

**HIGH COURT OF TRIPURA
AGARTALA**

W.P(C) NO.428 OF 2010

Smt.Gita Ghosh,

Wife of Shri Subhas Chandra Ghosh,
Resident of Bishramganj,
P.O. + P.S. Bishramganj,
Dist. West Tripura.

...Petitioner.

- Versus -

1. The Chairman cum Managing Director,

Tripura State Electricity Corporation Limited,
Near Bhuturia, Mara Choumuhani,
P.O. Banamalipur, Agartala,
West Tripura.

2. The General Manager cum Company Secretary,

Tripura State Electricity Corporation Limited,
Near Bhuturia, Mara Choumuhani,
P.O- Banamalipur, Agartala,
West Tripura.

3. The Senior Manager (Sub Divisional Office Electrical)

Tripura State Electricity Corporation Limited,
Bishramganj Electrical Sub Division,
P.O. Bishramganj, District- west Tripura.

4. Senior Electrical Inspector,

Government of Tripura,
Agartala, Tripura West.

..... Respondents.

**BEFORE
THE HON'BLE MR.JUSTICE S.C. DAS**

For the Petitioner : Mr. A. De, Advocate.

For the Respondents : Mr.D.C. Nath &
Mr. N. Majumder, Advocates.

Date of hearing & : **20.04.2015.**
delivery of judgment
and Order.

Whether fit for reporting : **YES**

JUDGMENT & ORDER(ORAL)

By filing this writ petition, the petitioner prayed for directing the respondents to pay her compensation of Rs.10,51,333/- for the death of Narayan Chandra Ghosh who died due to electrocution on 05.10.2006.

2. Heard learned counsel Mr. A. De for the petitioner and learned counsel Mr. D.C. Nath for the respondent Nos. 1, 2 and 3 and learned counsel Mr. N. Majumder for the respondent No.4.

3. In the title head of the writ petition, the petitioner Smt. Gita Ghosh mentioned that she is wife of Subhas Chandra Ghosh but learned counsel Mr. A. De at the time of hearing submitted that Smt. Gita Ghosh is the wife of deceased Narayan Chandra Ghosh and that it was a mistake in the title head of the writ petition wherein it is mentioned that the petitioner Smt. Gita Ghosh is the wife of Subhas Chandra Ghosh. It is further submitted by Mr. De that Subhas Chandra Ghosh is the father of the deceased Narayan Chandra Ghosh. He has also submitted that in para 9 of the writ petition it has been mentioned that the

petitioner Smt. Gita Ghosh is the wife of deceased Narayan Chandra Ghosh.

4. The case of the petitioner is that on 04.10.2006 at about 5-30 p.m., the deceased Narayan Chandra Ghosh along with other members of Nabatara Club were on a procession for the immersion of the idols of goddess Durga. At Rangapania, Pathaliaghat near Don Bosco School suddenly the overhead electric wire sparked and snapped over Narayan Chandra Ghosh and others and as a result, Narayan Chandra Ghosh and his companion Arabinda Das sustained severe burn injury and they were taken to G.B. Hospital wherefrom they were referred to SSKM hospital, Kolkata. On 05.10.2006 at 00-30 a.m. Narayan Chandra Ghosh died in the G.B. hospital and Arabinda Das died on the same date at 3-40 a.m.

It is the case of the petitioner that because of negligence on the part of the respondents, the live electric wire snapped from overhead electric line and Narayan Chandra Ghosh got electrocuted. A police case No.48 of 2006 was registered on 07.10.2006 under Section 304(A) of IPC and postmortem was also conducted over the dead body. A copy of the FIR annexed as Annexure-1 to the writ petition; a copy of death certificate is annexed as Annexure-

2 to the writ petition and a copy of the postmortem certificate is annexed as Annexure-3 to the writ petition.

It is also contended by the petitioner that Narayan Chandra Ghosh was 27 years old at that time and he was a businessman of Bishramganj Bazar and he used to earn Rs.7000/- per month. Because of the death of Narayan Chandra Ghosh due to the negligence of the respondents, the petitioner suffered financial loss and she gave notice to the respondents on 05.08.2009 but did not receive any response from the respondents. The petitioner, therefore, claimed compensation of Rs.10,51,333/-.

5. Respondent Nos. 1, 2 and 3 submitted a joint counter affidavit, *inter alia*, contending that the petitioner suppressed the fact that for the death of Narayan Chandra Ghosh she along with others filed a claim petition before permanent Lok Adalat vide Lok Adalat Case No.222(B) of 09 and the Lok Adalat by order dated 25.11.2009 disposed the case holding that there was no negligence on the part of the Tripura State Electricity Corporation Ltd. Since the petitioner and other successors of Narayan Chandra Ghosh already filed a case before the Lok Adalat and that has been disposed of, the present writ petition is not maintainable. It is also contended by the respondents that the petitioner would approach the Civil Court within two years from the date of death seeking compensation but they did not do so

rather they have filed the writ petition after about 4 years and since alternative remedy was available before appropriate forum the writ petition is not maintainable. The respondents denied the allegation of negligence on their part for the death of Narayan Chandra Ghosh.

6. The issues which fell for consideration are—

- (i) Whether the writ petition is maintainable in view of the fact that there are disputed questions of fact and that remedy was otherwise available before a Civil Court?
- (ii) Whether the petitioner suppressed the material fact and therefore is guilty of not coming in clean hand?

7. Learned counsel Mr. De has contended that it is not in dispute that Narayan Chandra Ghosh died due to electrocution and the respondents only denied the negligence on their part. It is contended by Mr. De that negligence on the part of the respondents is evident which may be inferred from the facts presented before this Court and since the right to life of Narayan Chandra Ghosh has been infringed, the doctrine of strict liability is applicable and compensation may be awarded to the petitioner.

8. Learned counsel Mr. Nath and learned counsel Mr. Majumder contended that the writ petition itself is not maintainable since the petitioner would approach the Civil Court within 2 years from the date of the alleged death and relief was available before the Civil Court. Since disputed facts are there and the petitioner is required to prove negligence on the part of the respondents to get compensation, writ Court cannot grant the relief without taking evidence on the allegation of negligence.

9. Admittedly, the incident as alleged occurred on 04.10.2006 and the deceased Narayan Chandra Ghosh died on 05.10.2006. The writ petition is filed on 10.09.2010 i.e. after about four years. Mr. De learned counsel for the petitioner has submitted that the limitation for filing a suit for compensation has expired and therefore, under compelling situation the petitioner approached this Court under Article 226.

10. Learned Counsel Mr. Nath has submitted that once the claim of the petitioner was barred by ordinary law, the petitioner cannot maintain the writ petition seeking the same relief. Mr. Nath and Mr. Majumder learned counsel for the respondents heavily relied on the case **Chairman, Greed corporation of Orissa Ltd. (GRIDCO) & Ors. Vs. Sukamani Das(Smt.) & Anr.** reported in **(1999) 7 SCC 298**

and also relied on the decision of the Apex Court in the case of **Swami Atmananda v. Swami Bodhananda & Ors.** reported in **(2005) 3 SCC 734**.

11. On the other hand, learned counsel Mr. De, relied on a decision of the Gauhati High Court in **Md. Altaf Ali & Anr. v. The State of Assam & Ors.**, reported in **2012 (3) GLD 371(Gau)** and the case of **S.K. Shangring Lamkang & Anr. v. State of Manipur & Ors.**, reported **2009 (1) GLD 96 (Gau)**.

He has also relied on the decision of the Orissa High Court in the case of **Udaya Gagarai v. Executive Engineer, Electrical Division & Anr.**, reported in **2014 ACJ 2029** and a decision of the Kerala High Court in the case of **Varghese & Anr. v. Kerala State Electricity Board**, reported in **2014 ACJ 2153**.

It is contended by Mr. De that the right of the petitioner to approach this Court under Article 226 of the Constitution cannot be taken away simply on the ground that she did not approach the Civil Court.

12. It is the case of the petitioner that Narayan Chandra Ghosh died as a result of electrocution and it is the further case of the petitioner that the respondents were negligent and as a result the incident of electrocution occurred.

13. The respondents by filing counter affidavit denied the allegation of negligence. There is, therefore, a dispute as to whether there was contribution of negligence on the part of the respondents to bind them for an actionable wrong.

14. The Fatal Accidents Act, 1855 prescribes clear provision of suit for compensation to the family of a person for loss occasioned to it by his death by actionable wrong. Section 1(A) of the Act reads as follows:-

“1A. Suit for compensation to the family of a person for loss occasioned to it by his death by actionable wrong.--Whenever the death of a person shall be caused by wrongful act, neglect or default, and the act, neglect or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, the party who would have been liable if death had not ensued, shall be liable to an action or suit for damages, notwithstanding the death of the person injured and although the death shall have been caused under such circumstances as amount in law to felony or other crime.”

15. Admittedly, the petitioner did not file any suit for compensation as per the above provision of the Fatal Accidents Act. While a remedy was available to the petitioner under a statute, she would take advantage of that statute and therefore avoiding that statute she cannot invoke the writ jurisdiction of the High Court to seek same relief which was available before the Civil Court.

16. In the case of **Md. Altaf Ali (supra)**, a Single Bench of the Gauhati High Court decided that a writ petition seeking compensation for an accidental death due to electrocution was maintainable. In that reported case, the negligence alleged was admitted and the Court granted compensation.

The facts in this case is otherwise. Here the allegation of negligence has been denied and so ratio of that decision cannot be applied in this case.

17. The fact of **S.K. Shangring Lamkang (supra)** is also distinguishable to that of the fact of this case and hence, the decision cannot help the case of the petitioner.

18. Similarly, the facts of the case of **Udaya Gagarai (supra)** and the case of **Varghese (supra)** are distinguishable, the decisions cannot be of any aid or advantage to the petitioner.

19. The Supreme Court in the case of **Sukamani Das (supra)** has almost in a similar case has held that the writ petition is not maintainable while there is disputed question of facts. In Para 6 and 7 of the judgment the Court held—

“6. In our opinion, the High Court committed an error in entertaining the writ petitions even though they were not fit cases for exercising power under Article 226 of the Constitution. The High Court went wrong in proceeding on the basis that as the deaths had taken place because of electrocution as a result of the deceased coming into contact with snapped live wires of the electric transmission lines of the appellants, that "admittedly/prima facie amounted to negligence on the part of the appellants". The High Court failed to appreciate that all these cases were actions in tort and negligence was required to be established firstly by the claimants. The mere fact that the wire of the electric transmission line belonging to Appellant 1 had snapped and the deceased had come into contact with it and had died was not by itself sufficient for awarding compensation. It also required to be examined whether the wire had snapped as a result of any negligence of the appellants and under which circumstances the deceased had come in contact with the wire. In view of the specific defences raised by the appellants in each of these cases they deserved an opportunity to prove that proper care and precautions were taken in maintaining the transmission lines and yet the wires had snapped because of circumstances beyond their control or unauthorised intervention of third parties or that the deceased had not died in the manner stated by the petitioners. These questions could not have been decided properly on the basis of affidavits only. It is the settled legal position that where disputed questions of facts are involved a petition under Article 226 of the Constitution is not a proper remedy. The High Court has not and could not have held that the disputes in these cases were raised for the sake of raising them and that there was no substance therein. The High Court should have directed the writ petitioners to approach the civil court as it was done in OJC No. 5229 of 1995.

7. Reliance placed by the learned counsel for the respondents on the decision of this Court in Shakuntala Devi v. Delhi Electric Supply Undertaking, [1995] 2 SCC 369 is really of no avail to the respondents. Even while entertaining

a writ petition under Article 32 of the Constitution, in view of the peculiar facts of that case, this Court observed in clear terms that "the question of negligence of officials of Respondent 1 can be properly examined in a suit where correct facts can be established." In that case, respondent No. 1 was directed to make payment of reasonable amount ex gratia in exercise of the power under Article 142 of the Constitution and that too because respondent 1 had agreed to that course being adopted. The power which is available to this Court under Article 142 is not available to the High Courts, as observed by this Court in Sanchalakshri & Anr. v. Vijayakumar Raghuvirprasad Mehta & Anr. JT (1998) 8 SC 55: (1995) 2 SCC 369."

20. In the present case there are clear disputed facts. The claim of the petitioner that because of negligence on the part of the respondents, the accident occurred has been denied by the respondents. The issue involved in this case is clearly covered by the decision of the Apex Court in the case of **Sukamani Das (supra)**.

21. The petitioner would approach the Civil Court for compensation under the Fatal Accidents Act but she did not avail the scope. The other legal representatives of deceased Narayan Chandra Ghosh has not been made party in this writ petition though we find that father of the deceased Subhas Chandra Ghosh along with others filed the petition before Lok Adalat for compensation which has been dismissed. The writ petition seeking compensation for actionable wrong is, therefore, not maintainable since there

are disputed facts which ought to be decided by taking evidence of the parties.

22. The next issue which has fallen for consideration of this Court is whether the petitioner approached this Court with clean hand. Respondents brought on record that after the death of Narayan Chandra Ghosh his father Subhas Chandra Ghosh and others filed a petition before Lok Adalat seeking compensation and it was registered as Lok Adalat Case No.222(B) of 2009 and copy of order dated 25.11.2009 has been annexed as Annexure-R/2 to the counter affidavit which shows that Lok Adalat dismissed the claim of the petitioners. The writ petitioner did not disclose anything about that Lok Adalat case. Even after filing of counter affidavit, the petitioner did not give any response to controvert the allegation by filing any rejoinder affidavit. It is, therefore, admitted position that after the death of Narayan Chandra Ghosh his father and others, which include the petitioner, as alleged in the counter affidavit, filed petition before Lok Adalat for compensation and that has been dismissed. This is a clear suppression of material fact and the petitioner is guilty of such suppression and therefore, I have no hesitation to come to conclusion that the petitioner did not approach this Court with clean hand and that the writ petition has been brought only with a view to somehow earn some compensation by any means.

23. The writ petition, therefore, is found to be devoid of any merit and hence, stands dismissed.

24. Parties to bear their own costs.

JUDGE.