

**HIGH COURT OF TRIPURA
AGARTALA**

W.P(C) NO.429 OF 2010

1. Smti Ancharan Bibi,
W/o Late Shoukaut Ali.

2. Mahammad Shiab Uddin,

3. Mahammad Riyaj Uddin,

4. Mahammad Main Uddin,

All are sons of late Shoukaut Ali,
R/o Vill Sukantanagar,
P.S. Kumarghat, Tripura North.

The Petitioner No.4 is being minor represented
by her natural guardian mother Smti Ancharan
Bibi, W/o Late Shoukaut Ali.

...Petitioners.

- Versus -

1. The Chairman cum Managing Director,
Tripura State Electricity Corporation Limited,
Near Bhuturia, Mara Chowmuhani,
P.O. Banamalipur, Agartala,
West Tripura.

2. The General Manager cum Company Secretary,
Tripura State Electricity Corporation Limited,
Near Bhuturia, Mara Chowmuhani,
P.O- Banamalipur, Agartala,
West Tripura.

**3. The Senior Manager (Sub Divisional Office
Electrical)**
Tripura State Electricity Corporation Limited,
P.O. Kumarghat, Kumarghat, North 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 : **NO**

JUDGMENT & ORDER(ORAL)

By filing this writ petition, the petitioners prayed for issuing appropriate writ directing the respondents to pay them compensation of Rs.5,95,000/- for the death of Shoukaut Ali, husband of petitioner no.1 and father of petitioner Nos. 2 to 4 who died on 14.01.2006 due to electrocution.

2. Heard learned counsel Mr. A. De for the petitioners; learned counsel Mr. D.C. Nath for respondent No. 2 and 3 and learned Counsel Mr. N. Majumder for respondent No. 4.

3. It is, *inter alia*, contended by the petitioners that on 14.01.2006 at about 2.00 p.m. the deceased Shoukaut Ali climbed up a jackfruit tree near his house to pluck some jackfruit leaves for his domestic goats and at that time he came in contact with live electric line which was touching the jackfruit tree and as a result he got electrocuted. The local people brought him down and it was found that he

was already dead. The petitioners contended that the respondents did not maintain electric line properly as a result of which it came in contact with the live jackfruit tree and the accident occurred because the petitioner could not notice it and when he climbed up the tree he came in contact with the live electric line got electrocuted. It is further contended by the petitioners that for the death of Shoukaut Ali due to electrocution the Block Development Officer Kumarghat R. D. Block paid compensation of Rs. 10,000/- to the petitioner and a copy of that sanction order has been annexed as Annexure-4 to the writ petition. After the death of Shoukaut Ali an unnatural death case No. 01/06, under Section 174 was Cr.P.C. was registered and post mortem was done over the dead body. Since Shoukaut Ali died due to electrocution because of the negligence of the respondents, the petitioners claimed that they are entitled to compensation.

4. The respondents by filing counter affidavit contended that there was no negligence on the part of the respondents for the accidental death of Shoukaut Ali. It is further contended by the respondents that the writ petition is not maintainable since the petitioner did not approach the civil Court as per the provision prescribed in the Fatal Accidents Act. The incident occurred in the year 2006 and the petitioner came before this Writ Court after 4 years

seeking compensation alleging negligence on the part of the respondents which is not maintainable. The respondents, therefore, prayed for dismissal of the writ petition since there is no actionable wrong on the part of the respondents.

5. Section 1A of the Fatal Accidents Act, 1855 prescribes provision for suit for compensation to the family of a person for loss occasioned to it by the death of the person by actionable wrong. Section 1A 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.”

6. Admittedly the petitioners did not approach the Civil Court under the above provision of law seeking compensation for the actionable wrong alleged to have committed by the respondents. They have approached this Court by filing a writ petition and prayed for exercising plenary jurisdiction of this Court under Article 226. While a remedy is prescribed under a statute, in the disputed facts,

I am of considered information that the writ petition is not maintainable.

7. Learned counsel Mr. De has submitted that a writ petition seeking compensation for the death due to electrocution is maintainable since the death of deceased due to electrocution has not been disputed. He has also contended that negligence can be presumed from the facts brought on record and doctrine of strict liability may be applied. In support of his contention he has relied on two Gauhati High Court decisions i.e. **Md. Altaf Ali & Anr. v. The State of Assam & Anr.**, reported in **2012 (3) GLD 371(Gau)** and **S.K. Shangring Lamkang & Anr. v. State of Manipur**, reported in **2009 (1) GLD 96 (Gau)**.

He has also referred the case of Hon'ble 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**.

8. Countering the submission of learned counsel Mr. De, learned Counsel Mr. Nath and learned counsel Mr. Majumder referring the decision of the Apex Court in the case of **Chairman, Greed corporation of Orissa Ltd.**

(GRIDCO) & Ors. Vs. Sukamani Das(Smt.) & Anr. reported in **(1999) 7 SCC 298** submitted that this case and the fact of that reported case are almost similar and the Apex Court has decided that in such cases of disputed facts the writ petition is not maintainable.

9. I have meticulously gone through the case laws referred by learned counsel of both side. The facts of the case laws referred by learned counsel Mr. De as I find are clearly distinguishable and the ratio, therefore, cannot be applied in the fact of the present case.

10. In the case of **Sukamani Das (supra)** the Apex Court in para 6 and 7 has observed—

“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."

11. The fact of this case and the fact of **Sukamani Das (supra)** are almost similar. The allegation that the respondents were negligent in maintaining the overhead live electric wire has been denied by the respondents. The petitioners, therefore, were required to prove the fact by adducing evidence in an appropriate Civil forum to establish actionable wrong on the part of the respondents. The petitioner tried to avoid the appropriate Civil forum and jumped to this Court to seek relief under writ jurisdiction which in my considered opinion is not maintainable. The writ Court cannot grant any relief in the disputed facts.

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

13. Parties to bear their own costs.

JUDGE.