

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.12.2016

CORAM:

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

W.P.No.1836 of 2013

I.Saroja

.. Petitioner

Vs.

1.Union of India rep. by
The Secretary, Railway Board,
Ministry of Railways
Rail Bhavan
Rafi Marg, New Delhi-110 001.

2.The Secretary,
Railway Board,
Ministry of Railways
Rail Bhavan,
Rafi Marg, New Delhi-110 001.

3.The General Manager,
Southern Railway,
Chennai-600 003.

4.The Chairman,
Tamil Nadu Electricity Board,
Chennai-600 002.

5.The Inspector of Police,
Railways/Central Circle,
Chennai Central,
Chennai-600 003.

.. Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India praying to issue a writ of Mandamus directing the respondents 1 to 4 to pay a

compensation of Rs.5 lakh to the petitioner for the death of her daughter, viz. Rajalakshmi, due to electrocution in the artificial fountain situated inside the Chennai Central Railway Station premises bus stop on 14.05.2005 at about 3.00 p.m.

For Petitioner : Mr.M.Radhakrishnan

For Respondents : Mr.V.G.Suresh Kumar for R1 to R3
Mr.G.Vasudevan for R4

ORDER

Heard Mr.M.Radhakrishnan, learned counsel for the petitioner and Mr.V.G.Suresh Kumar, the learned Standing Counsel on record for R1 to R3 and Mr.G.Vasudevan, learned Standing Counsel on record for R4.

2.This is an unfortunate incident of a girl child aged about 12 years, who died of electrocution in the artificial fountain erected in the park situated within the Central Railway Station premises at Chennai.

3.The brief facts of the case are as follows:

The petitioner's daughter, viz., Rajalakshmi was playing in the park within the Central Railway Station campus on 14.05.2005 at about 3.00 p.m. While playing, she had died of electrocution from the artificial fountain erected in the park. Immediately after the accident, the petitioner's daughter was taken to Government General Hospital, where she was declared dead. A post-mortem was conducted and by report dated 06.07.2005, issued by the

Tamil Nadu Forensic Science Department, it had been declared that the child Rajalakshmi had died due to electrocution on 14.05.2005 at about 3.00 p.m. The petitioner was a flower vendor in the platform in Walltax Road.

4. According to the petitioner, she ekes out her livelihood by selling flowers and her child Rajalakshmi was assisting her in selling flowers. In view of this unfortunate incident, the petitioner made a representation initially to the Chief Claims Officer of the Railway administration. The Chief Claims Officer of the Railway Administration had informed the petitioner that the death due to electrocution is not covered under the Railway Act, 1989 and therefore, she was advised to approach the appropriate forum for compensation. Hence, the petitioner had approached the third respondent- General Manager of Southern Railway with the representation dated 20/28.07.2005 / 19.12.2005 claiming a compensation of Rs.5 lakhs for her daughter's death. After that, the petitioner had been repeatedly requesting the third respondent to release the compensation amount. However, her representation has not seen the light of the day.

5. Learned counsel for the petitioner would submit that since the petitioner's daughter had died of electrocution inside the Central Railway Premises, the accident had occurred only due to the failure of maintenance of artificial fountain and therefore, both the Railway Administration as well as the

Tamil Nadu Electricity Board are responsible for the death and hence, both are liable to pay the compensation. Considering the petitioner's daughter's age and poor family circumstances, the learned counsel for the petitioner would submit that a sum of Rs.5 lakhs would be a reasonable compensation to the petitioner's family in the interest of justice.

6.Learned counsel for the respondents 1 to 3 would submit that the alleged electrocution was in the year 2005 and that the writ petition is filed in the year 2013 and therefore the same is liable to be dismissed on the ground that it is barred by delay and laches. He would further submit that inasmuch as disputed question of facts are involved in the present case, claiming a compensation in the writ petition is not maintainable.

7.As observed above, the petitioner is a flower vendor and a pavement dweller. It would be too much of an expectation on the part of the Railway Authorities to expect the petitioner-mother to redress her grievance before a civil forum, particularly when she was neglected at the doors of the third respondent with the fond of hope that he would be the authority for payment of compensation for loss of her child. With regard to the respondents' claim that there are disputed question of facts, this Court would only observe that the petitioner's child died due to electrocution and the accident of electrocution had happened inside the central railway station premises. These

facts have not been denied by the respondents. Apparently, the basic facts in this accident are not under dispute. It is only with regard to liability and quantum that this Court needs to take the decision. Hence, it would not be appropriate at this stage to direct the petitioner to approach the civil forum.

8.Learned counsel for the respondents 1 to 3 would submit that the artificial fountain is located in the front side of the railway station and is surrounded by lawns and hedges in a radius of 5 metres and the entire area is cordoned and fenced with steel frame work with a view to curb unauthorised entry into the said area and access to the fountain. Since the child had died due to electrocution, it is only because of her trespass into the cordoned off area, which would have occasioned only due to negligence on the part of the petitioner, who is the parent of the child.

9.I do not find that the reasoning of the respondents is acceptable. The very fact that there was electric leakage in the fountain by itself, would amount to negligence on the part of the respondents. Further more, when a child is able to enter into fountain which was allegedly barricaded by a steel fence, it is only to be concluded that it was not a proper fencing, since the child aged about 12 years, was is able to cross the barricade. Even otherwise, the seepage of electricity in the fountain would definitely amount to improper maintenance on the part of the respondents 1 to 3. Above all, the respondents

1 to 3 ought to have foreseen that the park is situated in a densely populated Railway Station and there was every likelihood of persons entering into and coming in contact with the fountain and therefore, the respondents should have taken due care to maintain the fountain properly to avoid any sort of accidents like this.

10. Under such circumstances, in my considered view, the respondents 1 to 3 are alone responsible for the accident. It would not be out of place to mention that the fourth respondent is not engaged with the affairs inside the premises of the railway authorities. Nevertheless, if the respondents 1 to 3 are of the opinion that fourth respondent Electricity Board is responsible for the accident, it would be open for them to seek from the Authority concerned to indemnify the payment of compensation

11. The petitioner who is a flower vendor, claims that her daughter was assisting her in her flower vending business. I am not inclined to accept the petitioner's statement that her child was earning income out of her flower business in view of her age. Nevertheless, the fact of loss of love and affection caused to the petitioner due to the loss of her child cannot be ignored. Under such circumstances, a compensation of Rs.5 lakhs to the petitioner would, in my considered view, be a reasonable compensation.

12.In the above circumstances, there shall be a direction to the third respondent-General Manager of Southern Railway to pay a sum of Rs.5 lakhs to the petitioner towards compensation for her loss of her daughter viz. Rajalakshmi, in the said incident, within a period of three months from the date of receipt of a copy of this order.

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

02.12.2016

Index : Yes/No

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M.S.RAMESH,J

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