

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 28.03.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.26017 of 2015

K.Senthil

.. Petitioner

Versus

1.Government of Tamil Nadu,
Represented by its Secretary,
Electricity Department,
Fort St. George, Chennai - 600 009.

2.TANGEDCO LTD.,
(Tamil Nadu Electricity Board),
Rep. by its Chairman,
No.800, Anna Salai,
Chennai - 600 002.

3.The Assistant Engineer,
TANGEDCO LTD.,
(TNEB), Annanur,
Ambatur Taluk,
Thiruvallur District.

4.The State of Tamilnadu,
Rep. by its Inspector of Police,
T-10, Thirumullaivoyal Police Station,
Chennai-62.
.. Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a writ of Mandamus, directing the respondents 1 to 3 to pay a sum of Rs.14,37,000/- (Rupees Fourteen lakhs and thirty seven thousands only) as compensation to the petitioner with interest at 9% per annum towards loss of petitioner's wife (late) Mrs.Kanniammal, from the date of filing of writ petition, till its realisation in full.

For Petitioner : Mr.R.Veeramani

For Respondents : Mr.R.Rajeswaran (for R1 and R4)
Special Government Pleader
Mr.P.R.Dhilip Kumar (for R2 and R3)

O R D E R

Heard Mr.R.Veeramani, learned counsel appearing for the petitioner and Mr.R.Rajeswaran, learned Special Government Pleader appearing for the respondents 1 and 4 and Mr.P.R.Dhilip Kumar, learned counsel appearing for the respondents 2 and 3, accepting notice on behalf of respondents. With the consent of the learned counsel on either side, the Writ Petition is taken up for final disposal.

2. The petitioner is one K.Senthil, who was married to Mrs.Kanniammal, out of their wedlock, they have two children both of them are minors. The petitioner's wife was said to be working as a domestic help was also a sweeper in various houses in the locality. On the fateful day, i.e. on 21.01.2015, at about 11.30 a.m. she was returning after completing the work in a few houses, the day was windy and there was rains on the previous day resulting in stagnation of water on the road. The petitioner's wife attempted to cross a pool of water which was stagnated on the road and she did not realize that there was a live wire which was high tension wire which had snapped away from the electric pole and was in contact with the stagnated water. On coming in contact with the stagnated water, the petitioner's wife was electrocuted and was thrown away and the death was instantaneous. With these facts that the petitioner had lodged a police complaint and the fact that petitioner's wife died due to electrocution is not in dispute and the fourth respondent who is present in Court also confirmed that the death was due to electrocution. The petitioner has claimed compensation of Rs.14,37,000/- for the death of his wife. The petitioner has arrived at the monthly income of his wife to be Rs.5,000/- and towards future prospects has been arrived at Rs.7,500/- and after deducting of 1/4th of her personal expenses, the monthly income has been calculated at Rs.5,625/- and the income per year at Rs.67,500/-. The petitioner has applied 17 as the multiplier and arrived at total compensation of Rs.11,47,500/-. Under the other heads such as Funeral Expenses, Transport Expenses, Loss of Consortium, Loss of Love and Affection and Loss of care and protection to children, the petitioner has claimed various amount and in all Rs.14,37,000/-.

3. In the counter affidavit, the incident which resulted in the death of the petitioner's wife is not disputed. The respondents / Electricity Board however would state that they are properly maintaining the electrical fittings and the death was not due to negligence on the part of the respondent Board but it is arising out of an Act of God. Similar is the stand taken by the respondents 1 and 4 stating that the claim made by the petitioner being a liquidated damages, the petitioner has to approach the appropriate forum for claiming compensation. The issue as to whether compensation for a death of the person, who died due to negligence of the Government authorities by exercising jurisdiction under Article 226 of the Constitution of

India is no longer res integra and one such decision of the Hon'ble Division Bench is in the case of The Chairman, Tamil Nadu Electricity Board, Anna Salai, Chennai v. Karuppayeeammal, in W.A.(MD)Nos.1020 and 1021 of 2012 in the said decision the decisions of Hon'ble Supreme Court in the case of (2001) 8 SCC 151, M.S.Grewal v. Deep Chand Sood, (2002) 7 SCC 478, Rabindra Nath Ghosal v. University of Calcutta and the decision of this Court in Singaraj v. State of Tamil Nadu 2009 (1) MLJ 416 and 2009 (1) MLJ 634, 2007 (2) MLJ 685 and 2012 (2) CTC 848, were considered and was held that this Court is entitled to consider the claim for the grant of compensation while exercising the power under Article 226 of the Constitution of India and that being in exercise of enforcing fundamental rights of an individual.

4. The first aspect which has to be taken into consideration is as to whether the respondent/ Board was negligent. As noticed above the respondent/Board does not dispute that the electric wire which was a over head high tension wire has snapped and come in contact with the stagnated water. The Board has stated that proper maintenance has been done and the snapping of the wire is an act of God. If the wires had been properly secured to the installations and regular maintenance had been carried out, the wire would not have snapped. Since admittedly there is no allegation that during the relevant time there were any floods or storm in the area. Therefore, if the snapping of the wire occurred due to normal rain fall and this obviously would be enough to show that there was no proper and adequate maintenance. Thus there is definitely an act of negligence on the part of the respondent/Board making them liable for payment of compensation. It is true that having held so, it has to be seen as to whether the petitioner has to be paid compensation as demanded by him in the writ petition. In fact the calculation adopted by the petitioner is by adopting the formula normally adopted in the Motor Accident Claim Cases. The main issue in the instant case is as to what would be the monthly wages which the petitioner's wife would have earned as it is stated that she was a domestic help and sweeper.

5. In the affidavit filed in support of the writ petition, the petitioner has not stated as to his avocation but during the course of argument learned counsel for the petitioner submitted that he is also a Coolie. That apart, the ex-gratia amount which is been normally paid in such of cases of death due to electrocution has not been paid to the petitioner till date and the exact reasons for such non payment is not forthcoming.

6. The learned counsel for the petitioner would state that the minimum daily wages for a sweeper as notified by the Government of India by order dated 30.03.2015 is in the range of Rs.233/- to Rs.348/- per day. Thus, considering the over all circumstances, this Court is of the view that there should be some evidence placed before this Court to show that the

petitioner's wife was employed as sweeper and domestic help in various places and she had been earning on an average of Rs.5,000/- per month. However, this exercise cannot be done by this Court, since it is considering a case filed under Article 226 of the Constitution of India. However, considering the economic circumstances in which the petitioner is placed and his wife, who was aged about 29 years had left behind him and his two minor children one of whom is a daughter, who was aged about 4 years as of now and Son aged about 11 years. Therefore, in order to provide a succour to the family, this Court is of the view that a fixed amount of compensation should be directed to be paid and this being an adhoc compensation leaving into open to the petitioner to approach the appropriate forum for further compensation, if he is so advised. Under normal circumstances, this Court would have directed payment of Rs.5,00,000/- to the petitioner as adhoc compensation. But in the instant case, the ex-gratia amount which is normally paid in such cases of death due to electrocution, which is stated to be around Rs.2,00,000/- was not paid. Therefore, this Court is inclined to fix the adhoc compensation at Rs.7,00,000/-. However, this will not prevent the petitioner from approaching the appropriate forum for further compensation.

7. In the result, the writ petition is partly allowed and the respondents 2 and 3 are directed to pay a sum of Rs.7,00,000/- as compensation for the death of the petitioner's wife and this compensation is an adhoc compensation. Out of the said amount of Rs.7,00,000/-, Rs.5,00,000/- shall be paid to the petitioner and Rs.1,00,000/- shall be invested in the name of the petitioner's son viz., Karthik, showing the petitioner as the natural guardian and the remaining Rs.1,00,000/- shall be deposited in the name of the petitioner's daughter Vinothini showing the petitioner as natural guardian and these deposits shall be made in any nationalised bank of the choice of the petitioner. These amounts shall be retained in deposits till the minors attain majority and the interest which would accrue from the same is permitted to be withdrawn by the petitioner once in six months. The payment shall be released in the name of the petitioner by way of Demand Draft. If the petitioner is already having a bank account in any of the nationalised bank, then the payment can be made by through E.C.S. The petitioner shall accept the compensation without prejudice to his rights to approach the appropriate forum for further compensation. In the event, any such claim is made and the appropriate forum awards further compensation, this amount directed to be paid by this Court shall be deducted from the amount that may be determined by the said forum. The above direction be complied with, within a period of six weeks from the date of receipt of a copy of this order.

8. Accordingly, the writ petition is partly allowed. No costs.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

vs/kpr

To

1. The Secretary,
Government of Tamil Nadu,
Electricity Department,
Fort St. George, Chennai - 600 009.
2. The Chairman
TANGEDCO LTD.,
(Tamil Nadu Electricity Board),
No.800, Anna Salai,
Chennai - 600 002.
3. The Assistant Engineer,
TANGEDCO LTD.,
(TNEB), Annanur,
Ambatur Taluk,
Thiruvallur District.
4. The Inspector of Police,
The State of Tamilnadu,
T-10, Thirumullaivoyal Police Station,
Chennai-62.

1 cc to Mr.P.R. Dhilip Kumar, Advocate, Sr. 19046
1 cc to Government Pleader, Sr. 19582
1 cc to Mr.R. Veeramani, Advocate, Sr. 19241

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SR (CO)
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