

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.11.2016

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN

W.P. No. 32780 of 2016

P. Santhi

..Petitioner

Vs.

1. The Chairman,
Tamil Nadu Generation of Electricity
and Distribution Corporation,
Anna Salai,
Chennai - 600 002.
2. The Superintending Engineer,
Tamil Nadu Generation of Electricity
and Distribution Corporation,
Villupuram District,
Villupuram.
3. The Assistant Executive Engineer,
Tamil Nadu Generation of Electricity
and Distribution Corporation,
Kandamangalam,
Villupuram Taluk & District.

...Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Mandamus directing the respondents to pay the compensation of a sum of Rs.20,00,000/- for the death of the deceased Periyasamy aged about 47 years, who died on account of electrocution on 19.07.2013 to the petitioner based on her representation dated 15.07.2015 within the stipulated time that may be fixed by the Hon'ble Court forthwith.

For Petitioner :: Mr.D.S. Thirumavalavan
For Respondents :: Mr.M. Varunkumar

O R D E R

The petitioner has approached this Court seeking a Writ of Mandamus directing the respondents to pay the compensation of a sum of Rs. 20,00,000/- for the death of the deceased Periyasamy, aged about 47 years, who died on account of electrocution on 19.07.2013, to the petitioner, based on her representation dated

15.07.2015 within a stipulated time.

2. On 19.07.2013, the petitioner's husband went to his field through one Selvakumar's land. While passing through the said land, the petitioner's husband suffered electrocution as the electric lines, which got snapped, had fallen on the said land. According to the petitioner, because of negligence on the part of the respondents in not maintaining the cables properly, they got snapped and had fallen on the above said land. Therefore, the petitioner contends that the respondents are bound to pay compensation for the untimely death of her husband.

3. A counter affidavit has been filed by the respondent Electricity Board stating that a dead neutral conductor of 3Ph 4 wire line fed from Pannakuppam - SSIV (100KVA) Distribution Transformer near Agriculture SC. No. 122 was cut and rolled with "B" Phase live conductor and fell down on the sugarcane field of one Thiru D. Selvakumar, resulting in the death of the petitioner's husband due to electrocution. However, it is stated that the electrical lines were properly maintained by TANGEDCO and they had, by way of caution, announced to the public through cable TV, posters, slides, notices, village tom tom etc, not to touch electrical lines, if any, on the ground. According to the respondents, the accident occurred due to heavy wind and rainfall. Moreover, the deceased failed to notice the snapped electrical line and therefore, there was carelessness on the part of the deceased as well. Besides, according to the respondents, disputed questions of fact are involved and the appropriate remedy is to approach the Civil Court as per the dictum laid down in AIR 1999 SC 3414 and hence, sought the dismissal of the writ petition.

4. Heard Mr. Govinda Reddy, learned counsel for the petitioner and Mr.M. Varun Kumar, learned Standing Counsel for respondents.

5. There is no dispute with regard to the death of the petitioner's husband Periyasamy on 19.07.2013 due to electrocution. The case of the petitioner is that the electric lines were not properly maintained by the respondent Board and therefore, the electric lines got snapped and fell on the field resulting in the death of her husband, on the way to his field. Therefore, there was negligence on the part of the respondents. Whereas the respondents would contend that due to carelessness and negligence on the part of the deceased, the accident occurred and there were announcements made by TANGEDCO, to caution the public, through cable TV, posters, slides, notices, village tom tom etc., not to touch electrical lines, if any, on the ground. The electric lines were properly maintained by them

and that it was the deceased who was negligent and therefore, met with his fate.

6. Though it is contended by the respondents that the electrical lines were properly maintained, the very fact that due to heavy wind and rainfall, the lines got snapped and fell on the field, resulting in electrocution of the petitioner's husband, when he came into contact with the wires, would undoubtedly prove that the electrical cables were not properly maintained. In fact, the respondents themselves, in their counter affidavit, have stated that the deceased, unknowingly, came into contact with the neutral line conductor. Therefore, it cannot be said that the deceased was negligent. In this context, it would be relevant to extract paragraph Nos. 6 and 7 of the counter affidavit, which read as follows:

"6.due to Heavy wind and rain at Pannakuppam Village on 19.07.2015, at early morning hours, a Dead Neutral Conductor of 3Ph 4 wire line fed from Pannakuppam - SSIV (100KVA) Distribution Transformer near Agriculture SC No. 122 was cut and rolled with "B"Phase live conductor and fell down on the sugarcane field of Thiru D. Selvakumar, S/o. Selvarasu. Thus results passing supply from the above live L.T. Line Conductor into the above dead neutral line conductor by the way Neutral Line Conductor has electrified. One G. Periyasamy S/o. Govindan, aged about 47 years of Pannakuppam Village, who passed the sugarcane field of Thiru. Selvakumar unknowingly come in contact with the above neutral conductor and electrocuted and died on the spot.

7.It is true that the poles, lines and equipments are maintained by the TANGEDCO. But, it is false to state that the accident took place due to improper maintenance of the electrical lines by the TANGEDCO. The TANGEDCO has properly announced to the public through cable TV posters slides notices village dam dam etc. and advised to the public not to touch the electrical lines if any on the ground and to inform the TANGEDCO immediately for rectification and to avoid electrical accident, if any. The accident had happened all of the sudden and due to force of heavy wind and rain (i.e natural gale).

The above extract of the counter affidavit would show that a dead neutral conductor of 3Ph 4 wire line fed from Pannakuppam - SSIV (100 KVA) Distribution Transformer near Agriculture S.C. No. 122 was cut and rolled with "B" phase live conductor and fell down on the sugarcane field, resulting in supply from the above live L.T. Line conductor into the above dead neutral line conductor, by which, the neural line conductor was electrified. Therefore, it was thoroughly due to the negligence on the part

of the respondents, in not maintaining the electric lines properly, that the accident had occurred and they cannot escape from their responsibility by terming it as an act of God or act of Nature. Hence, the contention raised by the respondents, with regard to negligence on the part of the deceased, is rejected and this Court is of the view that there was negligence, only on the part of the respondents, in maintaining the electrical cables properly, for which they are liable to pay compensation to the petitioner for the death of her husband.

7. Though it is stated that disputed questions of fact are involved, the averments in paragraph Nos. 6 and 7 of the counter affidavit would reveal that there are no disputed questions of fact involved. The respondents themselves, have admitted that the deceased unknowingly came into contact with the electric line, which got snapped and fell on the ground, due to heavy wind and rainfall. When that is the position, there is no necessity to drive the petitioner to approach the Civil Court.

8. As regards the compensation payable, the provisions laid down in the Motor Vehicles Act, 1988, can be invoked. The deceased was aged about 47 years and he was working as a Cement Worker in Aurobindo Ashram, Pondicherry, drawing a salary of Rs. 6,729/- and he is survived by four legal heirs, namely, wife, two children and mother. Since the salary drawn by the petitioner, to the tune of Rs.6,729/-, is proved by the certificate issued by the Management of M/s. Precast Concrete Works Trust, Pondicherry. The said certificate not only proves the last drawn basic salary of the deceased, at Rs.6,729/-, but also the payment of death benefits to the petitioner on 31.07.2013. Therefore, relying on the said document, this Court fixes the monthly salary of the deceased at Rs.6,729/-. As per the judgment of the Honourable Apex Court in Sarla Verma V. Delhi Transport Corporation reported in 2009 (2) TN MAC 1 (SC), since the deceased was aged 47 years, at the time of accident, 30% of his income has to be added towards "Future Prospects". In that event, his total monthly income would be,

Monthly Income	::	Rs. 6,729/-
Add: 30% towards "Future Prospects"	::	Rs.6,729/- + 30% (Rs.6,729/-)
	::	Rs.6,729/- + Rs.2018/-
	::	Rs. 8,747/-.

As per the above cited judgment, one-fourth is required to be deducted towards personal expenses of the deceased, when the family consists of more than 3 members. In this case, the dependants are four in number and therefore, one-fourth has to be deducted towards "personal expenses". After deduction of one-fourth towards "personal expenses", the "Loss of monthly contribution to the family" would be,

Loss of monthly contribution to the family	::	(Rs. 8,747/-	(-)	¼
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(Rs.8,747/-))

:: Rs.6,561/-

Annual Loss of contribution to
the family

:: Rs.6,561 x 12

Since the deceased was aged about 47 years, the appropriate multiplier to be adopted is 13. Accordingly, "Loss of Income" would be,

Loss of Income :: Rs.6,561 x 12 x 13
:: Rs.10,23,516/-

The petitioner, who is the wife of the deceased, was aged about 39 years, at the time of her husband's death and therefore, she has to be compensated appropriately towards "Loss of Consortium". Following the judgment of the Honourable Supreme Court rendered in Rajesh and Others V. Rajbir Singh and others reported in 2013 2 CTC 883, a sum of Rs.1,50,000/- is awarded for "Loss of Consortium". The legal heirship certificate dated 19.11.2014 would disclose that the deceased left behind two minor children, aged about 11 years and 13 years. For proper upbringing of children, love and affection of both father and mother are necessary. In the case on hand, the two minor children have been deprived of their father's love and affection for the rest of their lives. Hence, towards "Loss of Love and Affection" a sum of Rs.1,00,000/- is awarded to each of the minors and further, a sum of Rs.50,000/- is awarded to the 80 year old mother of the deceased, who had lost her son's love and affection. Towards "Transportation Charges", a sum of Rs.10,000/- is awarded; Rs.25,000/- is awarded towards "Funeral Expenses"; Rs.20,000/- is awarded towards "Loss of Estate" and Rs.15,000/- is awarded towards "Litigation Expenses". Therefore, the "total compensation payable to the petitioner" works out to,

Loss of Income :: Rs. 10,23,516/-
Loss of Consortium :: Rs. 1,50,000/-
Loss of "Love and
Affection"

(to the minors and age old mother of the deceased) :: Rs. 2,50,000/-

Transport Expenses :: Rs. 10,000/-
Loss of Estate :: Rs. 30,000/-
Funeral Expenses :: Rs. 25,000/-
Litigation Expenses :: Rs. 15,000/-

Total Compensation :: Rs. 15,03,516

Rounded off to Rs.15,00,000/-

9. The petitioner is entitled to payment of interest @ 9% per annum, from the date of death till the date of payment. The aforesaid compensation amount, along with interest and costs

shall be paid by the respondent to the petitioner, on or before, 31st December, 2016, directly by way of Demand Draft or Banker's Cheque, failing which the respondents shall appear before this Court on 05.01.2017.

10. The writ petition is disposed of accordingly. No costs. Connected W.M.P. is closed.

11. For reporting compliance of payment of compensation, by way of a report, call the matter on 5th January, 2017.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Chairman,
Tamil Nadu Generation of Electricity
and Distribution Corporation,
Anna Salai,
Chennai - 600 002.
2. The Superintending Engineer,
Tamil Nadu Generation of Electricity
and Distribution Corporation,
Villupuram District,
Villupuram.
3. The Assistant Executive Engineer,
Tamil Nadu Generation of Electricity
and Distribution Corporation,
Kandamangalam,
Villupuram Taluk & District.

Copy to

The Section Officer,
Writ Section, High Court, Chennai 104

+1cc to Mr.D.S. Thirumavalavan, Advocate, S.R.No.63579
+1cc to Mr.M. Vasun Kumar, Advocate, S.R.No.63148

pvs (CO)
md(19/12/2016)

W.P. NO. 32780 of 2016