IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 9.08.2016

CORAM

THE HON'BLE MR.JUSTICE M.JAICHANDREN

W.P.No.7500 of 2015

K.Kamalam .. Petitioner

Vs.

1.The District Collector,
Office of the Collectorate,
Ariyalur.

2.The Secretary to Government,
Government of Tamil Nadu,
Electricity Board Department,
Secretariat Building,
Chepauk, Chennai.

3.The Chairman,
Tamil Nadu Electricity Board,
Anna Salai, Chennai.

4.The Commissioner,
Corporation of Chennai,
Chennai.
(R-4 impleaded vide order dated 8.3.2016
in M.P.No.1 of 2015)

5.The Inspector of Police,
C-5, Kothavalchavadi Police Station,
(Law and Order),
Chennai.

(R-5 impleaded suo motu, vide order
dated 19.7.2016 in W.P.No.7500/2015) .. Respondents

This writ petition has been filed, under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus, directing the respondents concerned to pay a sum of Rs.11,94,000/- towards compensation, for the death of the petitioner's son, caused by electrocution due to the negligence of the respondents concerned.

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For Petitioner : Mr.V.Subramanian
For Respondents : Mr.R.Ravichandran, AGP for RR1, 2 and 5
Mr.P.R.Dhilip Kumar for R-3
Mr.P.V.Selvakumar for R-4

ORDER

Heard

2 This writ petition has been filed praying that this Court may be pleased to issue a Writ of Mandamus, directing the respondents concerned to pay a sum of Rs.11,94,000/-, as compensation, for the death of the petitioner's son, by electrocution, due to the negligence of the respondents concerned.

3 The petitioner has stated that she has been working as a Coolie. She had two sons, namely, Vigneshwaran and Vaithishwaran. Both the sons of the petitioner were working as Load men, at Kanthapachetty Street, Kothavalchavadi, Chennai. At about, 10.00 p.m., on 12.10.2011, the elder son of the petitioner had parked his vehicle, near the electric post. When he had come into contact with the live wire, he was electrocuted. Thereafter, he had been taken to the Rajiv Gandhi Medical College, Chennai, where he was declared as dead, due to electrocution. Hence the younger son of the petitioner had lodged a complaint with the Sub Inspector of Police, C-5, Kothavalchavadi Police Station, Chennai. It had been registered, as Crime No.942 of 2011, for an offence under Section 174 of the Criminal Procedure Code. The postmortem, conducted on the body of the deceased, had shown that he had died, due to electrocution. It has been further stated that the death of the elder son of the petitioner was due to the negligence on the part of the Tamil Nadu Electricity Board.

4 It has also been stated that the petitioner had made a representation to the first respondent, on 01.10.2012, to sanction the compensation for the death of his elder son. The Tahsildar, Ariyalur, by way of his communication, dated 11.10.2012, had asked the petitioner to furnish the necessary details, including the legal heir certificate, income certificate, ration card, etc. Based on the enquiry, the said Tahsildar had recommended the sanctioning of the compensation, by way of his letter, dated 18.12.2012. Only a small sum of Rs.15,000/- had been paid to the petitioner. As per the calculation of the petitioner, the amount of compensation, to be paid to the petitioner, would be Rs.11,94,000/-. In such circumstances, the petitioner has preferred the present writ petition before this Court, under Article 226 of the Constitution of India.

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5 The learned counsel appearing on behalf of the petitioner had relied on the following decisions of this Court, in support of his claim that either the Tamil Nadu Electricity Board or the Corporation of Chennai has to pay the appropriate compensation for the death of the elder son of the petitioner.

(i)Arulmeri Vs. The Superintendent Engineer, Tamil Nadu Electricity Board, Ramanathapuram and another [W.P.(MD) No.1994 of 2008, dated 9.10.2012];

(ii)K.Sambath @ Chidambaranathan Vs. The Superintendent Engineer-I, Puducherry Electricity Board, Uppalam, Puducherry and 2 others [W.P.No.17691 of 2009, dated 02.01.2013];

(iii)Mrs.Saroja Vs. The Government of Tamil Nadu, represented by its Secretary, Electricity Department, Fort St. George, Chennai and another [W.P.No.11757 of 2008, dated 13.2.2014]; and

(iv)G.Ravindran Vs. The State of Tamil Nadu, rep by its Secretary, Education, Science and Technology Department, Fort St. George, Chennai and others [W.P.(MD)No.10045 of 2009, dated 15.4.2015]"

6 Counter affidavits had been filed on behalf of the first and third respondents, denying the claims made by the petitioner. A report, dated 5.1.2015, had also been filed on behalf of the respondent Corporation, which had been impleaded, as a party to the writ petition.

7 Paragraphs 5,6,7 and 8 of the said report read as follows :

"5.I respectfully submit that if any incident occurred in the Corporation lamp post, the Police officials will immediately inform the same to the Corporation officials and inquire the same. In this no such information has been received from the Police officials.

6.I respectfully submit that in the Tamil Daily Dinakaran dated 15.10.2011 it was published as the petitioner's son was died while turning on the switch inside the bathroom in the godown. After the paper publication the Corporation Officials inspected the site and also inspected

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the pole and found no leakage in the pole itself and the pole light is burning in good condition.

7.I respectfully submit that the fuse box is placed in the height of 2 meters above the ground level and the leakage will not happen below the fuse box.

8.I respectfully submit that there is no negligence in the part of the Corporation of Chennai, hence the Corporation of Chennai is not liable to pay any compensation to the petitioner."

8 The learned counsel appearing on behalf of the first and second respondents herein had submitted that a complaint had been registered before the fifth respondent police, in Crime No.942/2011, under Section 174 of the Criminal Procedure Code. The investigation, by the fifth respondent police, had not been concluded.

9 The learned counsels appearing on behalf of the respondents had submitted that the petitioner has preferred the present writ petition, on 10.3.2015, with regard to the incident that is said to have taken place, on 12.10.2011, belatedly. While denying the claims made by the petitioner, the learned counsels appearing on behalf of the Tamil Nadu Electricity Board, as well as the Corporation of Chennai, had submitted that there was no negligence on their part, even if it had been found that the elder son of the petitioner had died due to the electrocution. No enquiry could be held, with regard to the said incident, at this stage, after a delay of nearly five years. The payment of compensation, in such cases, is not automatic. The petitioner has to prove, prima facie, that there was negligence on the part of the Tamil Nadu Electricity Board or the Corporation of Chennai, for the compensation to be paid, as prayed for by the petitioner, in the present writ petition. No proof of income of the deceased had been furnished. The contributory negligence of the deceased could also be a factor to be taken into account, while deciding such issues. When disputed questions of fact have arisen, it is for the petitioner to seek her remedy, if any, before the appropriate civil forum. No strict liability can be presumed against the said respondents in such cases.

10 In view of the submissions made by the learned counsels appearing on behalf of the petitioner, as well as the respondents and on perusal of the records available, this Court is of the considered view that the present writ petition has been filed, belatedly, after nearly five years, from the date of the occurrence, which is said to have taken place, on 12.10.2011. Even though there is some evidence that the elder

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son of the petitioner had died due to electrocution, there is no, prima facie, evidence shown by the petitioner to hold either the Tamil Nadu Electricity Board or the Corporation of Chennai to be responsible for his death. Even though the fifth respondent police had registered a complaint, it has been stated that the investigation, relating to the matter, had not been completed, till date. Further, no proof had been filed before this Court, relating to the income of the deceased elder son of the petitioner. The decisions relied on by the learned counsel appearing on behalf of the petitioner will not be applicable to the facts and circumstances of the present case, especially, in view of the fact that disputed issues, relating to the death of the elder son of the petitioner, had been raised in the present writ petition, by the respondents concerned.

11 In such circumstances, this Court is of the view that the relief prayed for by the petitioner, in the present writ petition, cannot be granted, by this Court, at this stage. Hence, the writ petition stands dismissed. No costs. However, it goes without saying that it may be open to the petitioner to seek her relief, if any, before the appropriate civil forum, in the manner known to law.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1.The District Collector,
Office of the Collectorate,
Ariyalur.

2.The Secretary to Government,
Government of Tamil Nadu,
Electricity Board Department,
Secretariat Building,
Chepauk, Chennai.

3.The Chairman,
Tamil Nadu Electricity Board,
Anna Salai, Chennai.

4.The Commissioner,
Corporation of Chennai,
Chennai.

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5.The Inspector of Police,
C-5, Kothavalchavadi Police Station,
(Law and Order),
Chennai.

+1cc to Mr.P.V.Selvakumar, Advocate Sr.45114
+1cc to Mr.V.Subramanian, Advocate sr.45330
+1cc to the Government Pleader Sr.45600

W.P.No.7500 of 2015

pvs[co]
srg 30/08/2016

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