

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.01.2016

Date of Reserving the Order	Date of Pronouncing the Order
19.01.2016	28.01.2016

CORAM

THE HON'BLE MR. JUSTICE T.S. SIVAGNANAM

W.P.No.40171 of 2015

1.S.Ruckmani
2.Ms.B.Sathyaneka ... Petitioners

Vs.

1. Tamil Nadu Electricity Board Limited,
NPKKR Maligai,
144, Anna Salai,
Chennai - 600 002.
Rep., by its Chairman and Managing Director.

2. Tamil Nadu Generation and Distribution
Corpn., Ltd., (TANGEDCO),
10th Floor, NPKKR Maligai,
144, Anna Salai,
Chennai - 600 002.
Rep., by its Chairman and Managing Director.

3. Superintending Engineer,
TANGEDCO,
K.N.Colony Post,
Salem 636 014.

4. Assistant Executive Engineer,
Swarnapuri TNEB, Convent Road,
Swarnapuri, Salem - 636 004. ... Respondents

Prayer :-Petition filed under Article 226 of the Constitution of India praying to issue Writ of Mandamus, to direct the first and second respondents and anyone under their authority to grant a compensation of Rs.80,00,000/- for their due negligence, careless and breach of duty on the petitioner representation FIR dated 07.10.2013, with the law.

For petitioner : Ms.M.Vidya

For Respondents : Mr.Rameshuwar

O R D E R

This Writ Petition has been filed to direct the respondent, TANGEDCO, to grant compensation of Rs.80,00,000/- for the death of the second petitioner's father, who died due to electrocution and the amount is claimed on the ground that the death occurred due to the negligence, carelessness and breach of duty on the part of the respondents.

2.The second petitioner is the daughter of late S.Subramanian, who had been residing with her parents and her grandmother at Salem and pursuing her education. She completed her B.Tech., course during 2014. The second petitioner's father is said to have been an independent photographer in Salem and earning an average of Rs.25,000/- per month and he was the sole breadwinner of the family. The second petitioner's mother was ailing and she died on 30.10.2013. For performing the last rites of the second petitioner's mother, the second petitioner along with her father and the first petitioner, grandmother were at Salem preparing for the rituals to be performed after seven days of the demise of her mother and her father was cleaning the house and removed few steel rods from the ground floor to the terrace. The stairway to the terrace is situated outside the house and while her father was removing the steel rods from the ground floor to the terrace, the steel rods came in contact with the exposed High Tension Electricity wires and he died on the spot due to electrocution. The second petitioner has been left in a state of shock, having lost both her parents within a short span of time. The first petitioner, her grandmother is 79 years old and she herself requires help and support to lead her day-to-day life. In the background of these facts, the second petitioner, on advice, had to shift to Chennai and now said to be employed in a private firm as a Sales and Marketing incharge.

3. The learned counsel appearing for the petitioners submitted that High Tension Electric Wires were passing near the petitioner's house and there was no protective mechanism provided by the respondents to prevent any untoward incident. However, in respect of low tension service lines protective plastics casing has been provided and therefore, the respondents are negligent in not providing adequate protection to the high tension line and hence, the second petitioner has to be compensated for the death of her father. In support of her

contention, the learned counsel placed reliance on the decisions in the case of K.Sundari vs. State of Tamil Nadu reported in 2009 (11) CTCOL 997, S.Manjula & Ors., vs. The Chief Secretary, Government of Tamil Nadu, reported in 2012 (2) CWC 552; Duraisamy vs. The Executive Engineer reported in 2012 (2) CWC 401; and K.Sampath @ Chidambaranathan vs. Superintending Engineer reported in 2013 (6) CTCOL 682.

4. The learned Standing counsel appearing for the respondents, by referring to the counter affidavit, submitted that the petitioner has approached this Court even without submitting any representation and therefore, no Writ of Mandamus, will be issued by this Court as sought for. It is further submitted that the death occurred on account of the steel rod of a length of 15 feet accidentally coming into contact with the EB line resulting in electrocution and there is no negligence on the part of the respondents, much less any documentary evidence to prove such alleged negligence. It is further submitted that overhead electric lines are existing in most of the places and such lines pass through the Corporation road and there is a 8 feet clearance in between the line and the compound wall/stairway. Therefore, the allegation that the respondents were negligent is denied. Further, it is stated that regular maintenance work is being carried on and the death occurred due to the negligence on the part of the deceased and the respondents are not liable to pay any compensation. Further, it is contended that the averments in the affidavit and the documents placed in the typed set of papers are bereft of even details regarding the alleged earnings of the deceased, leave alone any documentary evidences acceptable in law. Further, it is contended that merely because the death occurred on account of the iron rod coming into contact with the electric line is not sufficient to make a claim for compensation from the respondents. It is further contended that the petitioner has to approach the Civil Court for the relief and in this regard reliance has been placed on the decisions of the Hon'ble Supreme Court in the case of Chairman, Grid Corpn. of Orissa Ltd. (Gridco) v. Sukamani Das, reported in AIR 1999 SC 3412, Tamilnadu Electricity Board Vs. Sumathi and others, reported in 2000 AIR SCW 1717, Parvati Devi v. Commr. of Police, reported in (2000) 3 SCC 754 and SDO, Grid Corpn. of Orissa Ltd. v. Timudu Oram, reported in (2005) 6 SCC 156 and Godavari Sugar Mills Limited vs, State of Maharashtra & Ors., reported in (2011) 2 SCC 439. Further, when there is a disputed question of fact, the second petitioner is not justified in seeking for remedy under Article 226 of the Constitution and in this regard, reliance was placed on the decision of the Hon'ble Supreme Court in the case of Tamil Nadu Electricity Board vs. Sumathi & Ors., reported in (2000) 4 SCC 543.

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

6. The 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.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."

7. The factual scenario in the instant case appears to be not in a serious dispute. The death occurred due to electrocution. The electrocution was due to the fact that the steel rod carried by the deceased came in contact with a live High Tension wire. The high tension wire passes near the petitioner's house and it is stated by the respondents that there is a clear 8 feet distance between the compound wall/stairway and the wire. The respondent pleads that no negligence can be attributed to them, since the wires are at a safe distance. However, it has to be noted that there is no allegation that the house is an unauthorised construction or there is any deviation from the approved plan. When the High Tension wire is passing through a densely populated area, the Board ought to have taken protective measure to avoid any untoward incident. In fact, the petitioner's case is that in respect of the low tension wires which are drawn for providing electricity supply to the houses protective plastic casing has been provided. There is no explanation in the counter as to why such protection could not have been extended to the high tension lines especially when it is admitted that the lines are passing above a corporation road.

8. Thus, prima facie it is clear that adequate protection was not made and the live wires were exposed. Whether the distance of 8feet was sufficient protection or the Board had to adopt other safety measures is a question where there is a dispute. This obviously cannot be adjudicated in a Writ Petition. However, as pointed out in the decision referred supra, 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. In several decisions some of which have been referred to by the learned counsel for the petitioners, this Court had awarded compensation. In cases where details were provided as regards the income of the deceased and other particulars, this Court has adopted the principles laid down for computing compensation in motor accident compensation cases and awarded compensation. The case of the second petitioner deserves sympathetic consideration, she being a young girl with lot of aspirations, had lost both her father and mother in a short span of less than seven days. The plea raised by the respondents that there was no representation cannot be a ground to non-suit the petitioner in the given case. It is not as if, the respondents are not aware about the accident as has been admitted in the counter affidavit that too when a criminal case had been registered. It may be true that Article 226 of the Constitution cannot be

invoked for claiming damages, when there is a clear denial of tortuous liability. However, when there is prima facie material to show there was negligence and there was infringement of Article 21, relief claiming damages could be granted under Article 226 of the Constitution.

9. This Court can take judicial notice of the fact that in cases where death occurred due to electrocution, the respondents by paying an exgratia amount to the family of the deceased. However, it is not known as to why such payment was not made to the petitioners.

10. Hence, for all the above reasons, this Court is of the view that the petitioners should be entitled to a reasonable amount of compensation which shall be an adhoc amount and as an interim relief. This Court is not in a position to compute the exact amount of compensation that has to be awarded, in the absence of any details forthcoming from the petitioners. There is nothing on record to show as to how the petitioners claim Rs.80,00,000/- as compensation. Therefore, taking into consideration the hard facts of the case and the manner in which the death has occurred, it is a fit case where compensation of Rs.5,00,000/- should be awarded to the petitioners. It is made clear that this is an adhoc compensation granted by the Court leaving it open to the petitioners to move the competent forum for further compensation.

11. In the result, the Writ Petition is partly allowed and the respondents are directed to pay a sum of Rs.5,00,000/- to the petitioners as adhoc compensation for the death of the first petitioner's son and the second petitioner's father. Out of Rs.5,00,000/-, a sum of Rs.50,000/- shall be paid to the first petitioner and Rs.4,50,000/- to the second petitioner, and the payment shall be released in their names by way of Demand Draft within a period of four weeks from the date of receipt of a copy of this order. The petitioners shall accept the compensation without prejudice to their rights to approach the competent forum for further compensation, if so advised. In the event of any such claim being made, this amount directed to be paid by this Court shall be deducted from the amount that may be determined by the competent forum. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

pbn

To

1. The Chairman and Managing Director
Tamil Nadu Electricity Board Limited,
NPKKR Maligai,
144, Anna Salai,
Chennai - 600 002.
2. The Chairman and Managing Director
Tamil Nadu Generation and Distribution
Corpn., Ltd., (TANGEDCO),
10th Floor, NPKKR Maligai,
144, Anna Salai,
Chennai - 600 002.
3. The Superintending Engineer,
TANGEDCO,
K.N.Colony Post,
Salem 636 014.
4. The Assistant Executive Engineer,
Swarnapuri TNEB, Convent Road,
Swarnapuri, Salem - 636 004.

+1cc to Ms.M.Vidya, Advocate, S.R.No.5460

+1cc to Mr.Rameshuwar, Advocate, S.R.No.5780

W.P.No.40171 of 2015

VSN(CO)
CA(09/02/2016)

सत्यमेव जयते

WEB COPY