



W.P.No.17834 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.04.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.17834 of 2022

A.Raja

... Petitioner

Vs.

- 1.The Chairman,
Tamilnadu Generation and Distribution Corporation Limited,
No.398, Anna Salai, Mount Road,
Chintadripet,
Chennai 600 002
- 2.The Managing Director,
Chennai Metro Water Supply & Sewerage Board,
No.1, Pumping Station Road,
Chintadripet,
Chennai 600 031
- 3.The Commissioner of Greater Chennai Corporation,
Greater Chennai Corporation,
Ripon Building,
Chennai 600 003
- 4.State of Tamilnadu represented by the Inspector of Police,
G5, Secretariat Colony Police Station,
Chennai 600 010

... Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India praying to issue a Writ of Mandamus directing respondents 1 to 3 or their servants to pay the compensation of Rs.40,00,000/- together with interest at the rate of 12% per annum to the petitioner for the loss of life



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of the petitioner's wife-Late D.Shanthi.

For Petitioner : Mr.S.Suriyaprakash

For Respondents

For R1 : Mr.L.Jaivenkatesh,
Standing Counsel

For R2 : Mrs.K.Vasantamala
for Mr.K.Subramani

For R3 : Mrs.K.Aswini Devi,
Standing Counsel

For R4 : Mr.E.Vijay Anand,
Additional Government Pleader

ORDER

This writ petition has been filed seeking direction to respondents 1 to 3 to pay compensation of Rs.40,00,000/- together with interest at the rate of 12% per annum.

2. The petitioner got married one, Shanthy on 06.06.2019. Due to her illness, she was taken by the petitioner to Askar Clinic situated at Door No.7/2, Subrayan 4th Street, Otteri, Chennai at about 11.30 a.m. While they were standing in front of the said clinic, a spark emanated from a pit which was dug up by the third respondent's contractor wherein underground storm water drainage work was also completed in which



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dug up small hole to drain the rain water. On account of the same, the petitioner and his wife got electrocuted due to which there was fire. Fortunately, the petitioner fell down and his wife's cloth got fire and engulfed her entire body. Immediately, she was taken to Kilpauk Medical College Hospital with the help of jurisdictional police i.e. the Inspector of Police, G5 Secretariat Colony Police Station and she was admitted as in-patient. Immediately, the petitioner lodged complaint and the same was registered in crime No.273 of 2019 under accidental fire. Unfortunately, she died on 30.08.2019. After completion of investigation, post mortem certificate was issued by he Kilpauk Medical College Hospital stating that the petitioner's wife died of complication of burns-septicemia. The accident had taken place only due to the negligent act on the part of the third respondent. After completion of investigation, the fourth respondent also filed final report on 12.01.2023 before the II Metropolitan Magistrate, Egmore and the same has been taken cognizance in CC.No.1571 of 2023 for the offence punishable under Section 304A of IPC as against the contractors of the third respondent. It is pending for trial.



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3. Admittedly, the third respondent awarded contract to its contractor to lay storm water drainage. After completion of the entire project, again in order to drain water, which was stagntated in the road, the contractor of the third respondent dug up holes in order to drain rain water. While digging up a hole, they damaged the electric cable which was laid under the road, due to which there was fire accident. Unfortunately, the petitioner and his wife got fire injuries. Immediately, the petitioner fell down and he did not suffer from any fire injury. However, his wife suffered with fire injuries on her whole body, due to which she died in the hospital.

4. The first respondent filed counter stating that the first respondent is not liable for any fire accident where the underground electric lines were laid long back and the Chennai Corporation during the rain water system sewerage work, has not taken proper caution and due to that negligent act, has caused certain damage to the electric lines due to which there emanated spark. That apart, without any prior intimation



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and permission, the third respondent directed its contractor to perform the said work. The first respondent came to knowledge about the accident only after registration of FIR.

5. The second respondent filed counter stating that the second respondent had not carried out any underground drainage work at the place of accident. Further stated that they laid sewerage main line in the middle of the road. The machine holes are provided on the middle of the road. Whereas the rain water drain canal is passing before the place of accident. Therefore, the second respondent is not at all liable to pay any compensation as claimed by the petitioner.

6. The third respondent filed counter stating that since the accident occurred due to the burst of the electric cable maintained by the Tamilnadu Electricity Board, the petitioner has to approach the same for payment of compensation amount. As such, there cannot be any presumption of negligence on the part of the third respondent.



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7. As stated supra, the fourth respondent filed final report and the same has been taken cognizance in CC.No.1571 of 2023 on the file of the II Metropolitan Magistrate, Egmore, Chennai in which contractors of the third respondent are arrayed as accused. The relevant portion of the charge sheet is as follows:

ஈ. குற்றம் ஏதேனும் நடந்துள்ளதாக தெரியவந்தால் அது யாரால்?
எவ்வாறு? எங்கே? எப்போது?
ஆம்

கடந்த 20.09.2018 ம் தேதி 1ம் எதிரி கார்த்திக் என்பவரது நிறுவனமான TETRAD PROJECTS H-42A, பெரியார் நகர் ஈரோடு 638 001 என்ற நிறுவனத்திற்கு வழக்கு சம்பவ இடமான ஜி5 காவல் நிலைய எல்லைக்குட்பட்ட எண் 7/2 சுப்புராயன் 4வது தெருவில் பெருநகர சென்னை மாநகராட்சி சார்பில் மழைநீர் வடிகால் துறையில் மழைநீர் வடிகால்வாய் அமைக்கும் பணி ஒதுக்கப்பட்டது. அப்பணியினை 1 எதிரி 2ம் எதிரி ஜெயக்குமார் நடத்திவரும் JK Enterprises நிறுவனத்திடம் ஒப்படைத்துள்ளது.

பணிமுடித்து அங்காங்கே உள்ள Man Hole அருகில் சாலையில் உள்ள மழைநீர் புதியதாக அமைக்கப்பட்ட மழைநீர் வடிகால் வாயில் செல்வதற்காக



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துளையிடும் பணி மேற்கொள்ளும்போது சுப்பராயன் 4வது தெருவில் அஸ்கர் கிளினிக் முன்பாக துளையிடும் பணிக்காக பள்ளம் தோண்டப்பட்டுள்ளது. அப்போது மின்சார கேபிள் வெளியே தெரியும்படி தோண்டப்பட்டு திறந்த நிலையில் விடப்பட்டுள்ளது.

இந்நிலையில் கடந்த 26.08.2019 அன்று காலை சுமார் 11.30 மணிக்கு சாட்சி 1.திரு.ராஜா அவரது மனைவி திருமதி சாந்திக்கு உடல்நிலை சரியில்லாத காரணத்தால் சாட்சி 6 டாக்டர் அஸ்கர் மருத்துவமனைக்கு இருவரும் நடந்து வந்து நின்று கொண்டிருந்த போது தோண்டப்பட்ட பள்ளத்தில் இருந்த மின்சார ஓயர்களில் திடீரென தீப்பொறி ஏற்பட்டு திருமதிசாந்தி தீப்பொறியால் நிலை தடுமாறி கீழே விழுந்து நைட்டியின் பின்புறமும் முன்புறமும் பட்டு தீப்பற்றி கொண்டு சாந்தியின் முகம் பின்புறம் கை கால்களிலும் தீக்காயம் ஏற்பட்டு 30.08.2019ம் தேதி காலை 09.30 மணிக்கு இறந்துவிட்டார்.

1ம் எதிரியான M/s TETRAD PROJECT நிறுவன இயக்குநர் கார்த்திக் என்பவர் பணியினை சரிவர மேற்பார்வையிடாமலும் தனது நிறுவனத்திற்கு ஒதுக்கப்பட்ட பணியினை M/S JK Enterprises



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நிறுவனத்திற்கு வழங்கி அதன் நிறுவன உரிமையாளர் 2ம் எதிரி

திரு.ஜெயக்குமார் அப்பணிகளை பாதுகாப்பாகவும் சரியாக செய்யாததாலும்

மின்கேபிள் வெடித்து மருத்துவமனை முன்பாக நின்று கொண்டிருந்த சாந்தி

என்பவருக்கு தீக்காயம் ஏற்பட்டு இறக்க காரணமாகி உள்ளார்கள்.

எனவே A1 முதல் A2 எதிரிகளின் இச்செயலானது சட்டப்பிரிவு

304(A) IPC யின்படி தண்டிக்கத்தக்க குற்றம் புரிந்தவர்களாக

கருதப்படுகிறார்கள்.

8. Thus it is clear that only on the negligence on the part of the third respondent's contractor, the accident took place, due to which the petitioner's wife died. It is also seen that she got married only on 06.06.2019. Within a period of two months from the date of her marriage, she died due to the accident caused on the negligence of the third respondent's contractor. Therefore, the third respondent is liable to pay compensation. Hence, it should be compensated by means of monetary benefits by the third respondent. The petitioner is being the legal heir of the deceased, entitled to receive just and fair compensation. In respect of awarding compensation, there is no codified law for



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arriving at quantum of compensation in these types of cases. Therefore, the law such as Motor Vehicles Act and Workmen's Compensation Act may be applied for arriving at a just and fair compensation. Further, the principles of absolute liability will have to be applied for these types of cases.

9. However, the learned Standing Counsel appearing for the third respondent would submit that it is a disputed question of facts and as such, it cannot be decided under Article 226 of the Constitution of India. It is true that when disputed question of facts arises and if there is clear denial of tortious liability, remedy under Article 226 of the Constitution may not be proper. But, it cannot be understood as laying a law that in every case of tortious liability recourse must be had to a suit. When there is negligence on the face of it and infringement of Article 21 is there, it cannot be said that there will be any bar to proceed under Article 226 of the Constitution of India. Therefore, the petitioner is entitled for reasonable compensation from the third respondent for the death of the deceased and in the interest of justice, this Court would be



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justified in considering the relief prayed by the petitioner. The public law proceedings serve a different purpose than the private law proceedings. The relief of monetary compensation, as exemplary damages, in proceedings under Article 32 by the Supreme Court or under Article 226 by the High Courts, for established infringement of the indefeasible right guaranteed under Article 21 is a remedy available in public law and is based on the strict liability for contravention of the guaranteed basic and indefeasible rights of the citizen.

10. The purpose of public law is not only to civilize public power but also to assure the citizen that they live under a legal system which aims to protect their interests and preserve their rights. Therefore, when the court moulds the relief by granting 'compensation' in proceedings under Article 32 or 226 seeking enforcement or protection of fundamental rights, it does so under the public law by way of penalizing the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizen. The payment of compensation in such cases is not to



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be understood, as it is generally understood in a civil action for damages under the private law but in the broader sense of providing relief by an order of making 'monetary amends' under the public law for the wrong done due to breach of public duty, of not protecting the fundamental rights of the citizen. The compensation is in the nature of 'exemplary damages' awarded against the wrongdoer for the breach of its public law duty and is independent of the rights available to the aggrieved party to claim compensation under the private law in an action based on tort, through a suit instituted in a court of competent jurisdiction or/and prosecute the offender under the penal law."

11. It is relevant to rely upon the judgment of the Hon'ble Supreme Court of India in the case of ***Raman Vs. Uttar Haryana Bijli Vitran Nigam Ltd and others*** reported in ***(2014) 5 SCC 1***, wherein it is held as follows:

16. The learned Single Judge of the High Court has awarded compensation keeping all these aspects of the matter and has applied the guiding principle of multiplier method after advertng to the case of [Sarla Verma & Ors.](#)



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v. Delhi Transport Corporation & Anr[6]. for the purpose of computation of just and reasonable compensation in favour of the appellant which method should not have been applied to the case on hand, particularly, having regard to the statutory negligence on the part of the respondents in not providing the safety measures to see that live electric wires should not fall on the roof of the building by strictly following the Rules to protect the lives of the public in the residential area. This Court in the case of [Dr. Balram Prasad v. Kunal Saha\[7\]](#), has deviated from following the multiplier method to award just and reasonable compensation in favour of the claimant in a medical negligence case. The same principle will hold good in the case on hand too.

101. he has also strongly [placed reliance upon](#) the observations made at para 170 in Malay Kumar Ganguly's case referred to supra wherein this Court has made observations as thus: (SCC p. 282) "170. Indisputably, grant of compensation involving an accident is within the realm of law of torts. It is based on the principle of restitutio in integrum. The said principle provides that a person entitled to damages should, as nearly as possible, get that sum of money which would put him in the same position as he would have been if he had



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not sustained the wrong. (See Livingstone v. Rawyards Coal Co.)"

103.1. In Ningamma's case, this Court has observed at para 34 which reads thus: (SCC p. 721)

"34. in our considered opinion a party should not be deprived from getting 'just compensation' in case the claimant is able to make out a case under any provision of law. Needless to say, the MVA is beneficial and welfare legislation. In fact, the court is duty-bound and entitled to award 'just compensation' irrespective of the fact whether any plea in that behalf was raised by the claimant or not."

112. The claimant has also placed reliance upon [Nizam's Institute of Medical Sciences v. Prasanth S.Dhananka's \[\(2009\) 2 SCC 688\]](#) case in support of his submission that if a case is made out, then the Court must not be chary of awarding adequate compensation. The relevant paragraph reads as under:

"88. We must emphasise that the court has to strike a balance between the inflated and unreasonable demands of a victim and the equally untenable claim of



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the opposite party saying that nothing is payable. Sympathy for the victim does not, and should not, come in the way of making a correct assessment, but if a case is made out, the court must not be chary of awarding adequate compensation. The 'adequate compensation' that we speak of, must to some extent, be a rule of thumb measure, and as a balance has to be struck, it would be difficult to satisfy all the parties concerned."

17. Further in para 119, it is held this Court has rejected the use of multiplier system to calculate and award the quantum of compensation which must be just and reasonable. The relevant paragraph is quoted hereunder: (SCC para 92)

"92. Mr Tandale, the learned counsel for the respondent has, further submitted that the proper method for determining compensation would be the multiplier method. We find absolutely no merit in this plea. The kind of damage that the complainant has suffered, the expenditure that he has incurred and is likely to incur in the future and the possibility that his [pic]rise in his chosen field would now be restricted, are matters which cannot be taken care of under the multiplier method." (emphasis supplied)



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42. *In R. Venkatesh v. P. Saravanan the High Court of Karnataka while dealing with a personal injury case wherein the claimant sustained certain crushing injuries due to which his left lower limb was amputated, held that in terms of functional disability, the disability sustained by the claimant is total and 100% though only the claimant's left lower limb was amputated. In para 9 of the judgment, the Court held as under: (Kant LJ p. 415)*

'9. As a result of the amputation, the claimant had been rendered a cripple. He requires the help of crutches even for walking. He has become unfit for any kind of manual work. As he was earlier a loader doing manual work, the amputation of his left leg below the knee, has rendered him unfit for any kind of manual work. He has no education. In such cases, it is well settled that the economic and functional disability will have to be treated as total, even though the physical disability is not 100%.'

43. *Lord Reid in Baker v. Willoughby has said: (AC p. 492A)*

"... A man is not compensated for the physical injury: he is compensated for the loss which he suffers as a result of that injury. His loss is not in having a stiff leg: it is in his inability to lead a full life, his inability to enjoy those amenities which depend on freedom of movement



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and his inability to earn as much as he used to earn or could have earned...."

12. In the above case, the Hon'ble Supreme Court of India relied upon various judgments and granted just and reasonable compensation. Considering the above facts and circumstances of the case, the guiding principles of multiplier method in respect of 35 years of age as decided in the case of *Sarla Verma Vs. Delhi Transport Corporation* reported in **(2009) 6 SCC 121** are followed for the purpose of computation of just and reasonable compensation in favour of the petitioner, which is extracted hereunder:

Age of the deceased	Multiplier scale as envisaged in Susamma Thomas case	Multiplier scale as adopted by Trilok Chandra case	Multiplier scale in Trilok Chandra case as clarified in Charlie case	Multiplier specified in second column in the table in Second Schedule to the MV Act	Multiplier actually used in Second Schedule to the MV Act (as seen from the quantum of compensation)
31 to 35 years	13	15	16	17	13



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13. Accordingly, the 16 multiplier scale to be adopted to calculate the income of the deceased. The petitioner's wife had been a housewife. She died due to the accident occurred immediately after two months from the date of her marriage. According to the petitioner, he is working as Security in a private hospital and his wife had also been a daily wage employee. At the time of her death, she was aged about 35 years. Though the petitioner failed to produce any proof for her income, her income notionally is fixed at Rs.15,000/- per month, in which 1/3 to be deducted for her personal expenses. Hence, the monthly income to be fixed for calculating the compensation as Rs.10,000/- per month. Accordingly, the total compensation is arrived at as follows:

Total income	Rs.10000/- p.m. x 12 x 16 =Rs.19,20,000/-
Transport Expenses	Rs.10,000/-
Funeral Expenses	Rs.25,000/-
Loss of Consortium	Rs.2,00,000/-
Loss of Love and Affection	Rs.3,00,000/-
Total	Rs.24,55,000/-



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14. Accordingly, the petitioner is entitled to compensation to the tune of Rs.24,55,000/- with interest at the rate of 6% per annum from the date of the accident i.e. 30.08.2019 till payment. The third respondent shall pay the said compensation within a period of twelve weeks from the date of receipt of copy of this order.

15. With the above direction, this writ petition stands allowed.
There shall be no order as to costs.

12.04.2024

Neutral Citation: Yes/No
Index: Yes/No
Speaking/Non-speaking order
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To

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Tamilnadu Generation and Distribution Corporation Limited,
No.398, Anna Salai, Mount Road,
Chintadripet,
Chennai 600 002
- 2.The Managing Director,
Chennai Metro Water Supply & Sewerage Board,
No.1, Pumping Station Road,
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- 3.The Commissioner of Greater Chennai Corporation,
Greater Chennai Corporation,
Ripon Building,
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- 4.Inspector of Police,
State of Tamilnadu,
G5, Secretariat Colony Police Station,
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