

HIGH COURT OF GUJARAT (D.B.)

CHAIRMAN ONG CORPORATION LTD AND 3 ORS

Versus

KHANABHAI LAKHABHAI PARMAR AND ANR

Date of Decision: 27 September 2010

Citation: 2010 LawSuit(Guj) 1112

Hon'ble Judges: [A M Kapadia](#), [J C Upadhyaya](#)

Case Type: First Appeal

Case No: 3134 of 2000

Subject: Civil, Criminal

Acts Referred:

[Code Of Civil Procedure, 1908 Sec 96](#)

[Indian Penal Code, 1860 Sec 364](#)

[Evidence Act, 1872 Sec 108](#)

Final Decision: Appeal allowed

Advocates: [R C Jani](#), [Rajni H Mehta](#)

Cases Referred in (+): 1

J.C. Upadhyaya, J.

[1] By means of filing this Appeal under Section 96 of the Code of Civil Procedure, the Appellants, who were original Defendants in Special Civil Suit No. 151 of 1996 ("the Suit" for short), have challenged the legality, validity and correctness of the impugned judgment and decree dated 2.5.2000 rendered in aforementioned Suit by the learned 4th Civil Judge (SD), Nadiad, whereby the above mentioned Suit preferred by the Respondents herein, who were original Plaintiffs in the said Suit was partly allowed and the Appellants were ordered to pay Rs. 84,000/- to the Respondents Plaintiffs jointly and severally with running interest @ 15% per annum from the date of filing of the Suit till realization with proportionate cost.

[2] The facts giving rise to the instant Appeal in brief are that;

2.1 The Respondents - Plaintiffs are heirs and legal representatives of Mr. Vishnubhai K. Parmar, who was serving with the Appellant No. 1 - Oil and Natural Gas Corporation Limited ('ONGC Ltd.' for short). Mr. Parmar was serving since 1982 and lastly he was working as Assistant Director. During the course of his employment Mr. Parmar was sent by the Appellants - Defendant Nos. 1 and 2 for training with Appellant - Defendant No. 4 - Director / Principal, Indian School of Mines, Dhanbad, the then Bihar State, for twelve weeks to obtain requisite training and to that effect necessary office orders were passed. Pursuant to the said order Mr. Parmar along with other officers went to attend training, which was scheduled to be completed on 19.10.1984. It is the case of the Respondents - Plaintiffs that during the training period it was found on 13.10.1984 that Mr. Parmar was found lost. The Respondents - Plaintiffs tried their level best to trace out Mr. Parmar and also requested office bearers of ONGC Ltd. to help them in tracing out Mr. Parmar. That despite the intensive efforts which were undertaken to trace out Mr. Parmar, he was not found and the Respondents Plaintiffs thereafter received Rs. 55000/- on 15.2.1988 from ONGC Ltd. It is averred in the Plaint by the Respondents Plaintiffs that it was the duty of the Appellants Defendants to provide every type of facility, protection and supervision to see that during the training Mr. Parmar was properly protected and secured, but, because of the negligence on part of the Appellants Defendants, Mr. Parmar was lost, and till 13.10.1984 he was not found out. Accordingly, it is the case of the Respondents Plaintiffs that Mr. Parmar, as per law, can be said to be dead.

2.2 It is further the case of the Respondents Plaintiffs that Mr. Parmar was aged about 25 years, he was a Mechanical Engineer and the last salary drawn by him was Rs. 4000/-. Therefore in future there were all the chances of Mr. Parmar to get promotion and to earn more. In the result, the Respondents Plaintiffs filed above mentioned Suit against the Appellants Defendants to recover Rs. 20 lacs by way of compensation.

2.3 The Appellant Defendant No. 3 Project / Deputy General Manager, ONGC Ltd., Cambay Project, Cambay, District Kheda, where Mr. Parmar was serving, filed written statement in the Suit at Exh.19. The fact that Mr. Parmar was serving as Assistant Director before the Appellant Defendant No. 3 and the fact that as per the preset training programme Mr. Parmar was sent for training to Indian School of Mines, Dhanbad and the fact that Mr. Parmar was not heard of since 13.10.1984, have not been seriously challenged. However, it was contended that during the course of training he abruptly left the training without informing the appropriate authority. Mr. Parmar without informing or obtaining any consent of the appropriate authority went to see cinema at Zariya on 13.10.1984 by handing over the key of

his room to his friend. Even the appropriate authority, who were imparting the training, informed the police about missing of Mr. Parmar. Despite the intensive efforts Mr. Parmar could not be found out. It was therefore denied that the incident of missing of Mr. Parmar occurred because of any negligence on part of the appropriate authority, who were imparting the training. About the payment of Rs. 55000/- made by the ONGC Ltd. to the Respondents Plaintiffs, it was contended that the same was an ex-gratia payment and not by way of any compensation and the same was paid only by way of a special case. Therefore, in the written statement, it was prayed that the Suit deserved to be dismissed.

2.4 The trial Court framed Issues at exh.27 and both the parties lead oral and documentary evidence. After examining the oral and documentary evidence on record and considering the submissions advanced on behalf of both the sides, the trial Court held that the Respondents Plaintiffs successfully proved that they were dependent upon the income of Mr. Parmar. The Respondents Plaintiffs also proved that Mr. Parmar was serving with ONGC Ltd. since 1982 and he was Assistant Director and his last salary was Rs. 4000/-. The trial Court further held that the Plaintiffs successfully proved that their son Vishnubhai K. Parmar was sent to Dhanbad for obtaining training. However, the trial Court while replying Issue No. 4 came to the conclusion that the Respondents Plaintiffs proved that their son Vishnubhai K. Parmar was lost during the training because of the negligence on part of the organizers of the training and due to tortious act. The defence raised by the Appellants Defendants that Mr. Parmar left the running programme without informing the authority and without obtaining any permission on 13.10.1984 and went to see cinema at Zariya, was not proved by the Appellants Defendants. The trial Court held that Mr. Parmar was lost while he was within the custody of the Appellants Defendants and when he was lost, he was on duty. The trial Court ultimately came to the conclusion that though the amount of compensation claimed by the Plaintiffs at Rs. 20 lacs was exorbitant and while replying Issue No. 7, the trial Court held that the Respondents Plaintiffs were entitled to recover Rs. 84000/- by way of compensation, and accordingly Suit was partly allowed, which has given rise to the instant Appeal.

[3] Mr. Rajni H. Mehta, learned Advocate for the Appellants Defendants assailing the impugned judgment and decree rendered by the trial Court submitted that the trial Court committed serious illegality in law as well as not appreciating the oral and documentary evidence adduced before it. Mere fact that Mr. Parmar was serving in ONGC Ltd., and as a part of his duty, he was sent to Dhanbad for training, and during the course of his training without informing the appropriate authority so also the instructors of the training Mr. Parmar abruptly left the training, cannot be said to be an

act, much less a negligent act on the part of the ONGC Ltd. to give rise to the Respondents Plaintiffs to claim for compensation.

[4] Mr. Rajni H. Mehta, learned Advocate for the Appellants Defendants further submitted that, in the Suit, the Respondents Plaintiffs have produced necessary documents like FIR, etc. which suggest that on account of some family rivalry, as a matter of fact Mr. Parmar was kidnapped by somebody from Dhanbad and they suspected murder of Mr. Parmar. Therefore, the trial Court while coming to the conclusion that the doctrine of res ipsa loquitur was applicable in the instant case was not a correct finding, but on the contrary, the Appellants Defendants successfully established its defence that Mr. Parmar on 13.10.1984 left running programme of his training and went to see cinema without informing the concerned authority and without obtaining their permission, is duly established not only by the evidence adduced by the Appellants Defendants but even considering the oral and documentary evidence adduced by the Respondents Plaintiffs.

[5] Mr. Rajni H. Mehta, learned Advocate for the Appellants Defendants asserted that there was no tortious act or any negligence on the part of the concerned authority of the ONGC Ltd. and therefore there was no question for imposing any liability on them to pay any amount of compensation to the Respondents Plaintiffs. Mere fact that Rs. 55000/- was paid as a special case and by way of ex-gratia payment, cannot be termed as an evidence that thereby the Appellants Defendants admitted some tortious act.

[6] In the above context Mr. Rajni H. Mehta, learned Advocate for the Appellants Defendants prayed that the Appeal may be allowed and the impugned judgment and decree rendered by the trial Court may be set aside by holding that the Suit preferred by the Respondents Plaintiffs deserved dismissal.

[7] Mr. R.C. Jani, learned Advocate representing the Respondents Plaintiffs, during the course of his submissions, fully supported the impugned judgment and decree rendered by the trial Court and submitted that there is no dispute that Vishnubhai Parmar, the son of the Respondents Plaintiffs was serving with ONGC Limited, and from 13.7.1984 to 19.10.1984 he was sent to Dhanbad to attend a training programme organized by the ONGC Ltd. and Mr. Parmar had gone to Dhanbad to attend the said training programme. There is also no dispute that, while Mr. Parmar was in Dhanbad on 13.10.1984, he was not heard of by anybody including his parents and since then his whereabouts were not known.

[8] Our attention was drawn to Section 108 of the Evidence Act wherein it is provided that when it is proved that a person has not been heard of for seven years by those

who would naturally have heard of him, if he had been alive, the burden of proving that he is alive, is shifted to the person who affirms it. Accordingly, it is submitted that in the instant case, since last more than seven years, Mr. Parmar is not heard of by his kin and kith who are none other than his parents and therefore Mr. Parmar, in the eyes of law can be said to be dead.

[9] Mr. R.C. Jani, learned Advocate for the Respondents Plaintiffs submitted that when Mr. Parmar was getting training in the training programme organized by ONGC Limited at Dhanbad, throughout the training programme he could be said to be on duty, and therefore, it was the duty of the organizers of the training programme to protect the life and liberty of Mr. Parmar and to provide adequate security to him. The very fact that since 13.10.1984 Mr. Parmar was lost, suggests that there was gross negligence on part of the concerned authorities of the ONGC Ltd. for not properly taking care of Mr. Parmar, which has resulted into his death in the eyes of law.

[10] Mr. R.C. Jani, learned Advocate for the Respondents Plaintiffs relied upon a case of [M.S. Grewal and Anr. v. Deep Chand Sood and Ors.](#), 2001 8 SCC 151 and submitted that the ratio laid down by the Hon'ble Supreme Court in this case squarely applies to the facts and circumstances of the instant case, and therefore, the trial Court was fully justified in awarding the amount of compensation to the Respondents Plaintiffs, who are parents of Vishnubhai K. Parmar from the concerned authorities of the ONGC Ltd. It is therefore prayed that the Appeal deserves dismissal.

[11] We have considered the submissions advanced by Mr. Rajni H. Mehta, learned Advocate representing the Appellants Defendants and the submissions advanced by Mr. R.C. Jani, learned Advocate representing the Respondents Plaintiffs, so also the record and proceedings of Special Civil Suit No. 151 of 1996 in context with the submissions made by rival side.

[12] Upon re-examining, re-analyzing and re-evaluating the oral and documentary evidence adduced by both the sides, we are of the considered opinion that there are certain admitted facts for which there is no dispute between the parties. They are as under:

- (a) Mr. Vishnubhai K. Parmar was the son of the Respondents Plaintiffs.
- (b) Mr. Vishnubhai K. Parmar was selected and appointed for a temporary post of Assistant Director by ONGC Ltd. vide his appointment order dated 13.1.1983 (Exh.71). He took charge on 29.1.1983.
- (c) Mr. Vishnubhai K. Parmar was transferred to ONGC Cambay Project on 5.5.1983 (Edh.72).

(d) Mr. Vishnubhai K. Parmar was sent for training to Indian School of Mines Dhanbad (Appellant Original Defendant No. 4) for the period from 30.7.1984 to 19.10.1984.

(e) On 13.10.1984 Mr. Vishnubhai K. Parmar went out and never returned to his place of training and was found lost.

(f) Considering the oral and documentary evidence, especially the letters Exh.100 and Exh.92, etc. intensive search was conducted by the concerned officers of the ONGC Ltd. to find out Mr. Parmar, but he could not be traced out.

(g) An FIR was registered (copy at Exh.92) in connection with missing of Mr. Parmar, wherein, referring to a telegram, it is averred that while the training was under process, Mr. Parmar left the course without any information and it is further stated in the FIR that even Mr. Parmar had sent a telegram, wherein he had apprehended that there was some danger to his life. The relevant documents like telegram (Exh.91), copy of the FIR (Exh. 92) and other police papers, have been produced in the Suit by the Respondents Plaintiffs themselves.

(h) Pursuant to the FIR lodged in connection with missing of Mr. Parmar and considering the averments made in the FIR and the offence punishable under Section 364 of the Indian Penal Code for kidnapping or abduction in order to murder, came to be registered on 7.6.1994.

[13] In the impugned judgment and decree rendered by the trial Court, the trial Court only took into consideration that Mr. Parmar was on duty during the course of his training and even on the day when he was lost. The trial Court observed, especially while discussing the Issue No. 4, to the effect that whether the Respondents Plaintiffs prove that because of tortious act Mr. Parmar was lost from the custody of the Appellants Defendants, it was held that since Mr. Parmar was on duty, it was the duty on part of the office bearers of the ONGC Ltd., who imparted the training to take proper care of Mr. Prmar and to see that his life and liberty was properly secured, but they failed to perform the said duty, which resulted into missing of Mr. Parmar. The trial Court therefore came to the conclusion that the act of negligent on part of the office bearers was apparent and therefore the doctrine of res ipsa loquitur was fully applicable in the instant case.

13.1 The trial Court while replying Issue No. 5, which was required to be proved by the Appellants Defendants that Mr. Parmar had left running programme on 13.10.1984 and without informing anybody or getting prior permission of the concerned authority of the ONGC Ltd., who were imparting training, went to Zariya to see cinema, came to the conclusion that the Appellants Defendants miserably

failed to prove this issue and their defence. The trial Court observed that though on behalf of ONGC Ltd. Mr. Nimesh Shah was examined at Exh.112, but except his bare words, there was no evidence that Mr. Parmar on 13.10.1984 went to see cinema without informing anybody and the unfortunate evidence occurred.

[14] There is no dispute that so far as the Respondents Plaintiffs were concerned, they were not present on the day on which Mr. Parmar was found missing. On 13.10.1984 Mr. Parmar was in Dhanbad as his training was going on that day. It is pertinent to note that by the evidence adduced on behalf of the ONGC Ltd., so also considering the evidence adduced on behalf of the Respondents Plaintiffs, it is established that since the time Mr. Parmar was found missing, intensive search was conducted by the concerned authorities of the ONGC Ltd. to trace out Mr. Parmar. It is further pertinent to note that in connection with the incident of missing of Mr. Parmar on 13.10.1984, an FIR was lodged, copy of which was produced in the Suit at Exh.92 on behalf of the Respondents Plaintiffs wherein it is stated in an unequivocal terms that a telegram was sent to the effect that Mr. Parmar left the training programme without informing anybody on 13.10.1984 and since then he was missing. It is further stated in the FIR (Exh.92) that the Opponent party had kidnapped Mr. Parmar in order to murder him, and accordingly, the FIR was lodged in connection with the offence punishable under Section 364 of the Indian Penal Code. Considering the copies of the relevant police papers produced by the Respondents Plaintiffs at Exh.92, Exh.93, Exh.94, Exh.95 and Exh.96, it clearly transpires that an offence punishable under Section 364 of IPC came to be registered. Considering the evidence of witness Nirmesh Shah examined on behalf of the Appellants Defendants - ONGC Ltd. at Exh.112, it clearly transpires that not only the concerned officers of the ONGC undertook exercise to trace out Mr. Parmar, but even pursuant to the FIR lodged in connection with the offence punishable under Section 364 of IPC, police investigated the offence. It further transpires that on 13.10.1984 while the training programme was in process, Mr. Parmar left the training programme by handing over the key of his room to his friend and since then his whereabouts were not known.

[15] Perusing the impugned judgment and decree rendered by the trial Court, it seems that the trial Court considered the ex-gratia payment of Rs. 55000/- made by the ONGC Ltd. to the Respondents Plaintiffs as an admission of negligence on part of the ONGC Ltd. In this respect, Mr. Rajni H. Mehta, learned Advocate for the Appellants Defendants drew out attention to office order (Exh.78), by which, on 1.2.1988, Rs. 55000/- was sanctioned. Perusing the sanction order (Exh.78), it clearly transpires that the said amount was sanctioned as an ex gratia payment by way of a very special case. Considering the sanction order (Exh.78) nothing transpires that the said amount was sanctioned as a part of compensation, admitting the negligence of the concerned

officers of the ONGC Ltd. We are therefore of the considered opinion that the sanction order (Exh.78) can never be termed as proof of any admission on part of the office bearers of the ONGC Ltd. regarding any negligence or any tortious act as alleged by the Respondents Plaintiffs.

[16] We have considered the M.S. Grewal's case (supra). The facts of the said case are totally different than the facts of the instant case in the sense that in M.S. Grewal's case, minor students were sent to attend a picnic organized by school and two teachers were deputed to escort those students. While the minor students were on picnic, the teachers who were deputed to take care of them, permitted the students to play near a river and the incident of drowning occurred. The Hon'ble the Apex Court held that the teachers were in the course of employment of the school, and therefore, the school was liable for the death of the children.

[17] Re-examining the evidence adduced in the instant case, first of all, so far as Mr. Parmar was concerned, he was educated and responsible officer of the ONGC Ltd. He was deputed to undergo a training programme scheduled in Dhanbad. It was therefore his duty to see that during the entire training programme, which was scheduled between 30.7.1984 to 19.10.1984, he was required to take continuous training without any break. He was capable enough to take care of himself. The evidence, more particularly the lodgment of FIR and police investigation reveals that on 13.10.1984 Mr. Parmar left the training programme while it was under process. There is no evidence whatsoever that on 13.10.1984 Mr. Parmar left the training programme after informing any office bearers of the ONGC Ltd. or any trainer or after obtaining their permission. When such is the situation and more particularly, when the police investigation reveals that Mr. Parmar was kidnapped for murder, the facts of our case are completely different than the facts and evidence on record in M.S. Grewal's case (supra).

[18] Seen in the above context, we are of the considered opinion that the trial Court erred in coming to the conclusion that on account of negligence and tortious act on part of the responsible officer of the ONGC Ltd., Mr. Parmar was lost in such a fashion that he was 'deemed to have been dead'. It further appears that the trial Court therefore erred in invoking the doctrine of *res ipsa loquitur*.

[19] As seen above, mere fact that Rs. 55000/- was paid to the Respondents Plaintiffs who are parents of Vishnubhai K. Parmar by way of ex-gratia payment and by way of a very special case by the ONGC Ltd., thereby it cannot be termed that the ONGC accepted its liability for compensation. We are therefore of the considered opinion that the Appeal merits acceptance and the impugned judgment and decree rendered by the trial Court deserves to be quashed and set aside.

[20] For the foregoing reasons, the Appeal succeeds and accordingly, it is allowed. The impugned judgment and decree dated 2.5.2000 rendered in Special Civil Suit No. 151 of 1996 by the learned 4th Civil Judge (SD), Nadiad, partly allowing and decreeing the Suit preferred by the Respondents Plaintiffs against the Appellants Defendants, is quashed and set aside.

[21] Resultantly, the Suit preferred by the Respondents Plaintiffs is ordered to be dismissed. Considering the facts and circumstances of the case, there shall be no order as to costs throughout, and the parties shall bear their own costs. Decree to be drawn up accordingly.

