



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CWP-18968-2019 (O&M)

Date of decision: 22.08.2024

Smt. Seema Dhiman @ Shallu

...Petitioner

VERSUS

The State of Haryana and others

...Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present :- Mr. Ashwani Arora, Advocate for the petitioner.

Mr. Pankaj Mulwani, DAG Haryana.

Mr. Vivek Saini, Advocate for respondents No.2-UHBVNL.

Mr. C.K. Singhal, Advocate for respondent No.3.

VINOD S. BHARDWAJ, J. (Oral)

1. Prayer in the present petition is for directing the respondents to pay compensation amounting to Rs.50 lakhs to the petitioner on account of the death of Devinder Dhiman, husband of the petitioner and son of proforma respondent, who allegedly died on account of negligence of the respondents.

2. Learned counsel for the petitioner contends that at about 10.00 A.M. on 20.03.2019 Devinder Dhiman (since deceased), husband of the petitioner and son of proforma respondent, lost his life due to the entangling with loose electricity wire that was lying broken on the road from the main line passing over the road. Devinder Dhiman while was on his way from



Yamuna Nagar, driving a Pulsar motorcycle bearing registration No.HR-04-H-2192, he met with an accident on account of the loose overhead transmission lines. The death was thus directly attributable to the improper supervision/inspections by respondent No.2-Distribution Licensee and their being negligent in proper care and maintenance of the electricity wires which were lying broken and unattended on the road making it dangerous for the life of the people who were plying their vehicles on the road. FIR No. 0095 dated 21.03.2019 had been registered at Police Station Chhapar, District Yamuna Nagar, Haryana by Tarsem Singh son of Mehar Chand (brother of the deceased) and statement of petitioner-widow of the deceased was also recorded. The deceased was taken to the Indus Hospital Mohali where he was declared brought dead and his postmortem was conducted. As per the postmortem report, the cause of death was head injury.

3. Learned counsel for the petitioner contends that the petitioner has approached this Court since the incident in question took place as a direct outcome of the failure/negligence on the part of the respondents and that she is entitled for compensation on account of lapses committed by the respondents. It is contended that the deceased was working with LEEL Electricals Ltd. and was drawing a monthly salary of Rs.26,067/- and he was 32 years of age at the time of incident. He was the sole bread earner of family and that the family is in great pecuniary hardship on account of the death of Devinder Dhiman.

4. Learned counsel for the petitioner placed reliance on the judgment in the matter of **Baljit Kaur and others Vs. Union of India and**



others reported as 2012 ACJ 2596. Relevant extract of the said judgment reads thus:-

“6. Plea raised on behalf of the Railways that petitioners have not been able to establish the accident, is only to escape their liability. The Railways being a government organization can be expected to behave in a better manner. There is clear evidence of breaking of railway gate. Ignoring the material placed by the petitioners on record to show that the gate fell on the head of late husband of petitioner No. 1 the simple denial by respondents would not suffice. There is, thus, clear and cogent evidence available on record that the death of late husband of petitioner No. 1 was due to the reasons disclosed in the petition. The manner in which Railways had maintained the gate would be enough to show that they were not vigilant enough to ensure safety of public at large. The negligence from the manner in which the accident has taken place would clearly emerge. The respondents, thus, are seen liable for causing this death due to negligence. This negligence is gross and has led to the loss of bread-earner for the petitioners. A clear case for grant of compensation, therefore, is made out.

7. The aspect of grant of compensation by way of public law proceedings is by now fully established. There is not much dispute on the fact that the writ court is competent



to assess and grant compensation in case of negligence. In this regard reference can be made to Nilabati Behera v. State of Orissa, 1993 ACJ 787 (SC); Sebastian M. Hongray v. Union of India, (1984) 1 SCC 339; Sebastian M. Hongray v. Union of India, (1984) 3 SCC 82; Bhim Singh v. State of J&K, (1984) Supp SCC 504; Saheli, a Women's Resource Centre v. Commissioner of Police, Delhi, 1990 ACJ 345 (SC); and State of Maharashtra v. Ravikant S. Patil, 1991 ACJ 888 (SC). ”

5. Reference is also made to the judgment in the matter of Sudha and others Vs. State of Punjab and others reported as 2021 ACJ 937.

Relevant extract of the said judgment reads thus:-

“10. Adverting to the facts of the present case, the respondent Corporation is not denying the incident whereby the electric pole had fallen on Ashok Kumar (deceased) on 26.7.2016 while he was proceeding on a motor cycle and that the death had occurred on account of grievous injuries suffered as a result thereof. A stand has however been taken that on account of a windstorm, a big tree fell on the electric wires and consequently the electric pole also fell down and as such, there is no negligence on the part of the respondent Corporation but rather it was an act of God and a natural calamity and beyond the control of the officials of the Corporation.



11. This court, during the course of hearing, put a specific query to the counsel representing the respondent Corporation as to whether any fact-finding inquiry had been conducted into the incident and whether any findings had been recorded with regard to periodic inspections having been carried out as regards erection/affixation of the electric pole. Counsel has responded in the negative. What clearly emerges is that the stand taken in the written statement is only to oppose the prayer for grant of compensation.

12. As per respondent Corporation, a tree having fallen on the electric wires on account of high velocity winds has in turn led to the electric pole coming down upon Ashok Kumar while he was proceeding on a motor cycle. Suffice it to observe that it was bounden duty of the respondent Corporation to have conducted periodic inspections of all the electric poles installed by it on the sides of the road and to take all such necessary precautionary measures to prevent such like incidents. It was not beyond comprehension of the Corporation that a tree or any such other object may under adverse weather conditions fall upon the electric wires or any of the installations in the nature of electric poles/transformers, etc. The erection/ installation, as such, of the electricity poles, etc., has to be of the requisite strength so as to withstand such eventualities. Mere falling of a tree on



the electricity wires cannot be accepted as a valid reason for a street side electric pole to come crashing down. This court would have no hesitation in holding that the incident that led to the falling of the electric pole on Ashok Kumar (deceased) was on account of sheer negligence attributable solely to the respondent Corporation. The Corporation itself does not deny that the death of Ashok Kumar occurred on account of injuries that he had suffered in such incident. The respondent Corporation, as such, is liable to pay the compensation to the dependants of the deceased.

13. *As per dictum laid down by a Division Bench in Paramjit Kaur's case, 2010 ACJ 957 (P&H), the compensation amount would require to be assessed as per principles laid down for awarding compensation under the Motor Vehicles Act, 1988.*

14. *The petitioners have stated the age of the deceased to be 49 years on the date of his death. However, in the post-mortem report issued by the Civil Hospital, Bathinda at Annexure P-4, the age of the deceased has been reflected as 52 years approximately. This court would accept the age of the deceased, as such, to be 52 years for purposes of quantifying the compensation amount. The petitioners have claimed that the deceased was earning Rs. 15,000 per month while running a kirana shop. However, no material/*



documents have been appended along with the writ petition and placed on record to substantiate such plea. Be that as it may, death of Ashok Kumar took place on 27.7.2016. He was maintaining a family consisting of his wife and two children, who were pursuing their education. In para 3 of the writ petition there are categorical averments that daughter of the deceased was pursuing a doctorate degree at Panjab University, Chandigarh and the son was a student of Bachelor of Science in Computer Science, Statistics and Mathematics. Needless to observe that the deceased was paying for the education of his children. Under such circumstances, it would be safe and reasonable to accept the version of the petitioners as regards monthly income of the deceased to be Rs. 15,000. Notional income of the deceased, as such, is assessed as Rs. 15,000 per month. As per guidelines furnished by the Apex Court in National Insurance Co. Ltd. v. Pranay Sethi, 2017 ACJ 2700 (SC) and taking the age of the deceased to be 52 years on the date of his death, 10 per cent addition in income is granted towards future prospects. 1/3rd deduction would be made from the income towards personal and living expenses of the deceased. Keeping in view the age of the deceased multiplier of 11 would be applied by following the dictum of the Apex Court in Sarla Verma v. Delhi Transport Corporation, 2009 ACJ 1298 (SC).

15. Accordingly, the compensation amount payable by the respondent Corporation is assessed as follows:

Sl. No.	Head	Calculation
(1)	Notional income per month	Rs. 15,000
(2)	10 per cent increase in income towards future prospects	Rs. 15,000 + Rs. 1,500 = Rs. 16,500
(3)	1/3 rd deduction towards personal and living expenses	Rs. 16,500 / 33 per cent = Rs.5,445 Rs. 16,500 - Rs.5,445 = Rs. 11,055
(4)	Compensation after applying multiplier of 11	Rs. 11,055 x 12 = Rs. 1,32,660 (annual income) x 11 = <u>Rs. 14,59,260</u>
Total		Rs. 14,59,260

xxxx ”.

6. Reliance has also been placed on the judgment of this Court in the matter of **Paramjit Kaur and others Vs. State of Punjab and others**, reported as **2008(4) RCR (Civil) 772**. Relevant extract of the said judgment reads thus:-

“19. It has been pleaded that the deceased Lajja Ram was earning Rs. 25,000/- per month. The respondents have simply denied this on the ground for want of knowledge but have neither disputed it or asserted as to what the earnings were, especially when this is a petition for grant of compensation. A material fact having a direct bearing on the merits of the case, when not specifically denied, would be deemed to have been admitted by necessary implication. The



photographs show that he was having two big metal drums of milk one each saddled on the side of the motor cycle and was also cultivating land on batai/theke.

20. It is a well known and accepted fact that farmers engaged in the vocation of dairy farming and growing seasonal vegetables on the outskirts of Chandigarh are prosperous and earning reasonably well. The amount of milk he was selling daily (two big metal drums) in Chandigarh and using a motor cycle to ferry them to the city daily speak for itself. Even if we accept the statement of the counsel for the Board that the monthly income has been inflated to claim enhanced compensation and we reduce it to half this amount the monthly income comes to Rs. 12,500/- per month. We are of the considered view that he would not be earning less than Rs. 12,500/- per month as he was running a dairy and using a motor cycle to ferry milk to Chandigarh and was also cultivating land. If we take dependence of the family members to be half, keeping in view the fact that the deceased would be spending some amount on the petrol, maintenance and repair of the motor cycle and other personal expenses, the amount comes to Rs. 6250/- per month and annual dependance would be Rs. 75,000/-. Keeping in view the fact that the widow is a young lady with three minor children to support and an old mother-in-law to care for, we accept and hold this to be their



dependence on the deceased per annum. Lajja Ram was 34 years of age when he died and by applying a multiplier of 15 by restricted scales, the compensation comes to Rs. 11,25,000/-.

21. We allow this writ petition and direct the Punjab State Electricity Board to pay compensation of Rs. 11,25,000/- to the petitioners, who are the legal heirs of the deceased Lajja Ram. The amount be disbursed to the petitioners within six weeks from the receipt of copy of this order.

Disposed of accordingly.

Petition allowed.”.

7. Reply on behalf respondent No.2-Distribution Licensee had been filed. Certain averments contained therein are extracted as under:-

“2. That summarily it is the Respondent's case that the deceased died due to road accident, and not due to electrification or entanglement with any loose electrical wires. The post mortem report (Annexure P-3) holds the cause of death to be head injury, and not as per the alleged overhanging wires. The Petition has been filed in hindsight to gain pecuniary compensation from the unfortunate death of the deceased, by concocting a false causation of death due to the Nigam's negligence.



PRELIMINARY OBJECTIONS

Question of Fact

3. *That in order to maintain the present Writ Petition, it has to be proven that the death was caused due to the negligence of the Nigam. Hence, two questions of fact have to be answered:*

- (i) Whether wires were hanging over the road when the deceased suffered accident?*
- (ii) Whether the death was attributable to the alleged overhanging wires?*

Only when the first two questions have been answered in affirmative, will the question of Nigam's negligence arise.

Only then would the question of compensation be maintainable. However, the said questions, being of fact have neither been proved, nor been admitted, and therefore remain unsettled. Being a Writ Court, this Hon'ble High Court does not determine questions of fact, for which the remedy lies with the Civil Court, through a Civil Trial.

Patent Defect

4. *That as per the post mortem report (Annexure P-3), the cause of death has been held to be a head injury, and not the alleged overhanging wires. Hence, the Petition has*



been filed in hindsight to gain pecuniary compensation by concocting a false causation of death due to the Nigam's negligence. Moreover, the Respondent No. 3 has been wrongly impleaded as a Respondent, which has been with the sole objective of browbeating the Nigam in the court.

On Merits:-

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2. *That Para No.2 of the petition is wrong and hence denied. The death of the deceased Devinder Dhiman was not happened due to electrocution, but that was the result of rash and negligent driving. However facts regarding FIR and admission in the hospital etc. are matter of record.*

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5. *That Para No.5 of the petition is a matter of record to the extent of working place, salary, age and family condition of the deceased, but it is wrong to state that the incident took place due to the gross negligence of the respondents. Moreover the citation disclosed in this para are not related to the present case and therefore the petitioner can not take any benefit through the present petition.”*

8. Learned counsel for the respondent No.2 has vehemently argued that the said judgments relied by the petitioner are not applicable to the facts of the present case since in the said judgments the accident had



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been undisputedly caused on account of the street furniture/wires/poles of the electricity department and the facts were not a subject matter of dispute. Further, it is gravely disputed by the petitioner that any loose wire was lying across on the road and that it was on account of entanglement of the said wires as alleged, the accident in question took place. He submits that serious disputed questions of fact thus emerge in the present case.

9. I have heard the learned counsel appearing on behalf of the respective parties and have gone through the judgments as well as the documents appended with the present writ petition.

10. Learned counsel for the petitioner has been asked to advert to any unimpeachable admission/*prima facie* evidence on the basis whereof it can be held that the accident in question had taken place as is being asserted. He only relies on the postmortem report and contends that the death on account of an accident is not disputed by the respondents and as such he is entitled to grant of compensation. I find no significance in the arguments being advanced by the learned counsel for the petitioner. The entitlement of the petitioner to claim compensation from respondent No.2 does not arise on account of an occurrence of the accident but the liability of respondent to pay compensation emanates from their negligence which is required to be established or is *prima facie* evident from the documents of unimpeachable integrity available on record of this Court. A mere self serving statement or assertion made in the writ petition cannot be equated to that or an admissible evidence. Thus, as disputed question of facts would arise, which cannot be gone into by this Court in a writ jurisdiction.



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11. The present writ petition is accordingly dismissed at this stage on account of involving disputed questions.

12. Liberty is however granted to the petitioner to take recourse to the alternative remedies in accordance with law. The period spent in pursuing the present writ petition shall however be taken into consideration while computing the limitation for initiation of any proceedings before alternative forum for seeking compensation.

(VINOD S. BHARDWAJ)
JUDGE

22.08.2024
Mangal Singh

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No