



08-08-22 15-05-23 15-05-23 16-06-23 17-05-23

IN THE SUPREME COURT OF BANGLADESH

HIGH COURT DIVISION

(CIVIL APPELLATE JURISDICTION)

Dated: The 04<sup>th</sup> day of August, 2022.

Present:

Mr. Justice Bhishmadev Chakraborty

And

Mr. Justice Md. Ali Reza

First Appeal No. 134 of 2000.

In the matter of:

Being aggrieved by and dissatisfied with the Judgment and decree dated 14.10.99 (decree signed on 21.10.99) passed by the Subordinate Judge, 1<sup>st</sup> Court, Narshingi in Money Suit NO.4 of 1999.

And

In the matter of:

1. The General Manager, Palli Biddyut Samity-1, Madobdi, Narshingdi and another

- Versus -

..... Appellants

Mst. Mansura Begum Minor represented by her next friend father Md. Mohsinul Islam Kazi

..... Respondent

“দেশপ্রেমের শপথ নিন, দুর্নীতিকে বিদায় দিন”



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Bench:

Mr. Justice Bhishmadev Chakraborty

And

Mr. Justice Md. Ali Reza

First Appeal No. 134 of 2000

The General Manager, Palli Biddiyut Samity-  
I and another

.....defendants-appellants

-Versus -

Mst. Mansura Begum

.....plaintiff-respondent

Mr. Shaikh Mohammad Zakir Hossain with

Ms. Razia Sultana, Advocates

.....for the appellants

No one appears for the respondent.

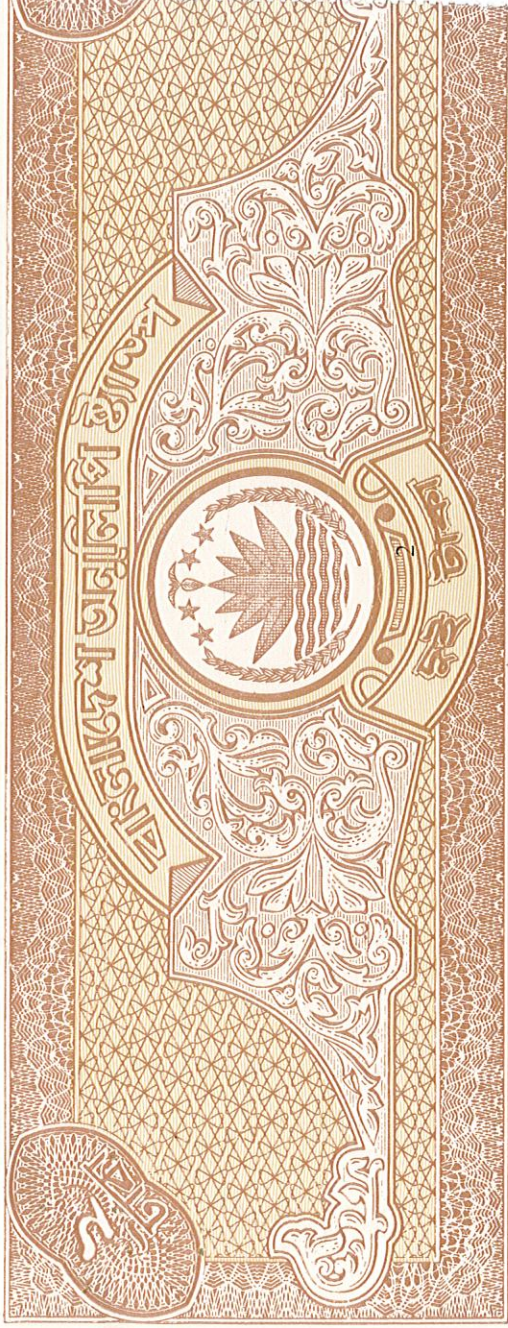
Judgment on 04.08.2022

Bhishmadev Chakraborty, J:

This Appeal at the instance of the defendants has been preferred against the judgment and decree dated 14.10.1999 passed by the then Subordinate Judge, Court No. 1, Narsingdi Main Money Suit No. 04 of 1999 decreeing the suit in part.

Respondent brought the aforesaid money suit against the appellants on the averments that the plaintiff was a girl of 8½ (eight and half) years at the material time. She was a helpless child of Kazirchar, Danga Bazar of Police Station Palash within the District of Narsingdi and had no wealth to live her livelihood. The defendant Palli Biddiyut Samity kept

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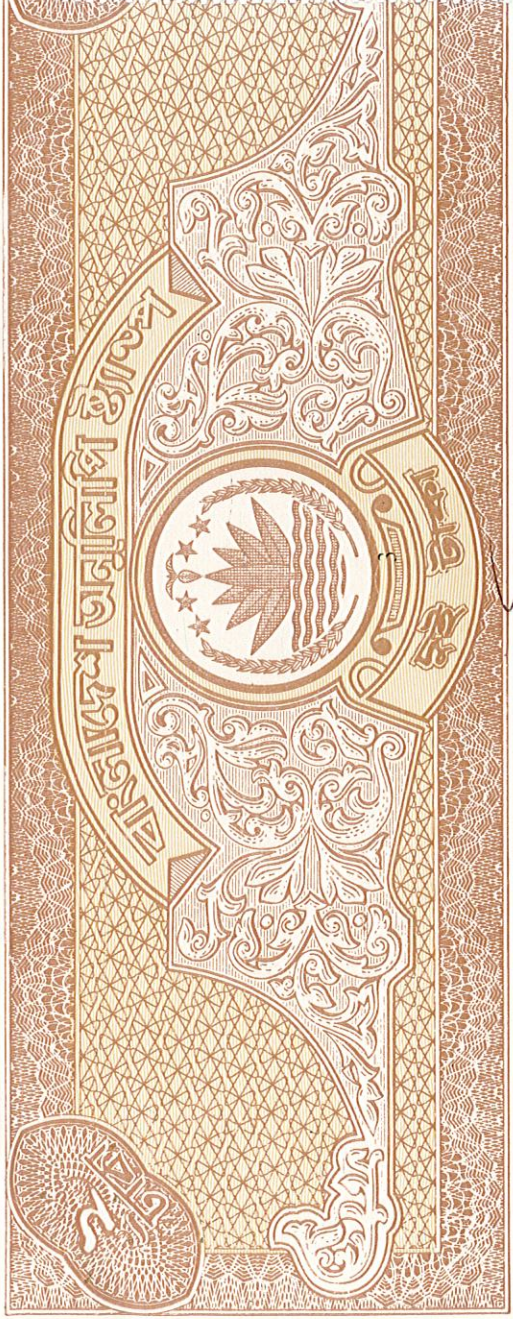
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hanging a live electricity cable in uncared and risky position near the shallow tubewell of one Jahangir Miah. The wire was hanging about 2½ feet high from the ground. The men of that area informed the authority of the Samity to take necessary measures about the said electric cable, but they did not pay any heed to it. When the plaintiff was coming home from the field on 16.11.1995 and reached near the shallow tubewell, she received electric shock from the wire and was severely injured. Her hands and legs were burnt, she fell under the cable and became senseless. One Akkas Ali from the same village somehow rescued her and handed her over to the uncle who carried her home. Subsequently, her uncle took her to Dr. Shajahan Miraj Chowdhury, a village doctor who provided her treatment. At the instruction of aforesaid Chowdhury she was sifted to Dhaka Medical College Hospital and therefrom to NITOR. Her family failed to get her admitted into the aforesaid hospitals and then got her admitted to Al Razi Hospital Private Limited situated at Farmgate. She received treatment therefrom including surgical operation. Subsequently, she was taken at her village home. She was again taken to Al Razi Hospital for having

“দেশপ্রেমের শপথ নিন, দুর্নীতিকে বিদায় দিন”



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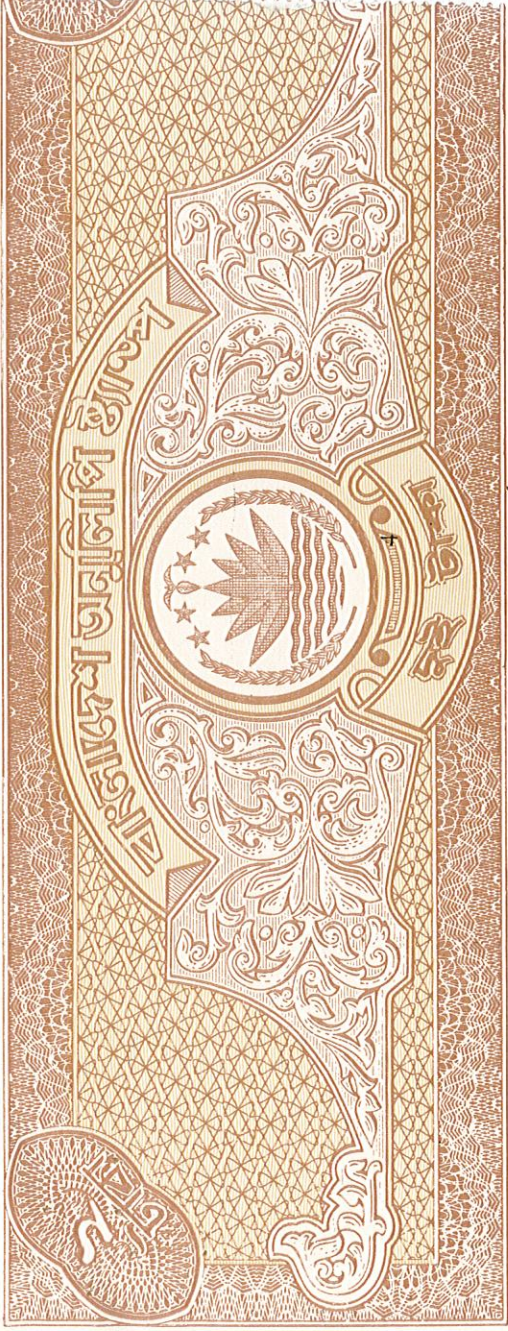
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further treatment. She took long term treatment in different hospitals at Dhaka in total 71 (seventy one) days while her relatives and other attendance had to stay with her. In this way, her family totally expended Taka 1,46,000/-. But ultimately, she was not cured but became a cripple/handicapped lady. She then sent a legal notice to defendant No. 1 on 12.02.1996 for Taka 1,50,000/- as expenditure for her treatment and Taka 6,00,000/- as compensation because for the accident she became 60% disabled. Finally she claimed Taka 7,81,648.10 to the defendants. The defendants refused to pay the amount, hence the money suit as a pauper claiming compensation and expenditure of medical treatment as stated hereinabove.

The appellants contested the suit by filing written statement denying all material statements of the plaintiff. They contended that they had no laches for the said occurrence. Having received the information they formed a committee then and there and made an inquiry as per the rules of the Samity. It came out in the inquiry that one Md. Anwar Ali of that area was digging a pond where he took electricity connection illegally and unauthorizedly. They disconnected it

“দেশপ্রেমের শপথ বিন, দুর্নীতিকে বিদায় দিন”



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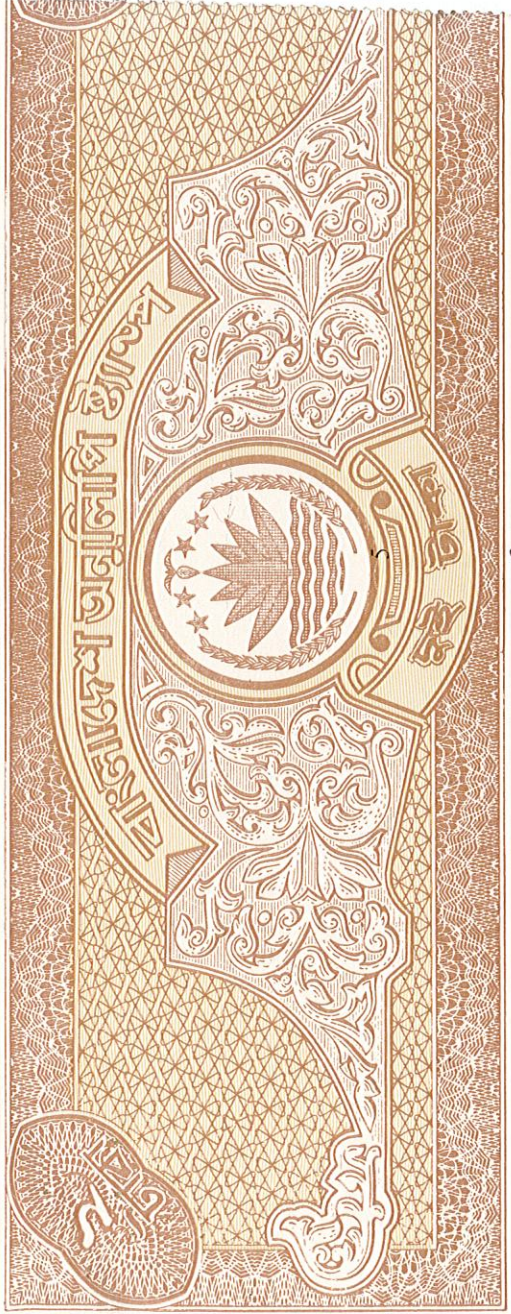
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but the cable of other side was stolen by thief and for that reason the flow of the line deteriorated. The plaintiffs have no knowledge about the nature/character of live electricity cable and while she was passing under it she received the electric shock. The defendants had taken immediate steps and made it safe for others. In the inspection, Anwar Ali was held responsible and a case was filed against him. Usually the defendant Samity take steps then and there, if any information was sent to them. The officers of the Samity were not at all responsible for the accident. The expenditure for the treatment of the plaintiff submitted in the Court was not correct. The plaintiff filed the suit on false statement with mischievous maneuver and as such the suit would be dismissed.

On pleadings, the learned Subordinate Judge framed 05(five) issues. During trial, the plaintiff examined 03(three) witnesses and exhibited some documents exhibits 1-4 while the defendants examined only 01(one) witness and exhibited the inquiry report exhibit-Ka in support of their claim.

The Subordinate Judge, Court No. 1, Narshingdi considering the evidence both oral and documentary, decreed

“দেশপ্রেমের শপথ নিন, দুর্নীতিকে বিদায় দিন”



the suit in part, holding that the plaintiff has been able to prove the expenditure of treatment in part and accordingly she is entitled to get a decree of total Taka 5,76,683.00 only including compensation.

Being aggrieved by and dissatisfied with the aforesaid judgment and decree the defendants preferred this appeal.

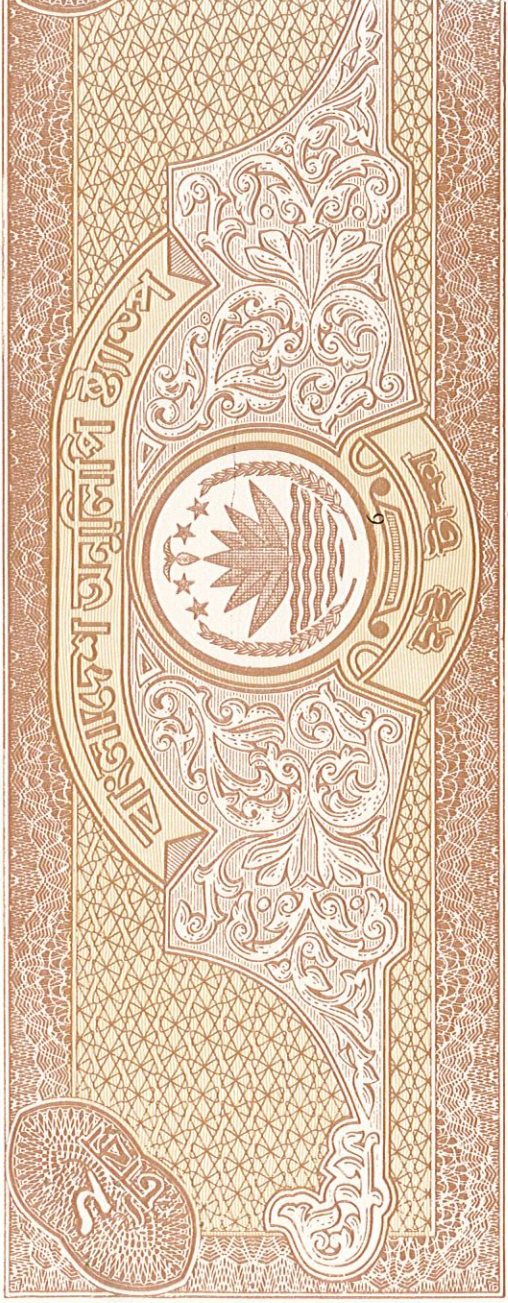
Mr. Shaikh Mohammad Zakir Hossain, learned Advocate for the appellants has placed the plaint, the written statement, evidence of witnesses both oral and documentary and the impugned judgment and then submits that the accident took place not for the fault of the defendant Samity or their men, rather it happened for one Anwar Hossain who illegally took electricity connection from the line of the Samity. When the Samity disconnected said illegal connection and the other part of electric cable was stolen the plaintiff due to her ignorance about electricity line received shock and fell into the accident. In cross-examining the witnesses of the plaintiff and by examining DW1, the appellants have been able to prove that they had no laches for said the accident. They had taken steps against said Anwar Ali. Since the defendants have been able to prove that it was

“দেশপ্রেমের শপথ নিন, দুর্নীতিকে বিদায় দিন”

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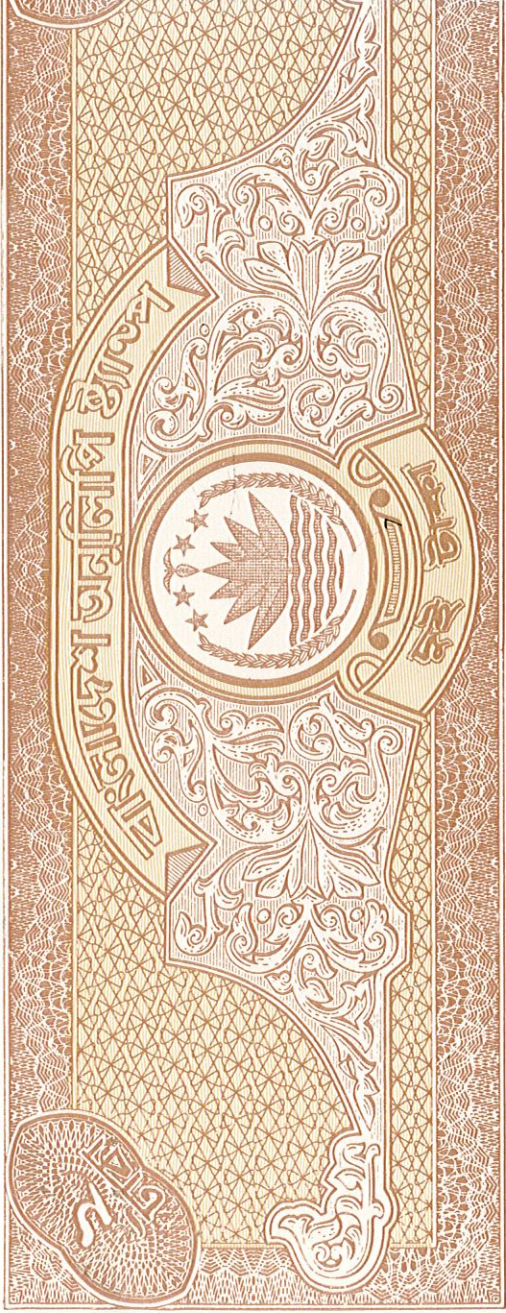
a mere accident; that it happened for the act of third person and for the laches of the ignorant plaintiff, and as such she is not entitled to a decree as prayed for. The then learned Subordinate Judge erred in law and fact in decreeing the suit which is to be interfered with in this appeal. In the aforesaid premises, the appeal should be allowed and the judgment and decree passed by the trial Court be set aside.

No one appears for the plaintiff-respondent although the matter has been appearing in the list for a couple of days with the name of the learned Advocate.

We have considered the submissions of the learned Advocate for the appellant, perused the memorandum of appeal, the exhibited documents and other materials on record. It appears that the plaintiff-respondent brought the suit against the defendant-appellant praying for medical expenditure of her treatment and compensation totally of Taka 7,81,453/- alleging that the accident was due to the defendants' fault.

It appears that the plaintiff fell into the accident in the place of occurrence by receiving electric shock of live electric wire of the Samity and became disable partly which

“দেশপ্রেমের শপথ নিন, দুর্নীতিকে বিদায় দিন”



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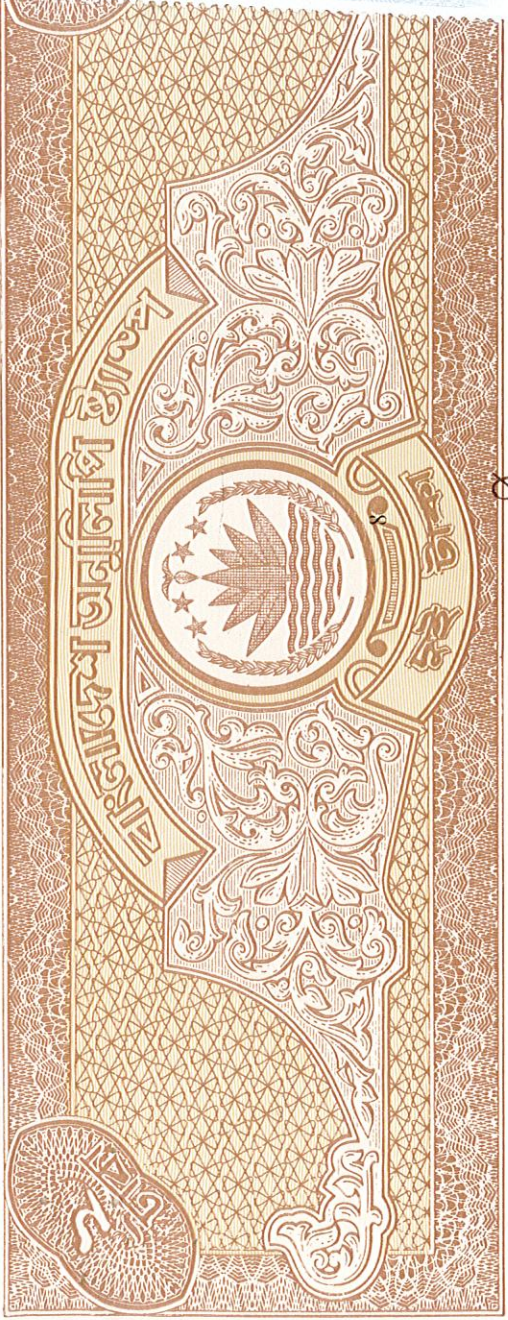


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was not specifically denied by the defendants. The defendants claimed that one Anwar Ali had taken electric connection illegally which was disconnected; that the other end of the cable was stolen and for its consequence a live electric cable was hanging in the place and the plaintiff for her unawareness fell into the accident. The minor plaintiff's father Mohsinul Islam, who represented her as PW1 and other two PWs from the locality corroborating each other supported the plaint case. They firmly stated that the occurrence happened by the uncared electric live wire of the defendants. The men of that area repeatedly informed the dangerous condition of the cable to the men of Samity but they carelessly did not make any response. On the other hand DW1 only witness of the defendants' in the evidence did not deny that no accident took place from the electric cable of the Samity rather admitted the accident. They tried to shift the burden to one Md. Anwar Ali but failed. In view of above position, the defendants cannot avoid their responsibility and liability for the accident of the plaintiff in any manner. The electric wire with live electricity is very dangerous and life threatening which has to be setup and

“দেশপ্রেমের শপথ নিন, দুর্নীতিকে বিদায় দিন”



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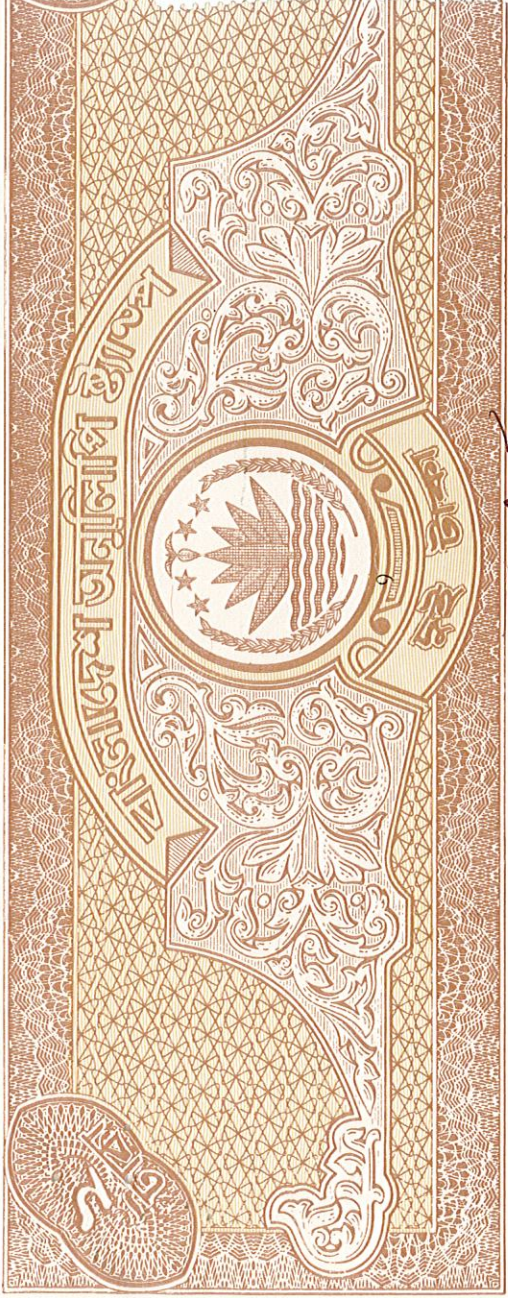
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maintained by the Samity regularly and any fault of its employee or the authority which hampers or endangers the life of others is to be treated as its own fault and as such, the trial Court correctly decreed the suit. We find no substance in the submission of Mr. Hossain that the accident was caused due to one Anwar Ali or he took illegal electricity connection for excavating a pond, there is no proof of it. We find that the plaintiff has been able to prove her claim of treatment cost and compensation against the appellants successfully.

It further appears that the learned Judge of trial Court upon proper scrutiny of the evidence on record decreed the suit with compensation to the tune of Taka 5,67,683/- (five lac sixty seven thousand and six hundred eighty three) only to be paid to the plaintiff. But it is apparently clear that the plaintiff has been prejudiced for not imposing interest on the decretal amount till its realization.

We find that the suit was filed in 1996 and in the meantime 26 years has elapsed. It was decree in 1999 and this appeal has been preferred in 2000 but the appellant did not take any steps of its hearing for last 22 years. The trial Court did not pass order for paying interest till realization on

“দেশপ্রেমের শপথ নিন, দুর্নীতিকে বিদায় দিন”



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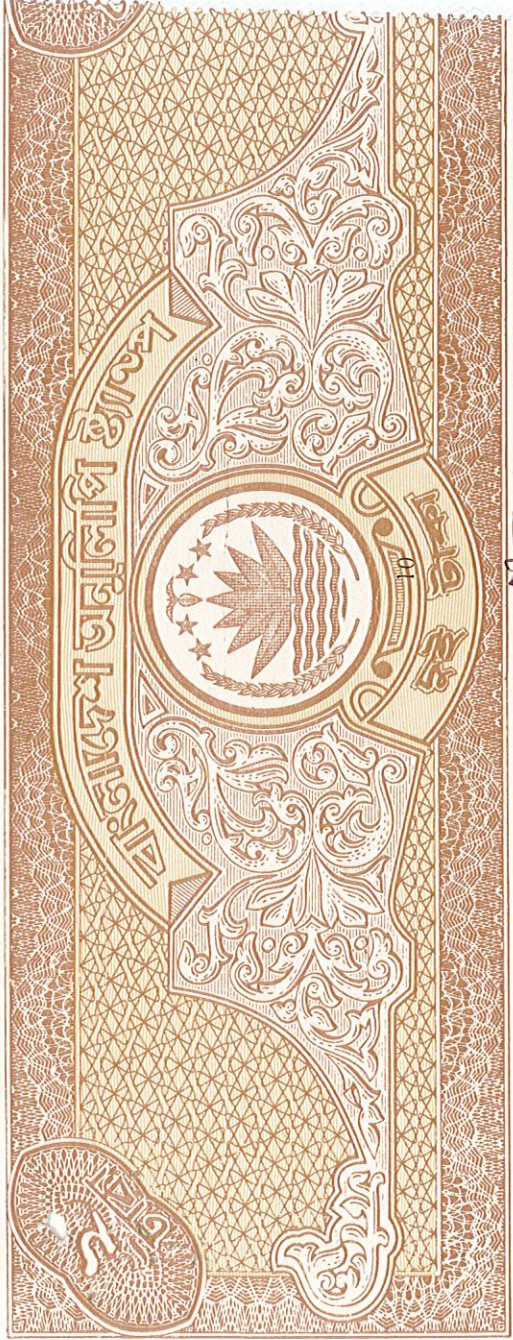
the finding that the plaintiff did not claim it. But under Order 7 Rule 7 of the Code of Civil Procedure, the Court can pass an order granting relief although not sought in the plaint. If the decretal amount was kept in the bank in fixed deposit, it may increase by now more than 04(four) times. In view of the provision of law of the Code and *ratio* in the cases of Commander (Rtd) AA Chowdhury Vs. AKM Imam Hossain and others, 49 DLR 23 and Dhaka City Corporation Vs. Shamsur Rahman, 59 DLR 207, we hold that the defendant-appellants should pay interest at the present savings account bank rate to the plaintiff on the decretal amount till its realization.

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In view of the above discussion, we find no merit in this appeal. Accordingly, the appeal is dismissed with cost. The judgment and decree passed by the trial Court is hereby affirmed in the above modified form. The plaintiff respondent may execute the above modified decree in accordance with law.

However, if the decree holder desires to file execution case, Taka 1 lac which was deposited by the appellant

“দেশপ্রেমের শপথ নিন, দুর্নীতিকে বিদায় দিন”



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through treasury chalan as per order of this Court passed in  
Civil Rule No.237(F) of 2000 shall be deducted.

Communicate this judgment to the concerned Court and  
send down the lower Court's record, if any.

Md. Ali Reza, J.

B. Chakraborty

I agree

Md. Ali Reza

Type by: Asiful: 16.05.2023

Read by:

Exd. by:

প্রত্যয়িত অবিকল প্রতিলিপি

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সহকারী রেজিস্ট্রার

বাহাদুরশাহ সুপ্রীম কোর্ট হাইকোর্ট বিভাগ  
(১৯৭২ ইং সনের ১নং আইনের)  
৭৬ ধারামতে ক্ষমতা প্রাপ্ত

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16-05-23

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