Whether the plaintiff proves that his son expired due to electric shock due to negligence on the part of the employee of the defendant institution?*
- (2) Whether the plaintiff is entitled to get any compensation from the defendant? If yes, how much?*
- (3) Whether the plaintiff is entitled to claim interest? If yes, from which date and at what rate?*
- (4) Whether is there any due in favour of the plaintiff?*
- (5) What order and decree?*

9. After close scrutiny and after going through the plethora of documents, the trial Court has answered all the issues in affirmative. The reasons recorded by the trial court to deal with the said issues are just and proper. With regard to the age of the deceased the trial Court has also discussed that Post Mortem note and the inquest panchnama were supported the theory of 18 years age. Further, the trial Court has also considered the fact that the deceased was earning Rs.200/- per day from selling of

Milk and his monthly income was Rs.6000/- per month.

10. Hence, in view of the above observations, this Court is of the opinion that the trial Court has not committed any error in passing the impugned judgment and award. In fact, trial Court has considered all the relevant aspects and has taken into account documentary as well as oral evidence and passed the impugned judgment and award and hence, in my view, there is no need to interfere in the impugned judgment and order passed by the trial Court, which is absolutely in accordance with law.

11. It is appropriate to note herein that it is the duty of the electric board to see that the electric wires do not touch the trees and for that the board has to appropriate steps. In present case, due to negligence on the part of the board, the son of respondent No.2 died untimely. Further, from the record it establishes that the wires were hanging and bent from the centre and had come near to the ground and same were touching the trees.

12. In view of the above discussion, I am in complete

agreement with the judgment and award passed by the trial Court. I do not find any justifiable reason to entertain present appeal.

13. For the foregoing reasons, present appeal is merit less and the same is hereby dismissed. The judgment and order dated 22.11.2011 passed by the learned Principal Senior Civil Judge, Kutch-Bhuj in Special Civil Suit No. 91 of 2008, is hereby confirmed. *Interim relief*, if any stands vacated forthwith.

14. The amount deposited by the appellant before the trial Court is ordered to be disbursed in favour of respondent No.2 herein along with accrued interest, if any, within period of eight weeks from the date of receipt of copy of present order. The record and proceedings, if any, be sent back to the concerned trial Court forthwith.

SURESH SOLANKI

Sd/-
(HEMANT M. PRACHCHHAK,J)