

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.04.2016

Date of Reserving the Order	Date of Pronouncing the Order
28.04.2016	29.04.2016

Coram

The Hon'ble Mr. Justice T.S. SIVAGNANAM

W.P.No.11280 of 2016

Mamooth

.... Petitioner

Vs

1.The Chairman cum Managing Director,
Tamil nadu Electricity Board,
144 Anna Salai,
Chennai - 600 002.

2.The Commissioner,
Corporation of Chennai,
Chennai - 600 003.

3.The Inspector of Police,
B-1, Traffic Police,
North Transport Police Station,
Chennai - 600 001.

.... Respondents

Suo-moto impleaded as per order dated 28.03.2016 in W.P.No.11280 of 2016

Prayer :- Petition filed under Article 226 of the Constitution of India praying to issue Writ of Mandamus, to direct the respondents to pay compensation of Rs.10,00,000/- towards loss of life of my mother Musthiri wife of late Abdul Majid, who died on 15.04.2015.

For petitioners .. Mr.V.P.Rajendiran

For Respondents .. Mr.P.R.Dhilip Kumar for R1
Mr.P.V.Selvakumar for R2
Mr.M.L.Mahendran for R3

O R D E R

The petitioner has filed this Writ Petition praying for issuance of a Writ of Mandamus to direct the respondents to pay compensation of Rs.10,00,000/- towards the loss of life of his mother Mrs.Musthiri, W/o.Late Abdul Majid, who died due to electrocution on 15.04.2015.

2. Initially the petitioner claimed compensation from the Tamil Nadu Electricity Board and Corporation of Chennai. After notice was served on the respondents 1 & 2, it was brought to the notice of this Court that the electrocution occurred on account of leakage of electricity from a Traffic signal post, therefore, this Court suo-moto impleaded the Inspector of Police, B1 Traffic Police as the third respondent.

3. The petitioner's mother was said to be carrying on saree business, and she used to procure sarees from whole sale market and sell it in retail in her locality. After the demise of the petitioner's father, his mother had been taking care of him as well as his sisters and the petitioner's sister's marriage was performed by their mother out of the earnings from this retail saree business. On the fateful day i.e., 13.04.2015, the petitioner's mother had gone to Rajaji Salai at about 10.45 a.m and on that day there was heavy rain and because of lack of proper drainage system, water was stagnated in the road and petitioner's mother crossed the road at the Traffic signal near Indian Bank from Jaffer Sarang Street, when the petitioner's mother came in conduct with the stagnated water, she was electrocuted and she died instantaneously. With these facts, the petitioner claims for compensation alleging negligence on the part of the respondents.

4. The petitioner has filed the copy of the First Information Report in Crime No.378 of 2015, the copy of the postmortem report, death certificate, the legal heir ship certificate and the legal notice sent to the respondents along with the postal acknowledgement card.

5. The third respondent Police has filed a counter affidavit from which it is clear that the cause of death is not in dispute. The third respondent would state that the installation of the signal post is done by the Maintenance Department of the Traffic Police through a contract entered with the private company namely, M/s.Analog & Digital Labs, No.1250/2, Avinashi Road, Coimbatore, Dental Foundation Building, First Floor, T.N.Palayam, Coimbatore. From the counter affidavit, it is established that the leakage of electricity had occurred from the Traffic post and when the petitioner's mother came in

contact with the stagnated water, she was electrocuted. The third respondent would state that on account of unprecedented rains and stagnation of water, which crossed a particular height, the water might have seeped into the junction box and resulted in the electricity passing into the water. The third respondent would further state that the traffic police have taken preventive measures by providing proper maintenance by entering into annual maintenance contract with the said company. Therefore, it is stated that the Writ Petition is not maintainable and liable to be dismissed.

6. In the typed set of papers filed by the third respondent, copy of the annual contract for maintenance entered with M/s.Analog & Digital Labs, dated 17.07.2014, dated 23.07.2014, copy of the FIR, Copy of the report of death, postmortem certificate and photographs of the street corner have been produced.

7. Heard the learned counsels appearing for the parties and perused the materials placed on record.

8. As noticed above, the cause of death and the manner in which the incident occurred are not disputed by the respondents. Therefore, only three issues would be necessary to be considered, first issue as to whether this Court exercising Writ jurisdiction can direct compensation to be paid; second as to who should be directed to pay the compensation; and third what would be fair and reasonable compensation payable.

9. The first issue as to whether compensation for the death of a person, who died due to negligence of Government Authorities, by exercising jurisdiction under Article 226 of the Constitution of India, is no longer res integra. The long line of decisions on this aspect have been taken note by the Honourable Division Bench of this Court in the case of the Chairman, Tamil Nadu Electricity Board, Anna Salai, Chennai and others vs. Karuppayeeammal and another, in W.A.(MD) Nos.1020 and 1021 of 2012 while awarding compensation and it would be beneficial to refer the relevant portion of the said Judgment:

"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.Thangaiyah 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."

In the light of the above, this Court is entitled to exercise jurisdiction and award reasonable compensation if not to the fullest extent at least to provide succour to the grieved family.

10. The electrocution occurred on account of seepage of electricity from the Traffic signal post, this is admitted by the third respondent in the counter affidavit by adding that the maintenance has been entrusted to M/s.Analog & Digital Labs. If the electrical installations had been properly secured the incident could have been averted. On the admitted facts negligence is prima facie proved. Even if it is so, the Police Department would be vicariously liable for the negligence of their contractor. Therefore, the responsibility to compensate has to be fixed on the Police Department.

11. Coming to the next point namely what would be the reasonable compensation, admittedly, the petitioner has not produced any documents to establish the income his mother was earning, but he has stated that his mother took care of himself

and his sisters and after the demise of their father, she, from her income, performed the marriage of two of his sisters. Thus, the old lady appears to have been actually taking care of the family. Any amount of compensation ordered cannot bring back the petitioner's mother back to life. The postmortem certificate shows that she was aged about 64 years.

12. Thus, considering the facts and circumstances of this case, this Court is of the view that the Traffic Police Department should be directed to pay a sum of Rs.3,00,000/- (Rupees Three Lakhs only) as compensation for the death of the petitioner's mother, who died due to electrocution. Since the maintenance contract for the Traffic Signal has been allotted to a private company, the Police Department would be at liberty to recover the same from the said contractor by initiating appropriate proceedings in accordance with law. Since only the Inspector of Police has been made as a party in this Writ Petition, there will be a direction to the Police Department represented by its Additional Commissioner of Police, who is incharge of the Traffic Department, (South), Vepery, Chennai-7. The compensation amount of Rs.3,00,000/- shall be paid to all the legal heirs of the Mrs.Musthiri in equal proportion, within a period of eight weeks from the date of receipt of a copy of this order.

In the result, the Writ Petition is allowed on the above terms. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

सत्यमेव जयते

To

1.The Chairman cum Managing Director,
Tamil nadu Electricity Board,
144 Anna Salai,
Chennai - 600 002.

2.The Commissioner,
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Chennai - 600 003.

3.The Inspector of Police,
B-1, Traffic Police,
North Transport Police Station,
Chennai - 600 001.

1cc to Mr.P.V.Selvakumar, Advocate Sr.27754
+1cc to Mr.P.R.Dhilipkumar, Advocate Sr.27837
+1 cc to Mr.V.P.Rajendiran, Advocate SR 28980[20/6/16]

W.P.No.11280 of 2016

sv(CO)
srg(27/05/2016)



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