

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.10.2016

CORAM

THE HON'BLE MR.JUSTICE M.S.RAMESH

W.P.No.15285 of 2013

R.Kumar

.. Petitioner

.Vs.

1.The Secretary to Government.

Electricity Department,
Government of Tamil nadu,
Secretariat, Chennai.

2.The Chairman,

Tamil Nadu Electricity Board,
Government of Tamil Nadu,
Anna Salai, Chennai 600 002.

.. Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India praying to issue a writ of Mandamus to direct the respondents to pay a sum of Rs,15,00,000/- (Rupees Fifteen Lakhs only) towards the compensation to the petitioner/Legal Representative who is the father of the deceased who died as a result of electrocution after coming into contact with a live electricity wire in the vacant plot opposite to his house while trying to save the cattle.

For petitioner : Mr.K.R.Kamesh Kumar

For R2 : Mr.S.K.Rameshuwar

No Appearance - R1

O R D E R

The petitioner, who is the father of the deceased Victor, seeks a direction to the respondents to pay a sum of Rs.15,00,000/- towards compensation to him.

2. On 27.09.2010 at about 5.00 p.m., the petitioner's eldest son viz., Victor, who was then aged about 27 years, came into contact with a live wire that had snapped down in the vacant plot which is opposite to the petitioner's house, resulting in instantaneous electrocution death.

3. Mr.K.R.Ramesh Kumar, learned counsel appearing for the petitioner submits that due to the negligence and lack of maintenance on the part of the Electricity Board, the victim was snapping of the live LT wire. Hence, the learned counsel would submit that the deceased Victor, who was then aged about 27 years at the time of his death and was carrying on the profession of the plumbing, is entitled to pay the compensation to the petitioner.

4. On the other hand, Mr.S.K.Rameshuwar learned counsel appearing for the second respondent submits that the LT line had snapped only due to the heavy wind blow and rain on 27.09.2010, which amounted to an "Act of God", as there was no negligence on the part of the respondents and that the accident was beyond the control of the officials of the respondents. The learned counsel appearing for the second respondent would vehemently submit that even otherwise, the proper remedy is only to file a Civil suit, since the disputed questions of facts are involved in the present case. In any event, the learned counsel submits that the quantum of compensation claimed was excessive and arbitrary.

5.Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents.

6.The first question that needs to be addressed is whether the snapping of OH-LT live-wire due to heavy wind and rain, would amount to an "Act of God". It is needless to mention that prior to installation of live-wire, careful precaution must be taken to ensure that the electric wires which are prone to come in contact with the public if snapped in times of heavy rain and wind, are installed with utmost durability and endeavour to withstand such unforeseen calamity. Rigorous periodical inspection needs to be conducted to such installation to avoid any untoward incident. Absence of the precaution would amount to negligence on the part of the respondents. It is common knowledge that rain tends to become heavy only after gradual and constant down-pour thereby turning into storm or gale wind, which are always predictable and hence precautions like cutting down the power supply to the openly installed live wires and transformer is essential during such untoward incidents.

7. In the case on hand, the live wire, to which, the deceased Victor came into contact, had snapped either due to poorly installed electric pole or lack of proper and periodical maintenance of the same. The respondents do not seem to have taken any precaution to cut down the power supply, when heavy rains and winds were anticipated. I do not find any of the reasonings put forth by the learned counsel for the second respondent in its counter affidavit as well as during his oral

submissions to the effect that the accident was due to an "Act of God". On the other hand, the unfortunate incident is attributable due to the negligence on the part of the concerned officials of the second respondent.

8. The next question that arises for consideration is as to whether the proper recourse or remedy is before the civil Court. It is not in dispute that the petitioner's son had died due to electrocution of snapped wire. The petitioner's son was aged about 27 years at the time of his death and he was a Plumber by profession. Even this has not been disputed by the respondents in the counter affidavit. In such circumstances, the respondents cannot contend that there are mixed question of facts, when the basic facts have already been answered through the pleadings in this writ petition. It is well settled principle of law that if facts are not in dispute, the legal heirs of the victims can claim compensation in writ proceedings. Since the cause of the death is not disputed and it is not an "Act of God" which led to the death of the petitioner's son, the respondents cannot escape the liability of paying compensation to the petitioner. Hence, the petitioner need not approach the civil Court for claiming the compensation and that this Court can exercise its power under Article 226 of the Constitution of India and can entertain a writ petition of this kind.

9. The learned counsel for the petitioner would also rely upon the Judgment of this Court in W.P.No.17691 of 2009, dated 02.01.2013, in the case of K.Sambath @ Chidambaranathan Vs. 1.The Superintendent Engineer-I, Puducherry Electricity Board, Uppalam, Puducherry and two others, wherein, it is held that the respondents are liable to pay compensation in the writ petition, when there are no factual disputes with regard to the manner of death.

10.The last question, which needs to be addressed is the quantum of compensation payable to the petitioner. This Court in the above Judgment, dated 02.01.2013, relied on a decision of the Supreme Court and it is useful to refer the following observations of this Court: -

11. How the Court should decide the cases of this nature is emphasised by the Supreme Court in the decision reported in (2011) 10 SCC 634 (Ibrahim v.Raju) In para-9 is held thus, " 9.This Court has time and again emphasised that the officers, who preside over the Tribunals adopt a proactive approach and ensure that the claims filed under the Act are disposed of with reacquired urgency and compensation is awarded to the victims of the accident and/or their

legal representatives in adequate measure keeping in view the relevant factors. Unfortunately, despite repeated pronouncements of this Court in which guiding principles have been laid down for determination of the compensation payable to the victims of road accidents and/or their families, the Tribunals and even the High Courts do not pay serious attention to the imperative of awarding just compensation to the claimants.

In 2009) 13 SCC 422 (Ramesh Kumari v. Madan Mohan) the Supreme Court pointed out the need of giving just compensation to the victim. In paragraphs 26 and 27 it is held thus:

" 26. The compensation which is required to be determined must be just. While the claimants are required to be compensated for the loss of their dependency, the same should not be considered to be a windfall. Unjust enrichment should be discouraged. This Court cannot also lose sight of the fact that in given cases, as for example death of the only son to a mother, she can never be compensated in monetary terms.

27. The question as to the methodology required to be applied for determination of compensation as regards prospective loss of future earnings, however, as far as possible should be based on certain principles. A person may have a bright future prospect, he might have become eligible to promotion immediately, there might have been chances of an immediate pay revision, whereas in another (sic situation) the nature of employment was such that he might not have continued in service; his chance of promotion, having regard to the nature of employment may be distant or remote. It is, therefore, difficult for any court to lay down rigid tests which should be applied in all situations. There are divergent views. In some

cases it has been suggested that some sort of hypotheses or guess work may be inevitable. That may be so."

This Court is bound to bear-in-mind the above stated principles for arriving at just compensation.

11. The petitioner's son was aged about 27 years as per the affidavit filed by the petitioner as well as the post-mortem report filed in the typed set of papers. The age has not been controverted by the 2nd respondent in the counter affidavit. The fact that the petitioner's son was a Plumber by profession is also not denied. The petitioner has not stated about the daily/monthly earnings of his deceased son. Nevertheless, the minimum wages which the petitioner's son could have earned at the time of his death, could be safely calculated at the rate of Rs.2,500/- per month.

12. I have taken into account the prospective loss of future earnings of the deceased and any scope of better prospects in his later career. While arriving at the bare minimum wages of the petitioner's son, the petitioner would have lived for another 33 years. On that basis, the compensation could be arrived at a sum of Rs.10,00,000/-, which could be just and reasonable.

13. In view of the above, the respondents, who are liable for the negligence and lack of maintenance of the live-wire, which caused the death of the petitioner's son, are directed to pay a sum of Rs.10,00,000/ (Rupees Ten Lakhs only) to the legal heirs of the deceased Victor, S/o.R.Kumar (i.e. the petitioner), within a period of eight weeks from the date of receipt of a copy of this order.

With the above direction, this writ petition is allowed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

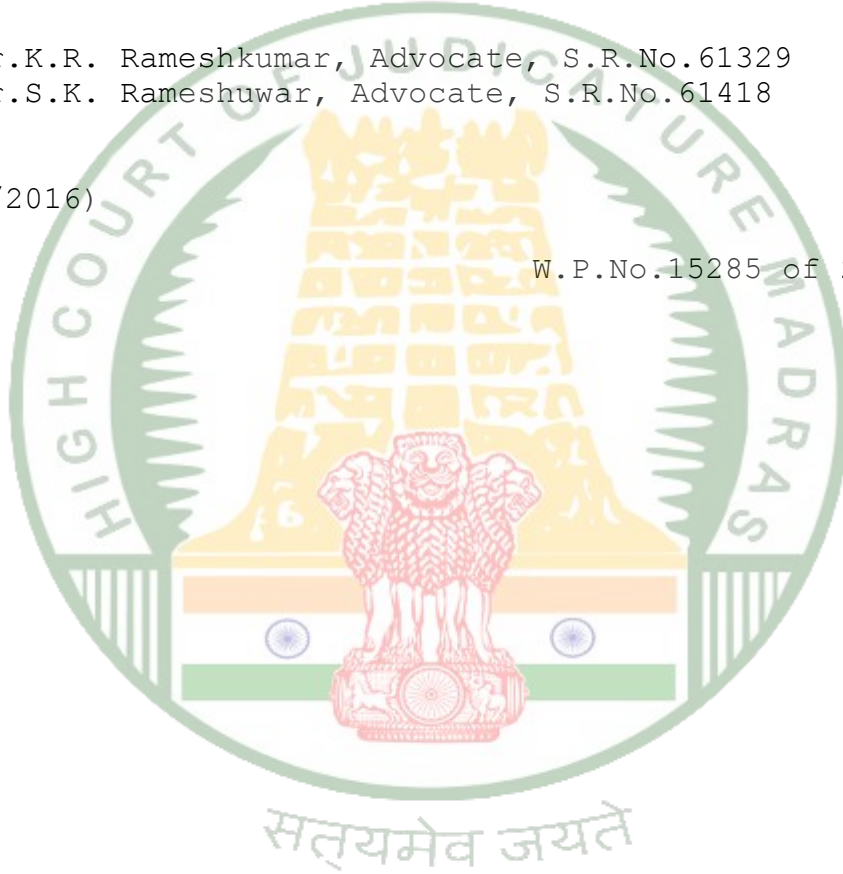
To

- 1.The Secretary to Government.
Electricity Department,
Government of Tamil nadu,
Secretariat, Chennai.
- 2.The Chairman,
Tamil Nadu Electricity Board,
Government of Tamil Nadu,
Anna Salai, Chennai 600 002.

+1cc to Mr.K.R. Rameshkumar, Advocate, S.R.No.61329
+1cc to Mr.S.K. Rameshuwar, Advocate, S.R.No.61418

sv (CO)
md (11/11/2016)

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