

GAHC010144092021



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

Case No. : WP(C)/5151/2021

BARUN DAS
S/O LATE DHANESWAR DAS
RESIDENT OF VILLAGE PALACHI AMINGAON, PO BAGULAMARA, PS
BARAMA, DIST BAKSA, ASSAM

VERSUS

THE STATE OF ASSAM AND 6 ORS.
REPRESENTED BY THE SECRETARY AND COMMISSIONER TO THE GOVT.
OF ASSAM POWER DEPARTMENT, DISPUR GUWAHTI 781006

2:THE CHAIRMAN OF APDCL.
BIJULI BHAWAN
PALTAN BAZAR
GUWAHATI 781001

3:THE CHIEF GENERAL MANAGER (D)
LOWER ASSAM REGION OF APDCL
BIJULI BHAWAN
PALTAN BAZAR
GUWAHATI 781001

4:THE CHIEF ELECTRICAL INSPECTOR

APDCL
BUJULI BHAWAN
781001

5:THE BARMA SUB DIVISIONAL ENGINEER OF APDCL

BARAMA SUB DIVISION
PO BARAMA

DIST BAKSA
ASSAM

6:THE CHIEF ELECTRICAL OFFICER CUM ADVISOR

HOUSEFED COMPLEX
DISPUR
GUWAHATI 06

7:THE ASSAM POWER DISTRIBUTION COMPANY LTD. (APDCL)
REPRESENTED BY ITS MANAGING DIRECTOR
APDCL
BIJULI BHAWAN
PALTAN BAZAR
GUWAHATI-01

For the Petitioner (s) : Mr. I. Haque, Advocate.
For the Respondent (s) : Mr. S.P. Sarma, Advocate, APDCL.
Ms. U. Das, Sr. Govt. Adv.

Date of hearing & Judgment : **18.11.2023**

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH
JUDGMENT AND ORDER(ORAL)

The instant writ petition has been filed by the Petitioner seeking compensation of Rs. 30 lakhs on account of the premature death of her son due to electrocution for the negligent act on the part of the Respondent APDCL Authorities.

2. The facts as enumerated in the writ petition is that on 19.10.2019, the son of the Petitioner, Satyajit Das(since deceased) who was a truck helper came in contact with a live wire and

accordingly fell down from the truck resulting in his death. The said incident was taken note of by the Barama Police Station and an Entry being GD Entry No.345, 348 dated 19.10.2019 was recorded. It is also reveals from the records that the Sub-Divisional Engineer, Barama Electrical Sub-Division of the APDCL had also filed an FIR before the Officer in Charge, Barama Police Station on 20.10.2019 stating inter alia that on 19.10.2019 at around 5 PM, a person named Satyajit Das was suspected to have expired in an electrical accident that took place at Barama 1st Gate, (Pub Chowk) Barama Tiniali, Baksa. It was further mentioned in the First Information Report that the truck bearing registration No. AS09AC-2520 was placed below LT conductor for unloading soil without any information and prior permission from the APDCL staff and came in contact with the LT conductor. The said Satyajit Das touched the door with bare foot and was suspected to get electric shock. On the basis of the said FIR, a Barama PS UD Case No. 10/2019 was registered.

3. The record reveals that on 21.10.2019, the Petitioner also had lodged an FIR before the Officer-in-Charge of Barama Police Station stating inter alia that on 19.10.2019, the vehicle bearing registration No. AS09/AC/2520 came from Paghamara with loaded sand and unloaded the sand at Barama and suddenly drove the vehicle in the forward direction for which the pile of sand came in contact with the live wire of electricity which electrocuted the labour Satyajit Das who

fell down from the said vehicle and he was brought to Barama Health Centre by the local public and referred to Mushalpar Civil Hospital. In the meantime, the said Satyajit Das succumbed to his injuries and died. It was further mentioned that there was delay in filing the FIR due to various works. On the basis of the said FIR filed by the Petitioner, Barama Police Station Case No. 134/2019 was registered under Sections 297/304(A) of the Indian Penal Code.

4. The record further reveals that there was a post mortem conducted on the body of Late Satyajit Das and it was opined that the cause of death was due to electrocution and fracture of skull leading to intra crainian hemorrhage following a fall. It was also opined that the injuries were found to be ante mortem in nature.

5. The record further reveals that on 07.12.2019, the Petitioner submitted an application to the Chief General Manager(D), APDCL (LAR) seeking financial assistance for the death of his son due to electrocution. Subsequent to the filing of the said application, the Chief General Manager(D), APDCL (LAR) informed the Petitioner that as per the FIR filed by the Petitioner the accident occurred due to the truck suddenly moving forward and went up the pile of sand for which the clearance of the LT wire line reduced and as a result, his son came in contact with the LT live wire and accident occurred. It was also mentioned that the unloading of the sand below the LT line was done without prior information or permission from the APDCL. Further

to that, it was stated that as per the prevailing Notification of the AERC dated 5.8.2019, the application with all relevant records are to be filed before the CEO or the MD of the APDCL.

6. The Petitioner thereupon being aggrieved approached this Court by filing the writ petition seeking the reliefs as abovementioned.

7. The records further reveals that this Court vide an order dated 6.10.2021 issued notice making it returnable by 24.11.2021 and it was further mentioned that the pendency of the writ petition shall not bar the Respondents to dispose of the representation submitted by the Petitioner and pay the amount of Rs. 4,00,000/- as the interim payment to the Petitioner following the due procedure and in accordance with law, if there is no impediment in releasing the same.

8. The records further reveals that on 21.04.2023, Mr. N. Goswami, Junior Government Advocate in presence of the Standing Counsel of the APDCL had duly submitted that the Electrical Accident Enquiry Report was received and he would file an affidavit to bring on record the same. It further reveals that on 26.03.2023, the learned counsel appearing on behalf of the APDCL had submitted that he had received a copy of the Electrical Accident Enquiry Report and prayed for 3 weeks' time to go through the same and to respond by way of a counter, if so advised. Be that as it may, it is apparent from the record that on 12.05.2023, the affidavit was filed by the Respondent No. 3

bringing on record the Enquiry Report dated 29.12.2021.

9. This Court have duly perused the Electrical Accident Enquiry Report enclosed to the affidavit-in-opposition filed by the Respondent No. 3. In the said Enquiry Report, it was mentioned that Late Satyajit Das came into contact with the LT 3 phase 4 wire line while the truck carrying sand was unloading below the said line. It was also mentioned that the driver/owner of the said truck neither informed nor took permission from the concerned authority i.e. the APDCL prior to unloading of the sand below the aforesaid line situated at Barama First Gate, P.O. Barama, Baska. It was also mentioned that though unloading of the sand was done under the aforesaid live line but had the line been placed with appropriate ground clearance, the victim would not have come in contact with the same. It was further opined in the said Electrical Accident Enquiry Report that for non compliance of the provisions of the Central Electricity Authority (Measures Relating to Safety and Electric Supply) Regulation, 2010 for lack of protective measures and corrective maintenance work caused the accident. It was further mentioned that had appropriate safety preventive measures been taken and had there been regular and proper checking of the overhead line, the instant electrical accident resulting to the death of the victim could have been avoided. Further to that, it was mentioned that as per Regulation 58 (2) (i) of the Central Electricity Authority (Measures Relating to Safety and Electric

Supply) Regulations, 2010 (in short 'the Regulations of 2010'), no conductor of an overhead line, including service line, erected along any street shall at any part thereof be at a height less than 5.5 metres for lines of voltage not exceeding 650 volts and accordingly there were recommendations being made in the said Electrical Accident Enquiry Report that thorough checking of overhead lines be carried out at regular interval for ensuring public safety.

10. The learned counsel for the Petitioner submits that in terms with Section 57 of the Electricity Act, 2003, the AERC (Compensation to Victims of Electrical Accidents) Regulations 2019 (in short 'the Regulations of 2019') have been framed by the Assam Electricity Regulatory Commission. The said Regulation provides compensation to those persons affected or his dependents for loss of animal or human life or injury to human beings and animals in consequence of an electrical accident provided the electrical accident is attributable to the fault/negligence of the licensee/Generating Company/the CPP. He further submits that this entitlement is without affecting the rights of such persons who claim compensation as per the other rights available to the persons as could be seen from Regulation 9 of the said Regulation of 2019. The learned counsel further drawing the attention of this Court to Regulation 15 of the said Regulation of 2019 submits as to whether the Petitioner herein makes a claim as regards the compensation or not, the licensee/the Generating Company/the

CPP have been statutorily obligated to determine the quantum of compensation on its own when an electrical accident comes to its notice and pay compensation to the persons entitled for the same in accordance with these Regulations, even if no claim is made. He therefore submits that the FIR filed by the Sub-Divisional Engineer, Barama Electrical Sub-Division of the APDCL on 20.10.2019 clearly shows that the APDCL authorities duly had notice of the accident. However, the said amount which ought to have determined in terms with Regulation 15 (iii) have not been paid for which the Petitioner is entitled to the said amount. The learned counsel further submits that the said payment of the compensation ought to have been made within a period of 30 days in terms with Regulation 18 of the said Regulation 2019 and failure to pay the said amount within a period of 120 days from the date of occurrence of the incident, the compensation shall be paid with additional interest @ 12% per annum on the amount from the due date of payment. The learned counsel further referring to the Schedule B of the said Regulation submits that as per Clause 1 of the Schedule B, the compensation payable for the loss of human live as a result of electrical accident is Rs. 4 lakhs per person.

11. Mr. S.P. Sarma, the learned counsel appearing on behalf of the APDCL submits that he has been recently engaged in the matter. Be that as it may, the learned counsel submits that from the narration of

the facts as could be discerned from the FIRs which have been filed both by the APDCL Authorities as well as the Petitioner, it could be seen that this is a pure and simple case of contributory negligence for which the sole liability cannot be imposed upon the APDCL Authorities. Be that as it may, he also submits that the Electrical Accident Report duly points that there was a contravention of the relevant provisions of law by the APDCL Authorities.

12. Ms. U. Das, the learned Senior Government Advocate appearing on behalf of the State Respondent Authorities submits that from a perusal of the Electrical Accident Enquiry Report, it reveals that the cause of death was due to the violation/contravention of the provisions of the Regulations of 2010 by the APDCL Authorities and as such the APDCL Authorities should make payment in terms with the Regulation of 2019.

13. From the Regulation of 2019, it is clear that the licensee/generating company/CPP would be liable to make payment of compensation in terms with Schedule B provided that the electrical accident is attributable to the fault/negligence of the licensee/Generating Company/the CPP. In the instant case, as it is a case of loss of human life, the compensation which is liable to be paid is Rs. 4 lakhs. The Electrical Accident Enquiry Report categorically stipulates that there has been contravention by the APDCL Authorities to the provisions of the Regulation 58 (2) (i) of the Regulations of

2010. This Electrical Accident Report however has not been challenged by the APDCL Authorities till date. Under such circumstances, whether the Petitioner have filed an application or not, the APDCL Authorities were statutorily obligated under Regulation 15 (iii) to determine the quantum of compensation on its own and pay the compensation to the person entitled to after coming to know about the electrical accident. This Court also finds it relevant to take note of that the APDCL Authorities had due notice of the electrical accident as far back as on 20.10.2019 inasmuch the Sub-Divisional Engineer, Barama Electrical Sub-Division of the APDCL had duly submitted the FIR. Under such circumstances, taking into account that the electrical accident report holds that the Respondent APDCL have contravened the provisions of law which led to the death of the son of the Petitioner, it is the opinion of this Court that the Petitioner would be entitled to the compensation of Rs 4 lakhs as stipulated in Clause 1 of the Schedule B to the Regulation of 2019. This Court also finds it relevant to take note of Regulation 20 which stipulates that the payment of compensation ought to be made within a period of 120 days from the date of occurrence of the said incident and in the instant case as the said amount have not been paid inspite of having knowledge as far back as on 20.10.2019, it is the opinion of this Court that the Petitioner would be entitled @ 12% interest per annum on the amount of Rs. 4 lakhs w.e.f. 19.2.2020 till the date of actual

payment.

14. Accordingly, this Court therefore disposes of the instant writ petition directing the Managing Director of the APDCL to ensure the disbursement of the amount of compensation i.e. Rs. 4 lakhs alongwith interest @ 12% interest per annum on the amount of Rs. 4 lakhs w.e.f. 19.2.2020 till the date of actual payment.

15. The said amount be paid within a period of 3 months from the date a certified copy of the instant judgment is served upon the Managing Director of the APDCL.

16. With the above observations and directions, the petition stands disposed off.

JUDGE

Comparing Assistant