



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.10.2015

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P(MD)No.16579 of 2013

and

M.P(MD)No.1 of 2013

Pandiyammal

... Petitioner

Vs.

- 1.The Chairman, TNEB
TNEB Electricity Avenue,
300, Anna Salai,
Chennai-2.
- 2.The Chief Engineer,
TNEB, Electricity Avenue,
300, Anna Salai,
Chennai-2.
- 3.The Assistant Engineer,
TNEB Uranganpatti,
Varichiyur Post,
Madurai North Taluk,
Madurai-20.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents to pay compensation of Rs.10,00,000/- (Total claim Rs.10,00,000/- as compensation) to the petitioner for the death of the petitioner's husband viz., Velu.

For Petitioner : Mr.M.A.Palanisamy

For Respondents : Mr.S.M.S.Johnny Basha

ORDER

The petitioner has claimed a sum of Rs.10,00,000/- as compensation from the respondents for the death of her husband Velu, who died on 07.05.2008 due to electrocution.

2.Fact of the case:-

According to the petitioner, her husband was doing agricultural work and Chamber work. He was earning Rs.500/- per day and maintaining his family. The petitioner and her husband have 7 children and petitioner's husband was the only earning member and he was maintaining the family. On 07.05.2008, when he went to Sugarcane field, he stepped on the live electric wire which was snapped from the pole and was lying on the ground, was suddenly attacked by electrocution and succumbed to death on the spot. The respondents are responsible for maintaining the electric Lines to the petitioner's village and other village. It is the duty to the respondents to maintain all the electricity connections, poles,

wires, transformers and other equipments in the village without any danger to the public.

3. According to the petitioner, the electric wire snapped and fell to the ground on 05.05.2008. The respondents and their employees ought to have switched off the electricity supply and set-right the damage. They failed to do so. The petitioner's husband died due to electrocution as the respondents were negligent in performing their duties.

4. A complaint was registered in Cr.No.100 of 2008 under Section 174 of Cr.P.C., by Inspector of Police, Silaiman Police Station. In the post mortem certificate, the Doctor has stated that "deceased would appear to have died of electrocution".

5. The petitioner sent notices dated 12.06.2008 and 20.03.2012 to the respondents, but the respondents failed to pay the compensation. In the circumstances, the petitioner has come out with the present writ petition claiming compensation of Rs.10,00,000/- from the respondents for the death of her husband Velu.

6. The third respondent filed counter affidavit for himself and on behalf of the respondents 1 and 2. The respondents have stated that the writ petition for compensation is not maintainable and that petitioner must approach only Civil Court and prove by evidence, negligence on the part of the respondents and quantum of compensation. The petitioner's husband did not die due to negligence on the part of the respondents. The accident occurred due to natural calamities, which is Act of God and the respondents cannot be held liable. The accident did not occur due to negligent act of respondents. The disputed questions of facts cannot be decided in the writ proceedings. Hence prayed for dismissal of the writ petition.

6. I have carefully perused the materials available on record and heard the arguments of the learned counsel for the petitioner and the respondents.

7. The main contention of the respondents is that the writ petition claiming compensation by petitioner is not maintainable. The remedy available to the petitioner is only by way of Civil proceedings. This contention is untenable and unsustainable. This issue is no longer res-integra. This Court in the following cases have held that in writ proceedings, this Court can grant compensation when the facts are un-disputed.

I) 2013 Writ L.R.176 (K.Sambath v. The Superintendent Engineer-I, Puducherry Electricity Board) in Paragraphs 7 of the said Judgment reads as under:-

"7. As already stated the death of petitioner's wife Malathy due to electrocution is not disputed. Her age and income are also not disputed. In such circumstances, respondents cannot contend that the petitioner has to approach the Civil Court for the claim of compensation. The cause of death having been admitted and the negligence also having been proved, respondents cannot escape from the liability of paying compensation to the petitioner and his family members."

<https://hcservices.ecourts.gov.in/hcservices/> 11/2014(3) CTC 553 (Saroja v. Government of Tamil Nadu) in Paragraphs 7 of the said Judgment reads as under:-

"7. The contention of the Respondents that the Petitioner has to approach the Civil Court for claiming Compensation is not correct. This Court considering the various decisions held that if the facts are not in dispute, and the death is due to negligence on the part of the State Authorities, the Legal Heirs of the deceased can claim Compensation in Writ proceedings."

iii) This Court in the Judgment, dated 29.04.2014, made in W.A. (MD) Nos. 1021 & 1021 of 2012 (The Chairman, TNEB, Chennai and others Vs. Karuppayeemmal), in which I was a party, held that compensation for death due to negligence of opposite party is maintainable by way of writ proceedings. Paragraphs 9, 10 and 11 of the said judgment read as under:-

"9. The learned counsel for the appellants contended that the writ petitions claiming compensation are not maintainable and that the proper remedy is only before the civil Court by way of civil suit. But his contention is untenable as this issue is no longer res integra.

10. One of us (V. Ramasubramanian, J) had an occasion to consider this issue recently in a decision dated 28.02.2014 in Writ Petition No. 61 of 2009 [D. NARAYANASAMY VS. THE DISTRICT COLLECTOR AND OTHERS]. It was held therein:

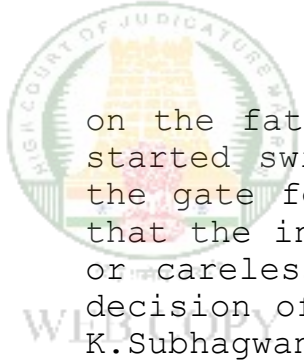
"when things speak for themselves, this Court has a constitutional social obligation not to drive the parties to the civil Court especially in the cases of this nature. This is borne out by several decisions of Supreme Court as well as this Court."

11. The above conclusion was arrived at, based on the following judgments mentioned in Paragraph Nos. 28 to 32 in D. Narayanaswamy vs. The District Collector and others, which is as follows:

"28. In M.S. Grewal vs. Deep Chand Sood [2001 (8) SCC 151], the Supreme Court was concerned with the case of 14 young children, who were all students of 4th, 5th and 6th standards of a public school, who were drowned in river Beas. In a writ petition filed by the parents of the unfortunate children, the High Court awarded compensation. The management went on appeal to the Supreme Court. Among other questions, a question of maintainability of the writ petition was raised before the Supreme Court. But the same was rejected by the Supreme Court by pointing out that the Law Courts exist for the society and that the Courts have an obligation to meet the social aspirations of the citizens.

29. In Rabindra Nath Ghosal vs. University of Calcutta [2002 (7) SCC 478], the Supreme Court again reiterated that the Courts have the obligation to satisfy the social aspirations of citizens and to apply the tool and grant compensation as damages in public law proceedings. The Court also pointed out that while enforcing fundamental rights and granting compensation, the Courts, acting under Article 226, do so under the public law by penalising the wrong doer and fixing the liability for the public wrong.

30. In Singaraj vs. State of Tamil Nadu [2009 (1) MLJ 416], the parents of 4 minor children, who were crushed to death, when the compound wall of the school collapsed, came up before this Court under Article 226 claiming compensation. A defence was taken that



on the fatal day, a few students climbed on to the grill gate and started swinging it back and forth. Unable to bear their weight, the gate fell down and crushed them. Therefore, a stand was taken that the incident was an act of God and that there was no negligence or carelessness on the part of the management. After citing the decision of the Supreme Court in *Municipal Corporation in Delhi vs. K.Subhagwanti* [AIR 1966 SC 1750], highlighting the liability of the owners to ensure the safety of the structures owned by them, K.Chandru, J, held that when children of tender age are sent to a State supported school, it is the responsibility of the school and the State to take care of the safety of the children. The learned Judge also observed that no negligence can be attributed to the children of tender age. To come to the said conclusion, the learned Judge relied upon two passages from the decision of the Supreme Court in *M.S.Grewal*, where the Supreme Court pointed out that the safety of children are of prime concern for the school authorities and that till such time the children return to school, safe and secure after picnic, the course of employment continues and resultantly, the liability of the school.

31. In *T.M.Kamalanathan vs. Government of Tamil Nadu* [2009 (1) MLJ 634], a claim for compensation was made by the father of a minor boy, for the death of his son due to electrocution. After citing the decision of the Full Bench of this Court in *P.P.M.Thangaiah Nadar Firm vs. Government of Tamil Nadu* [2007 (2) MLJ 685], K.K.Sasidharan, J., allowed the writ petition and granted compensation.

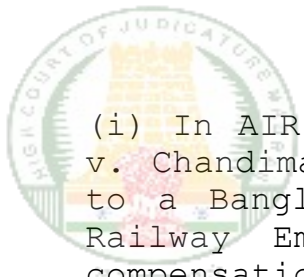
32. In *Ganesan vs. State of Tamil Nadu* [2012 (2) CTC 848], a claim for compensation was made by the parents of a minor boy, who was killed in a bomb blast. The writ petition and granted compensation."

Therefore, the contention of the appellants that only civil Court is the proper forum is untenable and unsustainable and hence, the same is rejected.

iv) On earlier occasion, I have considered this issue in W.P. (MD) No. 7846 of 2010 and W.P. (MD) No. 8423 of 2012 and following the above judgments by the order dated 15.04.2015 held that a writ petition claiming compensation for the death of a person, due to negligence of Official Respondents is maintainable.

8. As far as quantum of compensation payable is concerned there is no codified law for arriving at quantum of compensation. Loss of human life cannot be compensated by payment of money. But in order to arrive at just compensation, the provisions of Motor Vehicles Act, 1988, Employees Compensation Act 1948 and Fatal Accident Act, 1948 may be applied. The quantum of compensation and method of calculating the same was considered by this Court in the order reported in 2013 Writ L.R.176 (*K.Sambath v. The Superintendent Engineer-I, Puducherry Electricity Board*).

"9. Payment of compensation can be ordered by the High Court in appropriate case, particularly when there is no factual disputes, under Article 226 of the Constitution of India, is no longer res integra. In this regard, the following decisions can be usefully referred to.



(i) In AIR 2000 SC 988 : (2000) 2 SCC 465 (Chairman, Railway Board v. Chandima Das), a sum of Rs.10 lakhs was awarded as compensation to a Bangladeshi National, who was sexually assaulted by Eastern Railway Employee. Order of the High Court awarding the said compensation was upheld by the Supreme Court.

(ii) In AIR 2001 SC 3668 : (2001) 8 SCC 151 (M.S.Grewal v. Deep Chand Sood), Rs.4.10 lakhs each was awarded for the unfortunate death of 14 young children, who died due to drowning in a river, when they were on picnic organised by the School authorities.

(iii) In (2005) 9 SCC 586 (MCD v. Association of Victims of Uphaar Tragedy) the Supreme Court ordered payment of compensation to the families of those, who died in Uphaar Tragedy and directed the MCD to deposit Rs.3,01,40,000/- (Rupees Three Crores One lakh and Forty thousand) and 50% of the said amount was directed to be distributed to the Claimants.

(iv) In 2011 AIR SCW 4916 (Delhi Jal Board v. National Campaign for Dignity and Rights of Sewerage and Allied Workers), the Supreme Court enhanced the compensation awarded by the High Court of Delhi to sewerage workers' family to Rs.3.29 lakhs, over and above Rs.1.71 lakhs already paid by the Government.

Insofar as our High Court is concerned, the said issue is dealt with in several cases. Few decisions are as follows:

(a) 2001 WLR 174 (C.Chinnathambi v. State of Tamil Nadu) Rs.1.50 lakhs with 12% interest was ordered to be paid to each school students, who died while water tank broke and fell on them.

(b) 2004 WLR 346 (Smt.R.Dhanalakshmi v. Government of Tamil Nadu) - Rs.9.00 lakhs was ordered to be paid to the family of a prisoner, who was killed while in custody.

(c) 2004 WLR 611 (DB) (The Chief Secretary to the Government of Tamil Nadu v. Mrs.R.Selvam) Rs.5.00 lakhs was ordered to be paid by the State due to the killing of a medical student inside the Government Medical College Hostel.

(d) 2006 WLR 13 (DB) (C.Thekkamalai v. State of Tamil Nadu) The Division Bench enhanced the compensation from Rs.75,000/- to Rs.5.00 lakhs for the rape victim, who was illegally arrested and raped.

(e) 2006 WLR 608 (Lakshmana Naidu (decd) v. State of Tamil Nadu & Another) A sum of Rs.5.00 lakhs was ordered as compensation to the family of the deceased.

(f) 2008 (6) CTC 144 (P.N.Kanagaraj v. Chief Secretary, State of Tamil Nadu) Rs.4.10 lakhs with 9% interest was ordered for the death of a school boy.

(g) 2009 (1) CTC 434 (Subramaniam v. State of Tamil Nadu) A sum of Rs.3.50 lakhs was directed to be paid for the death of a student in the school due to negligence of the Government School Teacher.

(h) 2010 WLR 851 (DB) : 2010 (1) CWC 455 (T.Sekaran v. State of Tamil Nadu & Others) - A sum of Rs.9,07,000/- was directed

to be paid to the family of a person, who was shot dead by the Security Warden of Madurai Central Prison.

(i) 2011 (1) CWC 786 (The Registrar Administration, Madurai Bench of Madras High Court v. Secretary to Government, Home Department) A sum of Rs.10 lakhs was ordered to the family of an advocate, who died due to not providing immediate medical treatment, in the High Court premises.

(j) 2011 (6) CTC 636 (P.Ravichandran v. The Government of Tamil Nadu) A sum of Rs.18.00 lakhs was ordered as compensation to the victim, who suffered 100% disability while doing drainage work.

(k) 2012 (2) CTC 848 (Ganesan v. The State of Tamil Nadu) A sum of Rs.10.00 lakhs was ordered to be paid by the State to the family of a victim, who died due to bomb attack while travelling in a Transport Corporation Bus.

(l) In (2011) 1 MLJ 1409 (V.Ramar v. Director of Medical and Rural Health Services) this Court directed the State to pay a sum of Rs.5.00 lakhs to the family of a woman, who died during delivery due to the negligence of the Government Hospital authorities.

(m) In (2011) 1 MLJ 1329 (Thangapandi v. Director of Primary Health Services) A sum of Rs.5 lakhs was ordered to the family of a woman, who died after delivery, due to not giving proper treatment by Government Hospital Doctors.

(n) In W.P.No.23003 of 2011 dated 24.11.2011 this Court awarded a sum of Rs.10.00 lakhs to the family of a deceased student as he was killed while staying in Government Hostel.

(o) In W.P.No.20081 of 2007 dated 4.6.2012 I had an occasion to award a sum of Rs.29.26 lakhs to the petitioner therein, who lost both his parents due to fall of a tree on the road side.

Applying the above decisions to the facts of this case, I am of the view that the respondent department is liable to pay compensation to the family of the petitioner for the death of petitioner's wife Malathy due to electrocution on 17.5.2009.

10. There is no codified law for arriving at the quantum of compensation in cases of this type. The enactments like Motor Vehicles Act, 1988; Workmen Compensation Act, 1948; and Fatal Accidents Act, 1855 may be applied for arriving at the just compensation. In the decision reported in (1969) 3 SCC 64 (C.K.Subramania Iyer v. T.Kunhikuttan Nair) the Supreme Court held that there is no exact uniform rule for measuring the value of human life and the measure of damages cannot be arrived at precisely. In the decision reported in (2001) 8 SCC 151 (M.S.Grewal v. Deep Chand Sood) the Supreme Court held that multiplier method may be adopted to arrive at the just compensation. The age of the deceased can also be taken for arriving at a correct multiplier as per the judgment of the Supreme Court reported in 2011 (5) LW 408 (P.S.Somanathan & Others v. District Insurance Officer & Another).

11. How the Court should decide the cases of this nature is emphasised by the Supreme Court in the decision reported in (2011)



10 SCC 634 (Ibrahim v. Raju). In para 9 it is held thus, "9. This Court has time and again emphasised that the officers, who preside over the Tribunals adopt a proactive approach and ensure that the claims filed under the Act are disposed of with required urgency and compensation is awarded to the victims of the accident and/or their legal representatives in adequate measure keeping in view the relevant factors. Unfortunately, despite repeated pronouncements of this Court in which guiding principles have been laid down for determination of the compensation payable to the victims of road accidents and/or their families, the Tribunals and even the High Courts do not pay serious attention to the imperative of awarding just compensation to the claimants."

This order was referred to in the order of this Court reported in 2014(3) CTC 553 (Saroja v. Government of Tamil Nadu). After referring to the above order, this Court in paragraphs 10 to 14 held as follows:-

"10. Since the deceased was a bachelor, one half of the income has to be deducted towards personal and living expenses of the deceased in view of the decision reported in Sarla Verma vs. - Delhi Transport Corporation reported in 2009(2) TN MAC 1 (SC). Accordingly, the loss of income to the mother of the deceased is fixed at Rs.31,200/- (Rs.62,400/- x 50% = Rs.31,200/-) per annum.

11. Based on the age of the deceased at 25 years, proper multiplier to be adopted in this case would be 18 in view the decisions reported in 2009(2) TN MAC 1 (SC) (cited supra). If multiplier 18 is applied, the loss of income to the mother of the deceased would be Rs.5,61,600/- (Rs.31,200/- x 18 = Rs.5,61,600/-).

12. In addition, a sum of Rs.30,000/- is granted towards loss of love and affection and Rs.10,000/- is granted towards funeral expenses. A sum of Rs.3,000/- is granted towards transport expenses. In all the following amounts are granted as compensation to the mother of the deceased:

Sl.No.	Heads	Amount of compensation
	Loss of income to the mother of the deceased	Rs.5,61,600/-
	Loss of love and affection to the mother of the deceased	Rs. 30,000/-
	Funeral expenses	Rs. 10,000/-
	Transport expenses	Rs. 3,000/-
	Total	Rs.6,04,600/-

13. Though the petitioner has claimed a sum of Rs.5,00,000/-, it is well known that the courts have got powers to enhance the compensation. This Court in the case of Arulmeri vs. - Superintendent Engineer, TNEB reported in (2013)2 MLJ 302, citing various decisions of this Court and the Apex Court granted higher compensation than the claim of the petitioner.

14. In view of the above, the Writ Petition is allowed as follows:-

(1) The petitioner is entitled to a sum of Rs.6,04,600/- (Rupees Six Lakhs Four Thousand and Six Hundred only) towards compensation on the death of her minor son.

(2) The respondents are directed to pay the above amount with interest at 7.5% per annum from the date of writ petition till date of deposit.

(3) The respondents are granted eight weeks time from the date of receipt of a copy of this order to deposit the above amount.

(4) There will be no order as to costs.

The connected M.P.'s are closed. "

9. Following the principles laid down in the above referred judgments and orders, I am of the view that the petitioner is entitled to compensation and quantum payable can be arrived at following the Provisions of Motor Vehicles Act. The petitioner has stated that her husband was earning Rs.500/- per day. The petitioner has not produced any evidence to substantiate her claim. In the circumstances, as per the judgment of Hon'ble Apex Court, income of deceased is fixed at Rs.6,000/- per month, which amounts to Rs.72,000/- per year. The deceased had 7 children. Therefore, 1/5 of the amount has to be deducted towards his personal expenses. 1/5th of Rs.72,000/- is 14,400/-. The deceased would have contributed (Rs.72,000 - 14,400 = 57,600/-) Rs.57,600/- for the maintenance of his family. The petitioner has not stated the age of her husband. From the post mortem certificate, it is seen that the age of the deceased is 55 years. As per the Hon'ble Apex Court in Sarla Verma v. Delhi Transport Corporation, 2009(2) TN MAC 1 (SC), the multiplier applicable is 11. By applying the multiplier 11 the amount comes to Rs.57,600 x 11 = 6,33,000/-, the same is rounded off to Rs.6,00,000/-. Hence, the petitioner is entitled to compensation of Rs.6,00,000/-.

10. In the result, the writ petition is disposed of directing the respondents to pay a sum of Rs.6,00,000/- as compensation to the petitioner within a period of six weeks from the date of receipt of a copy of this order. If the respondents fail to pay this amount within the time limit fixed, the compensation amount shall carry interest at 6% p.a. From the date of incident, viz., 07.05.2008 till the date of payment in full. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(J)

/True Copy/

Sub-Assistant Registrar



To

- 1.The Chairman, TNEB
TNEB Electricity Avenue,
300, Anna Salai,
Chennai-2.
- 2.The Chief Engineer,
TNEB, Electricity Avenue,
300, Anna Salai, Chennai-2.
- 3.The Assistant Engineer,
TNEB Uranganpatti,
Varichiyur Post,
Madurai North Taluk,
Madurai-20.

+One cc to Mr.N.Satheesh Kumar, Advocate, SR.No.61986

+One cc to Mr.S.M.S.Johnny Basha, Advocate, SR.No.62091

am

RL/ 6c- 2/11/2015

W.P. (MD)No.16579 of 2013

16.10.2015