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GAHC010023862018

# THE GAUHATI HIGH COURT
## (HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

**Case No. : RFA 47/2018**

1:DR. DEBAJIT DAS AND ANR
S/O LATE DR. BISHNU RAM DAS, R/O SEUJPUR, DIBRUGARH, IN THE DIST. OF DIBRUGARH, ASSAM.

2: SMT. SHARADI DAS
W/O DR. DEBAJIT DAS
R/O SEUJPUR
DIBRUGARH IN THE DIST. OF DIBRUGARH
ASSAM

VERSUS

1:WILLIAMSON MAGOR EDUCATION TRUST AND 4 ORS
A TRUST CREATED UNDER INDIAN TRUST ACT, 1882 HAVING ITS OFFICE SITUATED AT HOUSE NO. 37 5TH BYE LANE, MOTHER TERESA ROAD, GUWAHATI 781021, DIST. KAMRUP (M), ASSAM, REPRESENTED BY THE CHAIRMAN OF THE BOARD OF TRUSTEES, SRI PRDIP KUMAR KHAITAN

2:THE ASSAM VALLEY SCHOOL
P.O. BALIPARA IN THE DIST. OF SONITPUR
ASSAM
PIN 784001
REPRESENTED BY THE CHAIRMAN OF THE BOARD OF GOVERNORS SRI P.K. KHAITAN

3:MR. D.N.A. MOOUNTFORD
THE HEAD MASTER OF ASSAM VALLEY SCHOOL
R/O P.O. BALIPARA
PIN 784101 IN THE DIST. OF SONITPUR
ASSAM.

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4:SRI MONOJ HAZARIKA
MUSIN TEACHER OF ASSAM VALLEY SCHOOL
R/O P.O. BALIPARA
PIN 784101 IN THE DIST. OF SONITPUR
ASSAM.

5:SRI NIKU SARMA
IN CHARGE OF THE MAINTENANCE DEPTT.
ASSAM VALLEY SCHOOL R/O P.O. BALIPARA
IN THE DIST. OF SONITPUR
ASSAM
PIN 78400

**Advocate for the Petitioner** : MR. D BARUAH

**Advocate for the Respondent** : MR. A GOSWAMI (R1, R2, R4, R5)

Linked Case : CO 35/2019

1:WILIAMSON MAGOR EDUCATION TRUST AND 7 ORS

A TRUST CREATED UNDER INDIAN TRUST ACT
1882 HAVING ITS OFFICE SITUATED AT HOUSE NO. 37 5TH BYE LANE
MOTHER TERESA ROAD
GUWAHATI 781021
DIST. KAMRUP (M)
ASSAM

2: THE ASSAM VALLEY SCHOOL
P.O. BALIPARA IN THE DIST. OF SONITPUR
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IN CHARGE OF THE MAINTENANCE DEPTT.
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IN THE DIST. OF SONITPUR
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VERSUS

1:DR. DEBAJIT DAS AND ANR
S/O LATE DR. BISHNU RAM DAS
R/O SEUJPUR
DIBRUGARH
IN THE DIST. OF DIBRUGARH
ASSAM

2:SMT. SHARADI DAS
W/O DR. DEBAJIT DAS
R/O SEUJPUR
DIBRUGARH IN THE DIST. OF DIBRUGARH
ASSAM.

Advocate for the Petitioner : MR. K N CHOUDHURY
Advocate for the Respondent :

**BEFORE**
**HONOURABLE MR. JUSTICE PRASANTA KUMAR DEKA**

**JUDGMENT (CAV)**

**Date : 08-06-2020**

Heard Mr. D. Baruah the learned counsel for the appellants and Mr. K. N. Choudhury, the learned Senior Counsel assisted by Mr. P. Sundi and Mr. K. Goswami the learned counsel for the respondents.

This regular first appeal u/s 96 of the Code of Civil Procedure , 1908(CPC) is filed against the judgment and decree dated 18.12.2017 and 20.12.2017 respectively passed by the learned Civil Judge, Sonitpur at Tezpur in T.S. No. 16/2011 dismissing the suit. The plaintiffs appellants filed the suit claiming damages against the defendants respondents due to the death of their son, Ranveer Das aged about 15 years due to negligence of the

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authority of the school, a boarding one situated at Balipara. The factual matrix giving rise to the cause of action for filing the suit is stated below.

2. Williamson Magor Education Trust, the defendant respondent No. 1 is a Trust under the Indian Trust Act, 1882 represented by the Chairman, Board of Trustees established the Assam Valley School represented by the Chairman, Board of Governors, the defendant No. 2 at Balipara which is about 27 kms. away from its nearest Tezpur Town in the year 1995. The school is a residential one and the school authority professed that it was equipped with a hospital to deal with the emergency situation like head injury, snake bites, myocardial infarction etc.

3. The plaintiffs appellants upon the aforesaid consideration amongst others, admitted their son in the school on 21.04.2005 in class IV. The son was a brilliant student and a very good guitarist. He was presented with the Scholar's Tie, a prestigious award given to a student by the school authority for academic brilliance.

4. The said son while practicing electric guitar in the music cell in the school along with three of his friends was electrocuted. He was taken to the school hospital/ infirmary in the ambulance but as it was not equipped to cope up with such emergency cases was taken to Baptist Christian Hospital situated at Tezpur town but was declared 'dead on arrival'. Post mortem was conducted in the Kanaklata Civil Hospital at Tezpur and the cause of death of the son was due to cardiac arrest due to ventricular fibrillation as a result of electrocution .

5. The Additional District Magistrate, Sonitpur as per direction of the Deputy Commissioner, Sonitpur caused an enquiry to ascertain the reason for the death of the son of the plaintiffs appellants . The Officer-in-charge, Rangapara P.S. registered UD Case No. 154/2001 u/s 287/ 304 A IPC against the school authority. The Additional District Magistrate

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submitted the enquiry report indicating gross negligence on the part of the respondents defendants.

6. The room assigned for practicing guitar was a suffocating one of height 7 feet with synthetic carpet. The door of the room required to be closed as per the direction of the school authority. At the time of incident there was no music teacher or any adult supervisor to supervise the activities of the students including the son of the plaintiffs appellants. The said minor students were allowed to use electrical instruments without any supervisor. The school infirmary was not equipped with defibrillator, ambu bag etc alongwith trained personnel to handle such emergency. The school authority misled the parents and the public by claiming that the hospital/infirmary was well equipped to deal with most emergency situation that might arose in the residential school. Due to negligence and lack of care on the part of the school authority, the son of the plaintiffs appellants died for which they are entitled to special and exemplary damages of Rs. 5 crores. The death of the son was a preventable one and due to lack of care of the defendants respondents he died.

7. The defendants respondents filed individual written statements but the defence was almost identical. A specific defence was taken in respect of maintainability of the suit as all the trustees of the defendant respondent No.1 Trust were not impleaded and for the said reason the suit was bad for non joinder of necessary parties. The defendant respondent No.2 school could not be sued as it was not a legal entity. Admitting that the son of plaintiffs appellants was a good guitarist, it was pleaded that he used to avail the facilities provided by the school. Reasonable care was taken of the son of the plaintiffs appellants immediately after the electrocution in the school hospital. But as the pulse and blood pressure remained unreadable the deceased son was taken to the hospital at Tezpur in the school ambulance

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followed by the doctor of the school. The deceased was attended in the hospital at Tezpur by doctor and after about half an hour he was declared dead.

8. The defendants respondents denied that the music cell was a suffocating one and further denied absence of the music teacher at the time of the incident. It was pleaded that he was taking Piano class in an adjacent room. The senior students used to practice electrical musical instruments without the supervision of any adult person. The defendants respondents were not aware of using an amplifier by the deceased without 3 pin top and the same did not belong to the school authority.

9. The defendants respondents denied about the deficiencies in the school hospital and reiterated that it was equipped for any emergencies but the same need not require to be an intensive care unit. The act of negligence leading to death of the deceased as per the report of the Additional District Magistrate was denied. The cause that MCB did not trip at the time of short circuit as it was 10 ampere rated and it ought to have been 6 ampere was also denied. The extension board found to be of inferior quality as per the enquiry report was also denied. There was contributory negligence on the part of the deceased which led to his death and as such the defendants respondents could not be held negligent in performing its duty of care towards the deceased.

10. The court below framed the following issues:

(1) Whether the suit filed by the plaintiffs is maintainable in law?

(2) Whether there is any cause of action for the suit ?

(3) Whether the suit is bad for non joinder of necessary parties?

(4) Whether there was negligence on the part of the defendants jointly and severally which led to the death of son of the plaintiffs?

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(5) Whether the accident occurred due to contributory negligence on the part of the deceased?

(6) Whether the plaintiffs are entitled to the reliefs as claimed for?

(7) To what other relief or reliefs the plaintiffs are entitled?

The plaintiffs appellants examined 5(five) witnesses including the mother of the deceased as PW 1 and Exhibited 29 documents. The defendants did not adduce any evidence but cross examined the witnesses of the plaintiff side.

11. The defendants respondents filed an application under Order VII Rule 11 CPC for rejection of the plaint on various grounds including the one that as required under Order XXXI Rule 2 CPC all the trustees of the defendant respondent No.1 Trust were not impleaded in the suit. The said petition was rejected vide order dated 5.10.2012. The learned court below while taking up the issue Nos. 1 and 3 jointly which includes the issue of maintainability of the suit, took note of the order dated 5.10.2012 and opined that the issue of maintainability could be decided as the court earlier dealt with the matter to the extent of rejection of plaint as per terms of Order VII Rule 11 CPC. Accordingly it held that defendant respondent No.2 school can be sued through the Chairman of the Board of Governors as from the records the school is run by the Chairman. Referring Order XXXI Rule 2 CPC and relying a decision of the Hon'ble Madras High Court (without any citation of any journal) held that trustees of defendant respondent No.1 are necessary parties to the suit and as such , in their absence the court cannot pass an executable decree and in view of the same the suit is not maintainable.

12. The learned court below held that there is cause of action for the suit and decided issue nos. 4 and 5 holding that the death of the deceased was a preventable one who died

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due to utter negligence on the part of the defendants respondents and they are jointly and severally liable for the death of the son of the plaintiffs appellants. There was no contribution of any negligence of the deceased towards his own death. But as issue Nos. 1 and 3 on the maintainability of suit and non joinder of necessary parties were decided against the plaintiffs appellants, issue Nos. 6 and 7 were decided against the plaintiffs appellants resulting dismissal of the suit.

13. Being aggrieved this appeal u/s 96 of the CPC is filed. The respondents on receipt of notice of the appeal entered appearance and filed cross objection under Order XLI Rule 22 CPC against the findings on issue Nos. 4 and 5 as hereinabove stated.

14. Mr. Baruah submits that the issue in respect of maintainability of the suit and non joinder of trustees in the suit and the findings thereof by the court below are totally unwarranted as the same is barred by the principle of res judicata on the face of the order dated 5.10.2012 which attained its finality. In support of his submission he relies Bhanu Kumar Jain Vs Archana Kumar and another reported in (2005) 1 SCC 787.

15. The suit is between the third party and persons beneficially interested over the property vested in a trustee. As per Order XXXI Rule 1 CPC the said beneficially interested persons are required to be represented by a trustee irrespective of number of trustees in the Trust. The learned court below failed to consider the same and erroneously held that as per Order XXXI Rule 2 CPC the trustees are not made parties and the suit is not maintainable. If at all the trustees were required to be made parties to the suit, the court below ought to have directed the plaintiffs appellants to do the needful invoking Order 1 Rule 10 CPC. In support of his contention regarding applicability of the Order XXXI Rules 1 and 2 CPC, Mr. Baruah relies Second Appeal No. 246/1990, Sainath Mandir Trust Vs. Vijaya & ors

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disposed of on 27.3.2003 by a Single Bench of the Hon'ble High Court of Bombay(Nagpur Bench)downloaded from Manupatra, MANU /MH/ 0496/2003.

16. The learned court below as per Mr. Baruah, merely considered a bald plea made by the defendants respondents in the written statements without naming the persons and how they are necessary parties to the suit and came to the erroneous finding in issue No.3 which requires interference. In support of his contention Mr. Baruah relies Laxmishankar Harishankar Bhatt Vs. Yashram Vasta (dead) by LRs reported in (1993)3 SCC 49.

17. The learned counsel for the appellants further urged that the learned court below decided issue Nos. 4 and 5 holding the defendants respondents jointly and severally liable for the negligence in the duty of care towards the deceased son of the appellants with a further finding that there was no contributory negligence on the part of the deceased. Under such circumstances non consideration of issue Nos. 6 and 7 in respect of the reliefs is in utter violation of the mandate under Order XIV Rule 2 CPC. Accordingly the learned counsel for the appellants sought for a decision on the said issue Nos. 6 and 7. The deceased son of the plaintiffs appellants was admittedly a brilliant one both in respect of his regular studies and extra-curricular activities. Undoubtedly a reasonable expectation of pecuniary advantage was always there from the point of view of the parents and as such the plaintiffs appellants are entitled for the amount claimed in the plaint. In support , Mr. Baruah relies the case law of Lata Wadhwa and ors Vs State of Bihar and ors reported in (2001) 8 SCC 197.

18. Mr. Choudhury the learned senior Counsel for respondents supports the findings of the learned court below in issue Nos. 1 and 3. It is his contention that as per Order XXXI Rule 2 CPC, the trustees are necessary parties. The provision is mandatory and the question of pleading the same does not arise as the court is bound to take note of the same. No

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executable decree could be passed in absence of the trustees moreso, when the plaintiffs appellants made the trust a necessary party in the suit. In support of his contention Mr. Choudhury relies M/s Shanti Vijay and Co. and ors – Vs Princess Fatima Fauzia and ors reported in (1997) 4 SCC 602, Sainath Mandir Trust- Vs- Vijaya and ors reported in (2011) 1 SCC 623 in which the decision of the learned Single Judge of Hon'ble High Court of Bombay( Nagpur Bench)(supra) relied by Mr. Baruah was set aside.

19. The plea of res judicata as raised by Mr. Baruah was strongly countered by Mr. Choudhury on the ground that rejection of a plaint could be allowed on the specific provision stipulated under Order VII Rule 11 of the CPC . The learned court below considered the said parameters and accordingly took up issue Nos. 1 and 3 for giving its decision with reasons. The same cannot be termed to be an erroneous act on the part of the court below when it had given sufficient cogent reason for deciding issue Nos. 1 and 3.

20. Assailing the findings in issue Nos. 4 and 5 , Mr. Choudhury, learned senior Counsel, referring to the plaint submitted that the plaintiffs appellants wanted to establish the plea of negligence on the grounds-(i) the music cell(room) in which the incident occurred while playing the electric guitar by the deceased was a suffocating one causing sweaty hands, (ii) students were using electrical musical instrument without the supervision of the teacher concerned, (iii) the electrical connections were naked (without FOP) which the school authorities would not have allowed the minor students to handle without any supervision, (iv) though it was professed that the school hospital was equipped to handle any emergency cases but, once the accident occurred it was found that the hospital did not have the facilities to meet the emergency cases . In addition the plaintiffs appellants also relied the Ext.13(postmortem report) and Ext 29 the enquiry report of the Addl. District

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Magistrate, Sonitpur.

21. The respondents in the written statements denying the above grounds took the stand that the amplifier with bare wires and without the pin connectors which the victim used was not the property of the defendant school. Against the observation in Ext.29 (enquiry report) that the extension board used by the students were of poor quality, it was pleaded that the victim himself was responsible for his death and the music teacher was not responsible. It would be too much to expect of a music teacher to supervise the activities of the students in a music room and the students themselves are to be blamed for the incident. There were no negligence on the part of the respondents in providing the music room with electrical fittings, a competent music teacher, medical facilities in emergency cases etc which falls within the duty of care required towards the students by the school authority. Only because the accident took place causing death of the son of the plaintiffs appellants, same cannot be termed to be an act of negligence to attract vicarious liability of the school management. Accordingly the findings of the court below are required to be interfered.

22. Mr. Choudhury urged that Ext 29 referred of the usage of poor quality electrical extension board and naked wires by the students which contributed to the death of the victim. So when the defence of contributory negligence was taken its existence does not depend on any duty owed to the injured party by the party sued. Suffice it to establish that the victim did not in his own interest took reasonable care of himself and contributed his want of care to his own injury. The court below failed to take note of such circumstances and wrongly held that there was no contributory negligence on the part of the victim, which is liable to be set aside.

23. Mr. Baruah countering the submissions of Mr. Choudhury referred to Ext.1, the

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prospectus of the Assam Valley School (defendant respondent No.2). It professed commitment for providing excellent residential education assuring Medical safety and security with a hospital well equipped at the curative level with most emergency situations . The deceased son of the plaintiffs appellants was admitted to the school and once the son was accepted as a pupil by the school it assumes responsibility not only for his physical well being but also for his educational needs. The headmaster being responsible for the school, himself comes under a duty of care to the educational needs of the pupils. Any negligence on the part of any of the servants under the school authority would entail vicarious liability to it. In support of his contention, Mr. Baruah relies X- (minor)- Vs- Bedfordshire County Council reported in (1995) 3 All ER 353.

24. On the date of incident the deceased son of plaintiffs appellants was playing electric guitar alongwith three other students. As per Ex 29 the electrical appliances were of not good qualities and naked wires were used for connecting the electric guitar through electrical extension board without FOP top. Under such circumstances it was not proper for the music teacher to leave the minor students alone in the music room and attend the piano class in another room. Accordingly the duty of care required from the music teacher was missing amounting to negligence. In support of his contention Mr. Baruah relies Fryer-vs- Salford Corporation reported in (1937) 1 All ER 617.

25. Mr. Baruah argues that the question of contributory negligence on the part of the deceased does not arise. The deceased was a minor child who cannot be expected to be as careful for his own safety as an adult. The defendants respondents in order to establish the fact of contributory negligence failed to adduce any evidence. In support he relies a Division Bench decision dated 15.6.2017 of Hon'ble Madras High Court passed in CMA No. 2815 of

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2015, MP No. 1 of 2015, Manager, Reliance General Insurance Co. Ltd. Vs. Selvi and ors, downloaded from Indian Kanoon–http/ Indian Kanoon. Org/doc/747694286/ and Gobald Motor Services Ltd. and anr. vs R. M. K. Veluswami & Others reported in AIR 1962 SC 1. Accordingly Mr. Baruah sought for dismissal of the cross objection.

26. I have considered the submissions made by the learned counsel and perused the records including the evidence. Points for determination before this court are-

(A) Whether the findings arrived at by the learned court below in issue Nos.1 and 3 are proper?

(b) Whether the findings of the learned court below in issue Nos. 4 and 5 holding the defendants respondents jointly and severally liable for the negligence in taking due care to the deceased are proper and whether the deceased was negligent in taking care of his own which contributed to his death ?

(C) Whether the plaintiffs appellants are entitled to the damages claimed?

Point for determination(A)

27. The plaintiffs appellants filed the suit claiming decree against the defendants respondents for both general and exemplary damages. The cause of action for the suit arose on 20.6.2011 when due to negligence on the part of the school authority, the son of the plaintiffs appellants was electrocuted and died. It is pleaded that the defendant respondent No.1 is a Trust under the Indian Trust Act, 1882 having a Board of Trustees represented by its Chairman. The defendant respondent No.2 school was established by the Trust. The school is managed by a Board of Governors represented by its Chairman. The rest of the defendants respondents are the Headmaster, Music Teacher and another employee of the school. In the written statements the specific stand taken is that the Trust was not capable of being sued.

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All the trustees are not made parties and the Trust cannot be represented by only one trustee and as such the suit is not maintainable and the same is bad for non joinder of necessary parities. But there was no mention of the names of the trustees nor how they are necessary parties to the suit in the written statements.

28. The learned court below took the issue Nos. 1 and 3 jointly and held that the trustees are necessary parties to the suit as per Order XXXI Rule 2 CPC and in their absence cannot pass an executable decree. So it held that the suit is bad for non joinder of necessary parties. Further it held that the suit is not maintainable due to non impleading of the trustees of the defendant respondent Trust. Mr. Baruah challenges these two findings on two counts-(i) the suit is covered by Order XXXI Rule 1 CPC but does not fall under Order XXXI Rule 2 CPC ; (ii) principle of res judicata bars the court from entering into the issue of maintainability of the suit due to non joinder of trustees as the order dated 5.10.2012 rejecting the application under Order VII Rule 11 CPC on the same ground attained finality.

29. Order XXXI of the CPC stipulates the requirements for suits by or against trustees, executors and administrators and Rules 1 and 2 read as follows:

> "*1. **Representation of beneficiaries in suits concerning property vested in trustees, etc**. – In all suits concerning property vested in a trustee, executor or administrator, where the contention is between the persons benefecially interested in such property and a third person, the trustee, executor or administrator shall represent the persons so interested and it shall not ordinarily be necessary to make them parties to the suit. But the Court may, if it thinks fit, order them or any of them to be made parties.*
> *2. **Joinder of trustees, executors and administrators**.- Where there are several trustees, executors or administrators, they shall all be made parties to a suit against or more of them.*
> *Provided that the executors who have not proved their testator's will, and trustees, executors and administrators outside (India)need not be made parties"*

Rule 1 prescribes that in all suits concerning property vested in a trustee and the contention is between the persons beneficially interested in such property and a third party, the beneficiaries are to be represented by a trustee. Rule 2 applies to suits against trustees.

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30. In the present context "maintainability of the suit", in my considered view is intended to mean whether assertion of the claim by the plaintiffs appellants against the defendants respondents is proper and the court is competent to pass an executable decree against them. The decision on the issue of non joinder of necessary parties is consequential flowing out of the decision of the former. To get an answer it is necessary to examine from the plaint as to against whom the cause of action for the suit accrued. But before that the category of "persons beneficially interested " in property vested in trustees is required to be classified. This is relevant keeping in view the controversy of applicability of Rule 1 or 2 of Order XXXI CPC in the suit raised on the face of the interpretation under Section 3 of the Indian Trusts Act, 1882. Under the said Act, 1882 "trust" is interpreted as an obligation annexed to the ownership of property, arising out of a confidence reposed in and accepted by the owner, or declared and accepted by the owner for the benefit of another, or of another and the owner. The person who declares the confidence is called the 'author' of the trust, the person who accepts the confidence is called the "trustee"; the person for whose benefit the confidence is accepted is called the "beneficiary". The "beneficial interest" of the beneficiary is his right against the trustee as owner of the trust property.

31. In Official Trustee of West Bengal–vs- Stephen Court Ltd, reported in (2006) 13 SCC 401 an issue was raised whether a tenant occupying a room in the ground floor of the building over the trust property had the locus standi to raise an objection under the Official Trustees Act, 1913. The said Act of 1913 does not envisage any application moved by a person other than the one who was beneficially interested in any trust property. In order to distinguish two different expressions " beneficiary under a trust" and "person beneficially interested in any trust property " used in Official Trustees Act, 1913, the Apex Court

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approved the definitions of "beneficiary" and " beneficial interest" in Bouvier's Law Dictionary and Concise Encyclopedia, 3rd Revision by John Bouvier and held that the said tenant had the locus standi to file the application under the Act of 1913. The definitions of the expressions are reproduced below:

> *"34. In Bouvier's Law Dictionary and Concise Encyclopedia, 3rd Revision by John Bouvier, the expressions "beneficiary" and "beneficial interest" have been defined as under:*
>
> *"'Beneficiary'- A term suggested by Judge Story as a substitute for cestui que trust and adopted to some extent. I Story, Eq. Jur. 321.*
>
> *The person named in a policy of insurance to whom the insurance is payable upon the happening of the event insured against.*
>
> *The beneficiary of a contract is not a cestui que trust; 12 HARV. L. REV. 564.*
>
> *'Beneficial interest'- Profit, benefit, or advantage resulting from a contract, or the ownership of an estate as distinct from the legal ownership or control.*
>
> *A cestui que trust has the beneficial interest in trust estate while the trustee has the legal estate. If A makes as contract with B to pay C a sum of money, C has the beneficial interest in the contract."*

32. From the above it can be inferred that the expression "beneficiary" means as a substitute of cestui que trust who is not a beneficiary of a contract. The cestui que trust has the beneficial interest in trust estate while the trustee has the legal estate or ownership. The beneficial interest, on the other hand, also includes profit, benefit or advantage resulting from a contract. But there is a distinction between a trust and contract. Trust involves equitable ownership to the beneficiaries whereas contract is legal obligation based on undertaking supported by consideration which obligation may or may not be in the nature of trust. So a person may enjoy the beneficial interest over properties vested in a trustee on the basis of the advantage resulting from a contract or the ownership of an estate. But the said ownership is distinct from the legal ownership as envisaged by the interpretations u/s 3 of the Indian Trusts Act, 1882 which normally vests with the trustee in a

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Trust.

33. The school authority in the present case is the beneficially interested entity enjoying the advantage arising out of the ownership of the school which is 'pseudo' in form. In order to understand the nature of ownership endowed creating the advantage to the school authority as the entity enjoying the beneficial interest, it would be proper to consider the right and status of a tenant over a property vested in a trustee. The tenant, except the claim of the legal ownership of the property forming the subject matter of the tenancy, possesses all the characteristics of an owner of that property of which he is a tenant. He has a right to possess and enter into contract for enjoying beneficially the tenanted property with persons who are strangers to the trustee forming the Trust. The right to sue of the strangers against the tenant is confined to the terms of the contract and not beyond that. But if a stranger makes a claim against the property vested in a trustee which is the subject matter of the tenancy, then in order to get an appropriate relief in respect of the said property, the trustee is required to be made party being the legal owner of the tenanted premises. This is because of the nature of ownership the tenant enjoys which is 'pseudo' or sham in nature. So the school authority also has all the indicia resembling itself to be the owner of the school which is the beneficial interest over the trust property. But the school authority is devoid of the legal ownership of the property vested in the Trustees but endowed with the "beneficial ownership" over the school. On the other hand the trustees are holder of the " bare ownership" (See Black's Law Dictionary, 9th Edition for meaning of the expressions) but without any right to enjoy the benefits arising out of the trust property which right is an exclusive one for the beneficiary or the cestui que trust who can enforce the said right of enjoying the benefits against the trustee. The right itself is the prescription of law insofar

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as the interpretation of Section 3 of Indian Trusts Act, 1882 is concerned. A right flowing out of the Trust cannot be disputed not even by a single trustee where there are trustees more than one .

34. The suit is for compensation under the law of tort. The school authority accepted the deceased son of the plaintiffs appellants as its pupil. Such acceptance of the school authority amounts to assumption of the responsibility not only the physical security but also the educational needs of the son of the plaintiffs appellants. The son of the plaintiffs appellants died due to electrocution while practicing guitar in the school. Alleging negligence towards the duty of care to the son, the plaintiffs appellants filed the suit claiming compensation from the school authority apparently under the law of tort. A tort is defined as a civil wrong independent of contract for which the remedy lies in an action for damages. The school authority voluntarily entered into contract for due performance of the duty of care towards the son of the plaintiffs appellants, once it accepted the deceased son of the plaintiffs appellants as its pupil. The suit is not concerning property vested in a trustee nor it is against the beneficial ownership of the school authority over the trust property but negligence on its part of the contract entered into on its own volition to undertake due care to the son of the plaintiffs appellants. So the trustees of the Trust are not necessary parties to the suit as the court is not required to decide any issue regarding the legal ownership of the trust property.

35**.** The school authority promised to take due care of the deceased son of the plaintiffs appellants while he was a scholar in the boarding school. But the school authority failed in its obligation and was negligent in taking due care to the deceased son who was electrocuted and died. The cause of action arose against the school authority for the suit alongwith the

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defendant respondent Nos.3 to 5 jointly and severally. The cause of action culled out from the plaint on its complete reading without any compartmentalization would show that the contention is between the persons beneficially interested in the trust property i.e. the school authority and the third party, the parents who are not party to the Trust. As per Order XXXI Rule 1 CPC the school authority is the person beneficially interested in the property vested in a trustee and they are required to be represented by a trustee only when the suit is concerning the property vested in a trustee. In the suit the Trust itself is made the defendant No.1 represented by the Chairman of the Board of Trustees. The learned court below held that the suit is bad for non joinder of the trustees as party to the suit and as such no executable decree could be passed. So the suit is bad for non joinder of necessary parties and as such not maintainable.

36. In my considered view, the court below was not correct in holding that no executable decree could be passed in absence of the trustees. Because the obligation promised by the school authority is not annexed to the ownership of the Trust property requiring a joint action of defence by all the trustees of the Trust in order to protect the ownership of the Trust property. This is because of the nature of ownership the school authority possessed which is only the beneficial ownership but not the legal ownership. The said obligation is not declared by the trustees of the Trust but by the school authority. As the obligation is contractual in nature it cannot have any link to the legal ownership which the trustees are vested with on the Trust property. Had it been linked to the legal ownership of the trustees then all the trustees are necessary parties to the suit. The suit is for damages claiming against the joint tortfeasors who are arrayed as defendants including the school authority. From the factual matrix in the plaint, I am of the view that if at all a decree is passed same would be an

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executable one inasmuch as when the law mandates the trustees to act for the beneficial interest of the school authority they cannot dispute the same if the interpretation u/s 3 of the Indian Trust Act, 1882 is looked into. In fact this is not a case of non joinder of necessary parties nor the suit is bad for non joinder of trustees to the suit. Under Order 1 Rule 4 CPC, the Court has the power to pass judgment without seeking for any amendment against such one or more defendants as may be found to be liable, according to their respective liabilities. The Trust though impleaded as defendant No.1 is not at all a necessary party to the suit. If the aforesaid discussion is considered then the representation of the school authority by the trustees or trustee is also not required as the suit is against the negligence of the school authority in taking due care to the deceased. The school authority is represented by the Board of Governors. The trustee cannot be roped into for vicarious liability also. The court has ample power under Order 1 Rule 4 CPC to hold the trustees of the Trust as not liable for the relief. The court held that all the trustees are not parties to the suit and as such the suit is not maintainable. Order XXXI Rule 2 CPC stipulates that if there are more than one trustee all the trustees are to be made parties. The court below considered that the suit was filed against the Trust. Even if it is held that the school authority is required to be represented by the trustee then in the present factual matrix all the trustees are not required to be made parties to the suit. For mere representation of the persons beneficially interested in the property vested in trustees as mandated under Order XXXI Rule 1 CPC, in my view, names of all the trustees of Board of Trust are not required to be mentioned when the suit is not concerning property vested in the trustees. The name of single trustee is sufficient for the purpose of representation of the beneficiary and the name of the Chairman of Board of Trustees is pleaded which is proper. The defendants respondents failed to prove that the

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Chairman, Board of Trustees is not a trustee himself. Accordingly the findings of the learned court below in issue Nos. 1 and 3 are reversed.

37. Mr. Baruah raised the ground that the court below was wrong in deciding issue Nos 1 and 3 i.e. non maintainability of the suit and non joinder of necessary parties on the principle of res judicata as the order of dismissal of the petition for rejection of plaint attained finality . As hereinabove stated the defendants respondents filed an application under Order VII Rule 11(b) and (d) CPC for rejection of the plaint as all the trustees were not made parties as required under Order XXXI Rule 2 CPC. But the court below rejected the said application with a specific observation that on the face of the provision under Order XXXI Rule 1 CPC non impleading of all the trustees cannot be a tenable ground for rejection of the plaint. The said finding by the court below cannot be held to be a bar for deciding issue Nos. 1 and 3 on the principle of res judicata. Because Order VII Rule 11 CPC speaks of rejection of plaint in a suit only on the grounds stipulated therein the said Rule 11. On the other hand, maintainability of the suit has to be looked into on the basis of the defence taken in a written statement. Moreover the court normally confines itself in respect of the pleadings made in the plaint for deciding an application under Order VII Rule 11 CPC. There is no dispute that principle of res judicata applies in two stages of a suit. But the plea raised in the present appeal has no force for the applicability of principle of res-judicata. Thus from the aforesaid discussions the suit is maintainable and the same is not bad for non joinder of all the trustees. The point for determination No.(A) is decided in favour of the appellants.

**Point for determination No. (B) and (C)**

38. The school is a residential one and the son of the plaintiffs appellants was admitted to it. Accordingly a school which accepts a pupil assumes responsibility not only for his physical

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well being but also for his educational needs. In M.S Grewal Vs Deep Chand Sood reported in AIR 2001 SC 3660, the Apex Court observed that while the parent owes his child a duty of care in relation to the child's physical security, a teacher in a school is expected to show such care towards a child under his charge as would be exercised by a reasonably careful parent.

39. On 20.6.2011 while the son of the plaintiffs appellants practicing electric guitar alongwith three other students was electrocuted and died. An enquiry was conducted and as per the enquiry report Ext. 29/15, the extension board which was provided to the students by the school authority was of poor quality. One of the amplifiers used by the students when the incident took place, did not have 3 pin Top cover. There being no adult supervisor, the students who were minors connected the bare wire i.e. the earth wire to phase as a result of which there was short circuit in the amplifier and electricity passed through the guitar which caused electrocution to the son of the plaintiffs appellants. An electrical engineer who assisted the said investigation by the Magistrate opined further that the miniature circuit breaker (MCB) was of 10 ampere rated in the electrical circuit connecting the power supply to the music room from the mains and had it been of lesser rating the MCB would have tripped isolating the faulty electrical circuit. Further it was stated in the plaint that the school hospital was not equipped to meet up such emergency cases in a residential school situated far away from the Town area though the school authority professed that the school hospital was equipped to face such emergency cases.

40. The defendants respondents denied the allegations but admitting the incident and death of the son of the plaintiffs appellants, took the plea of contributory negligence on the part of the deceased as he failed to take due care while connecting the amplifier to the

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electricity supply mains. Regarding the absence of adult supervisor it is the stand that the defendant No.4, the music teacher was taking piano class in an adjacent room.

41. The mother of deceased, the plaintiff appellant No.2 deposed as PW 1 supporting the claim made in the plaint. In the cross- examination the PW 1 admitted that the act of negligence came to her knowledge from the enquiry report Ext 15 (Ext 29). She denied that senior students used to practice guitar without any adult supervisor and such practice was prevalent since the days of her elder son who was an Ex- student of the said school.

42. PW 2 is the professor of Cardiology department of Assam Medical College, Dibrugarh who deposed supporting the contents of a certificate issued by him, Ext.3 mentioning the minimum requirements in a hospital in order to cope up with the situation of ventricular fibrillation arising out of electric shock. In his cross examination the defendants respondents could not demolish the expertise of the PW 2 nor able to bring on any other opinion from a competent specialist.

43. The PW 3 is the doctor who opined in the post mortem report of the deceased the cause of death as cardiac arrest due to ventricular fibrillation occurred due to electrocution.

44. PW 5 is the electrical engineer who supported the findings in the report to the extent that extension cord was found with only two pin top and it was essential to have a three pin top for establishing the earth path in the event of any incident of short circuit. The defendant side did not adduce any evidence.

45. From the pleadings in the plaint and the evidence adduced by the plaintiff side it can be arrived as follows:-

(a) the students on that particular day were practicing electrical musical instrument in the music room and electrical appliances allowed to be used by the school authority

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were not safe;

(b) there was no adult supervisor/music teacher to supervise the acts and deeds of the students inside the music room, inasmuch as there are no evidence of the defendant side to establish the presence of the teacher or any adult person supervising the activities of the students. Mere pleading in the written statement about the presence of the music teacher at the time of incident but in an adjacent piano class room is not sufficient unless evidence is adduced in support of the pleadings in the written statement;

(c) the defendants failed to prove that the hospital was well equipped to meet the emergency cases like myocardial infarction which covers the case of the deceased.

46. On the basis of the evidence on record the learned court below held that the death of the deceased was a preventable one but died due to utter negligence on the part of the defendants who are jointly and severally liable.

47. The learned senior counsel for the respondents wanted to project that the pleadings of the plaintiffs appellants is not that a case of absence of the music teacher on that day but the teacher was outside. Referring to the use of the electrical appliances without the requisite three pin top cover , it is the contention that it would be too much to expect of a music teacher to supervise the activities of the students in a music room minute to minute.

48. Usage of the three pin top plug and the advantage thereof is explained by the PW 5 which as per his deposition was required for establishing the earth path of the electricity in the event of any short circuit. The said advantage was not there while using two pin top plug. So in my view there was lapse in the safety measure required while using electrical appliances. In the cross examination the defendants suggested the PW 1 that such practice of

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allowing the senior students to play guitar without any supervisor was prevalent since the days of the elder son of PW 1 who was also a student in the said school . Further suggestion was that the PW 1 was aware of such practice which she denied. Though there is no evidence adduced by the defendants respondents but they wanted to project that the aforesaid practice was prevalent since long and due to negligence of the deceased he met his death. The said submission of the learned senior counsel accordingly cannot be accepted.

49. In Gillmore Vs- London County Council, reported in (1938) 4 All ER 331 it was a case wherein the plaintiff joined a class in physical training organised by the defendant council by paying the requisite fee. Exercises were performed in a hall which was used for dances and the floor was highly polished. While performing an exercise in which the members of the class were hopping on one leg and making lunges at another member in an endeavour to compel that other to put his raised foot on the ground, the plaintiff slipped and suffered injury. The whole class at the time were wearing rubber shoes. The issue was whether the floor should be covered with matting or a drugget. It was held that the duty of the council was to provide a floor which was reasonably safe in the circumstances which they had failed to do so. The accident did not result from a risk which the plaintiff had agreed to take and the defence of "volenti non fit injuria" i.e. the plaintiff cannot complain because he agreed to take the risk, and was willing to run any risk there was not available.

50. Next in Fryer- Vs.- Salford Corporations reported in (1937) 1 All ER 617, the court of Appeal discussed the liability of Local Education Authorities. The plaintiff a child aged 11, attended a school maintained by the defendant authority. While she was being instructed in cooking, her apron caught fire from a gas cooker, and she received injuries . There was no guard round the cooker. It was held that the danger which ought reasonably to have been

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anticipated, and one which a local authority ought to have taken precautions to prevent by the provision of a guard round the stove or otherwise. Therein from the evidence taken as a whole shows that the plaintiff had gone to the other cooker from which her pudding eventually was to come on with only one teacher to look after a class of 19 or 20 girls and it was inevitable that the girls would run to the second stove in anticipation of the teacher getting there. It was held that there was an element of grave risk which was not guarded against .

51. Here in the present case it is argued that the defendants respondents in order to discharge their obligation of care towards the students provided the music room with a music teacher to look after the activities of the students. Because an incident of electrocution took place that itself cannot held the school authority vicariously liable attributing negligence towards the duty of care to the students. This submission also is not acceptable. It is already observed that a teacher in a school is expected to show such care towards a child under his charge as would be exercised by a reasonably careful parent. If the ratio of Gillmore-Vs-London County Council (supra) and Fryer–Vs- Salford Corporation (supra) are applied it can be summed up that though the music room is provided but the electrical appliances were not reasonably safe which runs an element of grave risk against the physical security of the child which turned out to be a reality. The school is a residential one and for each session there is a specific time period slotted. In such a schedule, the minor students practising guitar are bound to be in haste and as such the school authority is duty bound to provide safe electrical appliances for its use by minor students. The school authority cannot remain satisfied with the belief that as nothing had happened since the past years in the music room, so it requires no supervision by an adult. This will be against the duty of

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care assured by the school authority while accepting a child as its student in the school it runs. It is the responsibility of the school authority to anticipate and identify the source of grave risk surrounding the students while imparting education to them. The assurance of the said duty of care though made by the school authority also binds its servant in the course of performing the said duty of care. Any breach thereof by the servant makes liable the school authority vicariously.

52. Accordingly I am of the considered view that there was negligence in the duty of care towards the son of the plaintiffs appellants by the defendant Nos. 3 to 5 who are employees of the school and for their negligence the respondent No.2 represented by the school authority is vicariously liable for the negligence of duty of care which resulted in death of the son of plaintiffs appellants.

53. Mr. Choudhury the learned senior counsel submitted that on the relevant day when the incident took place it was found that the students including the deceased were using poor quality extension cord with only two pin tops. The said cord was not supplied by the school authority. It accordingly indicates that due to lack of care on the part of the deceased himself he contributed towards his death. This fact was not recorded by the trial court nor took into consideration by the court below.

54. I am unable to agree with the said contention. A person is guilty of contributory negligence if he ought to have foreseen reasonably that if he did not act cautiously he might hurt himself. In the present case in hand the deceased was aged about 15 years on the date of incident. In Manager , Reliance General Insurance Co. Ltd- Vs- Selvi and ors(supra) a Division Bench of Hon'ble Madras High Court took note of the distinction drawn between children and adults for an act of constituting contributory negligence referring to Halsbury's

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Laws of England, III Edition, Volume 28 pages 93 and 94 and paragraph 98 which is reproduced below:

> "*A distinction must be drawn between children and adults, for an act which would constitute contributory negligence on the part of an adult may fail to do so in the case of a child or young person, the reason being that a child cannot be expected to be as careful for his own safety as an adult . Where a child is of such an age as to be naturally ignorant of danger or to be unable to fend for himself at all , he cannot be said to be guilty of contributory negligence with regard to a matter beyond his appreciation, but quite young children are held responsible for not exercising that care which may reasonably be expected of them.*
>
> *Where a child in doing an act which contributed to the accident was only following the instinct natural to his age and the circumstances, he is not guilty of contributory negligence , but the taking of reasonable precautions by the defendant to protect a child against his own propensities may afford evidence that the defendant was not negligent, and is therefore not liable"*

55. The deceased was aged 15 years and it cannot be presumed that he was aware of the danger involved in using the naked wires to feed electricity supply to the amplifier from the mains supply. Further it can be inferred that such usage of naked wire normally was allowed in the usual course of practice in the very presence of the music teacher and the electrician of the school. So considering the age of the deceased, I am unable to accept the plea of contributory negligence of the deceased towards his death. If the evidence on record is considered including the enquiry report Ext.15 (Ext 29), and the principle of res ipsa loquitur, which means that the accident " speaks for itself" is applied, it must be held that the accident was proved indicating negligence on the part of defendants respondents.

56. Salmond on Law of Torts (15 th Ed) at p 306 as relied by the Apex Court in Pushpabai Puroshottam Udeshi and ors- Vs- M/s Ranjit Ginning & Pressing Co(P) Ltd and anr., reported in (1977) 2 SCC 745 states: " The maxim res ipsa loquitur applies whenever it is so improbable that such an accident would have happened without the negligence of the defendant that a reasonable jury would find without further evidence that it was so

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caused". As held by the Apex Court further , where the maxim " res ipsa loquitur " is applied the burden is on the defendant to show either that in fact the defendant was not negligent or that the accident might more probably have happened in a manner which did not connote negligence on his part.

57. It is already mentioned that the defendants respondents failed to adduce evidence rebutting the claim of negligence on their part by the plaintiffs appellants. The school is managed by the Board of Governors represented by its Chairman who is a party to the suit but failed to adduce any evidence to disprove the act of negligence. Thus it is held that there was no contributory negligence on the part of the deceased.

58. The learned court below rightly decided the issue Nos. 4 and 5 which I concur. The point for determination (B) is decided against the cross objectors respondents.

**Point for determination (C)**

59. The learned court below did not decide issue Nos. 6 and 7 which are in respect of the reliefs sought for in the suit by the plaintiff appellants. The court below refrained from deciding the issues on the ground that no executable decree could be passed due to non joinder of the trustees as defendants. But the court below held that the defendants respondents are jointly and severally liable for the negligence on their part in taking due care to the deceased . In the suit the plaintiffs appellants adduced evidence and their witnesses were cross examined by the defendants respondents. No evidence was adduced by the defendant respondents. I am satisfied to reverse the findings of issue Nos. 1 and 3 holding the suit as maintainable and not bad for non joinder of all trustees of the Trust. Accordingly invoking the power under Order 41 Rule 24 CPC, I decide to give my findings in issue Nos. 6 and 7 and dispose of the appeal.

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60. The plaintiffs appellants sought for general and also exemplary damages for loss caused due to the death of their son which they claim that the death of their son was a preventable one but for the negligence of the duty of care towards the son. In order to show their entitlement to the damages it is pleaded that the deceased son was a brilliant student with accomplishment in several extracurricular activities. The son was on the threshold of a brilliant career and promising future . The loss caused to them was a great one.

61. In order to establish the academic brilliance of the deceased, the plaintiffs appellants exhibited merit certificates/ report cards issued by Don Bosco School, Dibrugarh , Pastoral report, mark sheets of classes IV to IX of the Assam Valley School, certificates for academic distinction, certificate in extracurricular activities, Medals etc. The said exhibits were exhibited by the PW 1, the mother of the deceased. In the cross examination, the defendants respondents failed to demolish the evidence in support of the brilliancy of the deceased in the school examinations. There was not even a single question put to the PW 1 by the defendants respondents challenging the veracity of the contents of the certificates and mark sheets issued by the school authority . Thus the claim made in the plaint by the plaintiffs appellants that their deceased son was a brilliant student stands proved. The father of the deceased i.e. plaintiff appellant No.1 is a Professor in the Assam Medical College, Dibrugarh and the plaintiff No. 2 is his wife who is a housewife and her age at the time of the death of her son was 45 years. So the parents of the deceased are of sound financial background inasmuch as their elder son was also a student of the defendant No.2 school. It thus gives an impression that the parents are financially sound at least to look after the higher education of the deceased son who had the prospect of completing his higher education from

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a prestigious institution of the country keeping in view the marks obtained in the school examinations . Naturally there would be an expectation from the parents for some assistance financially from the deceased son. So the claim for damages in the nature of compensation in the suit has its basis . Further the fact that the deceased was a brilliant student with sound health is proved from the pastoral certificate exhibited. Section 1A of the Indian Fatal Accidents Act , 1855 gives a right to ask for damages proportionate to the loss caused by the death of a person to the beneficiaries like wife, husband, parent and child. Thus the point for determination(C) is decided in favour of the plaintiffs appellants

62. In order to ascertain the pecuniary loss under Section I A of the Act,1855 caused to the relations mentioned in Section 1 A of the said Act of 1855 the Apex Court in C.K.S. Iyer Vs T.K. Nair reported in AIR 1970 SC 376 wherein the son of the plaintiffs aged about 8(eight) years was hit by a bus owned by the first defendant later died held as follows:

> "*6. In ascertaining pecuniary loss caused to the relations mentioned in Section 1A, it must be borne in mind that these damages are not to be given as solatium but are to be given with reference to a pecuniary loss. The damages should be calculated with reference to a reasonable expectation of pecuniary benefit from the continuance of the life of the deceased-see Franklin V South Eastern Railway Co(1862) 157 ER 3 H&N 448 . In that case Pollock, C.B. observed:*
> "*We do not say that it was necessary that actual benefit should have been derived, a reasonable expectation is enough and such reasonable expectation might well exist, though from the father, not being in need, the son had never done anything for him. On the other hand a jury certainly ought not make a guess in the matter, but ought to be satisfied that there has been a loss of sensible and appreciable pecuniary benefit, which might have been reasonably expected from the continuance of life."*

63. In Lata Wadhwa and ors Vs State of Bihar and ors (supra) the Apex Court held that a mere speculative possibility of benefit is not sufficient and the existence of a reasonable expectation of pecuniary advantage is always a mixed question of fact and law. Further it was held that in case of a bright and healthy boy, his performance in the school, it would be

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easier for the authority to arrive at the compensation amount. The same may be different from another sickly, unhealthy and bad student. In the said case children were grouped as 5 to 10 years as one group and 10 to 15 years another group. Considering the environment from which the victim children were brought and their parents being reasonably well placed officials of Tata Iron and Steel Company awarded Rs. 2 lacs each to the children of 5 to 10 years group. The other group of 10 to 15 years being student from class VI to X and considering the employment in TISCO itself having a tradition of employing one children of employees, the contribution per annum was taken to be Rs.24,000/- and the multiplier as 15 awarded Rs. 4.10 lakh for each of the claimants of the children.

64. The plaintiffs appellants in the present case in hand, proved that the deceased son was a brilliant student and had a very good prospect in future. The parents could expect an annual contribution of minimum Rs.1, 00,000/- from the deceased son. Taking the multiplier as 15, the plaintiffs'-appellants' pecuniary loss stand on Rs.15, 00,000/-. The mental agony of the parents after the death of a son, that too in an accident where the death was preventable one, cannot be measured in terms of money. However each of the parents are entitled to be compensated, which I hold to be Rs.5,00,000/- each and comes to a total of Rs.10,00,000/- under the said head.

65. The school is a residential one situated about 27 kms away from the nearest town of Tezpur. The school is equipped with an infirmary for the students. It is on record that the deceased died due to ventricular fibrilliation due to electric shock. Students were allowed to use electrical equipments including musical instruments and the element of grave risk is always there in usage of electricity. In a residential school the infirmary is required to be equipped with such infrastructure at least to face the situation arising out of electrical shock

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to the boarders of the school, moreso when the nearest town from the school is situated 27 kms. away. In the argument it is submitted by the learned senior counsel for the defendants respondents that the infirmary in a school cannot be expected to be an intensive care unit of a hospital. I am unable to accept the said submission. PW 2, the Professor of the Cardiology Department of Dibrugarh Medical College in his evidence deposed that personnel skilled in operating de-fibrillator equipments alongwith other equipments are required for treatment of electrically shocked patient . The defendants respondents failed to prove such preparedness to treat a patient suffering electric shock and played with the lives of the student who are boarders in the school. The location of the school demands the adequacy of the infirmary in that regard also. Preparedness in that element of risk could have saved the son of the plaintiffs appellants. It is held that the son of the plaintiffs appellants died due to negligence of due care. Due care includes in my view, the preparedness to face a situation of emergency by the infirmary at least against the hazard which are common in nature. Electrical accident is one of such hazards keeping in view the essentiality of electricity in day to day life of a person. But the school authority did not consider the said hazard as grave element of risk which took the life of the son of the plaintiffs appellants. That amounts to wilful negligence of due care towards the deceased on the part of the school authority on the ground that the school authority took the responsibility of the students as a boarding school and the responsibility undertaken by it is on the higher level compared to a school with only day scholars. Accordingly, Rs. 5,00,000/- is imposed as exemplary damages on the defendant respondents.. Accordingly, the appeal is allowed and cross objection stands dismissed. The issue Nos. 6 and 7 are decided in favour of the plaintiffs appellants. Accordingly the suit is decreed.

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66. The defendants respondents jointly and severally are liable to pay a sum of Rs.30,00,000/-(Thirty lacs) only to the plaintiffs appellants as damages due to negligence on their part to take due care to the deceased son of the plaintiffs appellants with costs within a period of six weeks from the date of judgment failing which the defendants respondents jointly and severally are liable to pay simple interest @ 6% per annum till the date of realisation. Draw the decree accordingly.

**JUDGE**

**Comparing Assistant**