

GAHC010014452022



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

Case No. : **W.P.(C) NO. 560/2022**

Tara Bhanu,
W/o Late Nur Hussain,
Village - Kharballi,
P.O. & P.S.- Kalgachia,
District-Barpeta, Assam.

..... Petitioner

-Versus-

1. The Assam Power Distribution Company Limited Represented By Its Chairman,
Bijuli Bhawan,
Paltan Bazar, Guwahati-781001
2. The Chief Electrical Inspector,
Government of Assam,
Chandmari, Guwahati-781003.
3. The Chief Engineer [Distribution] APDCL,
Bijuli Bhawan, Paltan Bazar,
Guwahati-781001.
4. The Sub-Divisional Engineer,

Sorbhog Electrical Sub-Division,
P.O.-Sorbhog,
District-Barpeta, Assam.

5. The Deputy Manager,
Sorbhog Electrical Sub-Division,
P.O.-Sorbhog,
District-Barpeta, Assam.

.....Respondents

Advocates :

Petitioner

Mr. S. Islam, Advocate

Respondent nos. 1, 3, 4 & 5

Mr. B. Choudhury, Standing Counsel, APDCL

Respondent no. 2

Mr. B. Choudhury, Junior Government Advocate, Assam

Date of Hearing and Judgment & Order : 06.02.2023

BEFORE
HON'BLE MR. JUSTICE MANISH CHOUDHURY
JUDGMENT & ORDER [ORAL]

The subject-matter of this writ petition filed under Article 226 of the Constitution of India is a claim for compensation lodged for the death of one Nur Hussain [hereinafter referred to as 'the victim' and/or 'the deceased', for easy reference] on the ground that his death had occurred in an electrical

accident, which took place at around 05-30 a.m. on 29.08.2020. Seeking invocation of the extra-ordinary jurisdiction, the writ petition has been instituted seeking **inter alia** a direction to the respondent Assam Power Distribution Company Limited [APDCL] authorities to grant adequate compensation as no compensation has been disbursed till date despite approach.

2. The relevant background facts leading to the institution of the writ petition, as found averred in the writ petition, are as follows :-

2.1. The petitioner is the wife of Late Nur Hussain, who was claimed to be a cultivator. At around 05-30 a.m. on 29.08.2020, Nur Hussain proceeded towards his paddy field. When he reached near the residence of one Khalilur Rahman of Kharballi village, the overhead electric wire suddenly fell down on his person and due to the intensity of electric shock received, he fell down on the ground unconscious. Having seen him in unconscious condition, the villagers took Nur Hussain to the nearby health facility, Barpeta Civil Hospital, Kalgachia but the doctors at the Barpeta Civil Hospital declared him as brought dead and by issuing a medical admission receipt dated 29.08.2020 [Annexure-1], the doctors advised for Post-Mortem Examination [PME] on the dead body of the deceased. After the dead body of Nur Hussain was handed over to the family by the Barpeta Civil Hospital, Kalgachia, the Post-Mortem Examination [PME] on the dead body of the deceased was performed at the Fakhruddin Ali Ahmed Medical College & Hospital [FAAMCH], Barpeta on 29.08.2020 pursuant to Kalgachia Police Station General Diary Entry no. 526 dated 29.08.2020. As per the PME Report, the death of the deceased was due to syncope as a result of electrocution during life and the approximate time of death was reported as 06 hours – 18 hours.

2.3. In connection with the death of Nur Hussain, the petitioner as the informant, lodged a First Information Report [FIR] before the Officer In-Charge, Kalgachia Police Station on 30.08.2020. On receipt of the FIR, a case of unnatural death i.e. Kalgachia Police Station U.D. Case no. 08/2020 was registered.

2.4. According to the petitioner, the death of Nur Hussain, due to electrical accident, was reported at the office of the respondent no. 4 by the local people immediately and the office staff from the office of the respondent no. 4 had also visited the place of occurrence thereafter.

2.5. Claiming that the electrical accident resulting in the death of the deceased took place due to negligence on the part of the respondent APDCL authorities, the petitioner stated to have submitted a Representation before the respondent no. 5 on 30.12.2020 and the respondent no. 5 had duly acknowledged the receipt of the Representation under his seal and signature on 30.12.2020. When no discernible action with regard to the matter of disbursement of compensation was taken by the respondent APDCL authorities, the petitioner has approached this Court by the present writ petition seeking the direction, mentioned above.

3. Heard Mr. S. Islam, learned counsel for the petitioner; Mr. B. Choudhury, learned Standing Counsel, APDCL for the respondent nos. 1, 3, 4 & 5; and Mr. B. Deuri, learned Junior Government Advocate, Assam for the respondent no. 2.

4. Mr. Islam, learned counsel for the petitioner apart from referring to the contents of the PME Report and the FIR lodged in connection with Kalgachia Police Station U.D. Case no. 08/2020, has submitted that an enquiry in respect of the electrical accident was conducted from the end of the respondent no. 2.

From the findings of the Electrical Accident Enquiry Report submitted by the respondent no. 2, it has clearly emerged that the electrocution of the deceased was the result of sudden snapping of a Low Tension [LT] bare conductor on the body of the deceased while the deceased was passing below the said conductor for reaching his paddy field. He has further submitted that the accident took place due to sheer negligence on the part of the respondent APDCL authorities as they did not look properly after the LT bare conductor which was in defective condition from an earlier point of time. Despite complaints made in that connection by the local people, the respondent APDCL authorities did not pay heed to the intimation of the local people and the accident occurred due to such negligence. It is submitted that the deceased was the sole bread winner of the family.

5. Mr. Choudhury, learned Standing Counsel, APDCL has submitted, by referring to the statements and averments made in the counter affidavit filed on behalf of the respondent nos. 1, 3, 4 & 5, that it was due to storm and resultant wind and rain shower, a branch of a tree [Shimul tree] fell over the LT conductor adjacent to the tree and as a result, one of the LT conductor [AAA Squirrel] snapped due to increased mechanical stress and fell on the ground. It has been contended that nobody informed the respondent authorities in the APDCL about such falling of the LT conductor. When the victim passed by the area, he unfortunately came in contact with the snapped LT conductor and got electrocuted.

6. Mr. Deuri, learned Junior Government Advocate, Assam appearing for the respondent no. 2 has submitted that a counter affidavit has been filed on behalf of the respondent no. 2 enclosing a copy of an Electrical Accident Enquiry

Report. The respondent no. 2 who is empowered under Section 161 of the Electricity Act, 2003 to conduct an enquiry, had conducted an enquiry and submitted the Electrical Accident Enquiry Report on 01.04.2022.

7. I have duly considered the submissions of the learned counsel for the parties and have also perused the materials brought on record by the parties with their respective pleadings. I have also gone through the contents of the Electrical Accident Enquiry Report dated 01.04.2022 submitted by the respondent no. 2, as the same is part of the counter affidavit filed by the respondent no. 2 on 29.04.2022.

8. From a perusal of the Electrical Accident Enquiry Report, it is noticed that the accident of electrocution was duly reported at the jurisdictional Police Station and the same had resulted into registration of a general diary entry being General Diary Entry no. 526 dated 29.08.2022 at the Kalgachia Police Station. The Post-Mortem Examination on the dead body of the deceased was performed at the FAAMCH, Barpeta on 29.08.2020 pursuant to the General Diary Entry no. 526. As per the PME Report, the death of the deceased was due to syncope as a result of electrocution during life and the approximate time of death was reported as 6 Hours-18 Hours. None of the respondents has denied the factum of death of the deceased on 29.08.2020. From the Electrical Accident Enquiry Report, it is noticed that the said authority [the respondent no. 2] conducted the enquiry on the basis of the documents furnished by the respondent APDCL authorities and after duly examining the eye-witnesses and considering the circumstantial evidence, gathered in the course of enquiry. It is reported that on the date of accident i.e. on 29.08.2020, the victim was proceeding towards his paddy field in the village at around 05-30 a.m. When the victim was passing

below one overhead LT bare live conductor the same got snapped and fell down on his body resulting in his electrocution. Though the victim was taken to the Barpeta Civil Hospital, Kalgachia by the villagers immediately but the doctors at the Barpeta Civil Hospital, Kalgachia declared him dead on arrival. As regards the acts leading to the accident, it has been reported that there was non-compliance of the provisions of the Central Electricity Authority [Measures relating to Safety and Electric Supply] Regulations, 2010 for lack of corrective maintenance works. The Report has observed that had the appropriate safety and preventive measures been taken and had there been regular and proper checking of the electric line by the owner of the overhead line, the electrical accident in question resulting into the death of the victim would not have taken place. It has been specifically reported that there was non-compliance of Regulation 12[1] & Regulation 73[1] of the Central Electricity Authority [Measures relating to Safety and Electric Supply] Regulations, 2010 on the part of the licensee i.e. the APDCL. It has been recommended that the safety provisions of the Central Electricity Authority [Measures relating to Safety and Electric Supply] Regulations, 2010 should be strictly complied with by the owner of the supply lines and checking from time to time of the electric overhead line at regular intervals has been suggested to ensure public safety. Suggestion has also been made to use ACSR conductor instead of AAA conductor since ACSR conductors have reinforced steel wire which are much more stronger in comparison to AAA conductor as the AAA conductors are devoid of such protective gadget.

9. Section 161 of the Electricity Act, 2003 has prescribed that if any accident occurs **inter alia** in connection with the generation, transmission, distribution, supply or use of electricity in or in connection with, any part of the electric lines

or electrical plant of any person and the accident results in loss of human or animal life or in any injury to a human being or an animal, such person shall give notice of the occurrence and of any such loss actually caused by the accident, in such form and within such time as may be prescribed, to the Electrical Inspector or such other person as aforesaid and to such authorities as the appropriate Government may by order direct. The Electrical Inspector is empowered to inquire as to the cause of any accident affecting the safety of the public, which may have occasioned by or in connection with, the generation, transmission, distribution, supply or use of electricity. The phrase, 'such person' appearing in the said provision is the licensee and in the present case, it is the APDCL. As per sub-section [3] of Section 161, every Electrical Inspector or other person holding an inquiry under sub-section [2] shall have all the powers of a civil court under the Code of Civil Procedure, 1908 for the purpose of enforcing the attendance of witnesses and compelling the production of documents and material objects, and every person required by an Electrical Inspector is legally bound to do so. Sub-section [2] of Section 162 has provided for an appeal which shall lie from a decision of a Chief Electrical Inspector or an Electrical Inspector to the Appropriate Government or to an Appropriate Commission, as the case may be, if anyone is aggrieved by the decision.

9.1. Mr. Choudhury, learned Standing Counsel, APDCL has submitted that the APDCL authorities have not preferred any appeal before the appellate authority under sub-section [2] of Section 162 of the Electricity Act, 2003 in respect of the Electrical Accident Enquiry Report dated 01.04.2022.

10. The respondent no. 2 who is empowered under Section 161 of the Electricity Act, 2003 to inquire into such an incident which occurred on 29.08.2020

resulting ultimately into the death of a human life and to submit a report, conducted an inquiry in respect of the electrical accident in question and thereafter, had submitted the Electrical Accident Inquiry Report wherein the contraventions of the Regulations, 2010 which had occurred at the accident site, have been mentioned.

11. It is settled position of law as held by the Hon'ble Supreme Court of India in **M.C. Mehta and another vs. Union of India and others**, reported in [1987] 1 SCC 395, while discussing the rule of strict liability that where an enterprise is engaged in a hazardous or inherently dangerous activity and harm is caused on anyone on account of the accident in the operation of such activity, the enterprise is strictly and absolutely liable to compensate those who are affected by the accident; such liability is not subject to any of the exceptions to the principle of strict liability under the rule in **Rylands vs. Fletcher**.

12. Under the concept of strict liability, one party is legally responsible for the consequences resulting from an activity even in the absence of fault or negligence. In essence, as per the concept of strict liability, a party will be held responsible for its actions, without the other party who has suffered, having to prove the fault or negligence on the part of the first party. When a person/party is involved in inherently dangerous or hazardous activities, then such person/party may be held liable if any other person/party is injured because of such activities, even if the first person/party had taken necessary precautions and followed the requisite safety requirements.

13. The principle of strict liability has been considered by a Division Bench of this Court in **Kiron Das vs. State of Assam and others**, reported in [2014] 5 GLR 617. It has been observed therein that normally as a general rule, claims of

compensation based on tortious liability are decided by way of private law remedy in the civil court of competent jurisdiction. But in a case of loss suffered because of admitted negligence in the discharge of statutory duty by a public authority, there can be no bar to invoke the public law remedy and for a writ court to entertain a claim of compensation for such loss. Considering the public character of the duties carried out by the erstwhile ASEB and its successor companies, it cannot escape from the adverse consequence which may arise or occur in the discharge of its duties by applying the principle of strict liability. Examining the concept of strict liability and the decisions rendered by the Indian Courts including the Hon'ble Supreme Court, the Division Bench has observed that the concept of strict liability focuses on the nature of the defendant's activity rather than on any negligence. There are many activities which are so hazardous that it may constitute a danger to the person or property of another. The principle of strict liability is based on the proposition that one who undertakes such activities has to compensate for the damage caused by him irrespective of any fault on his part. Thus, in a case where the principle of strict liability applies, the party undertaking such activities has to pay damages for the injury caused to the victim even though the party may not have been at any fault.

14. In the decision titled **M.P. Electricity Board vs. Shail Kumari and others**, reported in **[2002] 2 SCC 162**, the Hon'ble Supreme Court of India has observed as under :

“8. Even assuming that all such measures have been adopted, a person undertaking an activity involving hazardous or risky exposure to human life, is liable under law of torts to compensate for the injury suffered by any other person, irrespective of any negligence or carelessness on the part of the managers

of such undertakings. The basis of such liability is the foreseeable risk inherent in the very nature of such activity. The liability cast on such person is known, in law, as “strict liability”. It differs from the liability which arises on account of the negligence or fault in this way i.e. the concept of negligence comprehends that the foreseeable harm could be avoided by taking reasonable precautions. If the defendant did all that which could be done for avoiding the harm he cannot be held liable when the action is based on any negligence attributed. But such consideration is not relevant in cases of strict liability where the defendant is held liable irrespective of whether he could have avoided the particular harm by taking precautions.

15. From the facts emerged from the pleadings of the parties and the submissions advanced, it is evidently clear that on the date of the accident, the victim was proceeding towards his paddy field and the LT conductor snapped suddenly and fell on his person resulting into electrocution which ultimately led to his death on the date of the accident itself i.e. on 29.08.2020.

16. In a writ proceeding, a clear picture as to whether any disputed question of fact is involved in the adjudication or not, usually emerges only after the parties exchange their pleadings. It is settled that the extra-ordinary and discretionary jurisdiction of this Court under Article 226 of the Constitution of India is to be exercised on sound judicial principles and if after exchange of pleadings, it is found that the jurisdiction can be exercised in determining the issues involved therein on the basis of the materials on record then the Court can exercise such discretion. The following observations made by the Hon’ble Supreme Court of India in **Smti. Gunwant Kaur and others vs. Municipal Committee, Bhatinda and others**, reported in [1969] 3 SCC 769, can be referred in this regard :-

“14. The High Court observed that they will not determine disputed question of fact in a writ petition. But what facts were in dispute and what were admitted could only be determined after an affidavit in reply was filed by the State. The High Court, however, proceeded to dismiss the petition in limine. The High Court is not deprived of its jurisdiction to entertain a petition under Article 226 merely because in considering the petitioner’s right to relief questions of fact may fall to be determined. In a petition under Article 226 the High Court has jurisdiction to try issues both of fact and law. Exercise of the jurisdiction is, it is true, discretionary, but the discretion must be exercised on sound judicial principles.”

17. The Electrical Accident Enquiry Report which was submitted by the respondent no. 2 after due enquiry under Section 161 of the Electricity Act, 2003 has reported about the contraventions indicated above. The APDCL being an electricity distribution company is a public utility. The activities carried out by it are inherently dangerous in nature. The cause of death reported in the PME Report had corroborated the factum of death of the victim due to electrical accident and incident reported in the FIR. There is consistency as regards the time of death indicated in the FIR and in the PME Report. Having noticed all the facts and circumstances and the pleadings of the parties, this Court has not found any disputed question of fact in the case in hand to disable this Court to determine the claim for compensation under public law remedy and has found no sufficient reason to relegate the parties to the civil court for any factual determination. From the fact situation obtaining in the case, as has been discussed above, the respondent APDCL authorities are found liable for the loss of human life under the rule of strict liability. Consequently, they are found liable to compensate the claimant-petitioner here who has made a claim for compensation under the public law remedy for infringement of the right to life

guaranteed under Article 21 of the Constitution of India.

18. The next issue is what should be the amount of compensation. The respondent APDCL by an Office Memorandum dated 07.11.2019 has provided different quantum of compensation payable to the next-of-kin of the victims in respect of fatal electrical accidents. In the Office Memorandum dated 07.11.2019, a detailed procedure had also been laid down in respect of disbursal of such compensation. It has prescribed an amount of Rs. 4,00,000/- for loss of human life. While prescribing the amount of Rs. 4,00,000/- as compensation, it has also been prescribed that in the event a claim is not settled within a period of 120 [one hundred and twenty] days from the date of occurrence of the electric accident, the delay in payment of compensation shall result in an additional interest of 12% per annum on the amount.

19. In the light of the above discussion, this Court finds that it is the compensation prescribed in the Office Memorandum dated 07.11.2019 which is payable in respect of the fatal electric accident under reference. Accordingly, the respondent APDCL authorities are directed to make payment of a compensation of Rs. 4,00,000/- to the petitioner along with an interest of 12% per annum on the said amount. Having due regard to the factual situation obtaining in the case in hand, it is directed that the respondent APDCL authorities shall calculate the interest at 12% per annum w.e.f. 01.04.2022 i.e. the date of submission of the Electrical Accident Enquiry Report by the respondent no. 2 and the same shall be paid to the petitioner upon her due identification and furnishing the bank details within a period of 2 [two] months from the date of receipt of a certified copy of this order by the respondent APDCL authorities from the petitioner. Notwithstanding such payment, it would be open for the petitioner to

pursue for further compensation, if available under the provisions of law.

20. With the observations made and directions given above, this writ petition stands allowed to the extent indicated above. There shall, however, be no order as to cost.

JUDGE

Comparing Assistant