



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 04.11.2016

Pronounced on : 02.12.2016

CORAM :

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Writ Petition(MD) No.9039 of 2011

and

M.P(MD)No.1 of 2011

K.Muthu

...Petitioner

Vs.

1.The Secretary,
Public Works Department,
Government of Tamil Nadu,
Fort St. George,
Chennai.

2.The Superintending Engineer,
Tamil Nadu Electricity Board,
Race Course Road,
K.Pudur, Madurai - 625 007.

3.The Chief Engineer,
Tamil Nadu Electricity Board,
Race Course Road,
K.Pudur, Madurai - 625 007.

4.The Assistant Engineer,
Tamil Nadu Electricity Board,
Chekkanoorani Village,
Usilampatti Taluk,
Usilampatti Taluk,
Madurai District.

...Respondents

Prayer : Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus to direct the respondents to pay compensation a sum of Rs.10,00,000/- to the death of the petitioner's son due to electrocution.

For Petitioner

: Mr.R.Pandi Maharaja

For Respondents

: Mr.K.Guru A.G.P., for R1

Mr.SMS Johnny Basha for R2 to R4

O R D E R

This writ petition has been filed to issue a writ of mandamus directing the respondents to pay a sum of Rs.10,00,000/- as compensation to the death of the petitioner's son due to electrocution.



2.The facts in brief of the case are as follows:

The son of the petitioner, namely, Muthupandi, aged about 40 years, and his wife while on 24.04.2010 were taking drinking water from the nearest pipe-line of their house, the electric wire between pole No.744952043 and 744952044 snapped and fallen down on the petitioner's son and caused his sudden and unexpected death on the spot. Subsequently, a case was registered in Crime No.201/2010 by the Sub-Inspector of police, Chekkanoorani Police Station, Madurai District and the body of the deceased was sent to Post-mortem. Further, the post-mortem report dated 25.04.2010, is opined that the death of the son was caused due to cardio respiratory arrest owing to electrocution.

3.Having lost his son, who was the sole bread-winner of the family of the petitioner, he was left into lurch. The death of the petitioner's son was caused due to the negligence and careless of the respondents in maintaining the electric pole and wire as improper manner. At the time of death, the said deceased Muthupandi was working as driver in a Private Carrier and was earning sufficiently. Thereafter, the petitioner requested the respondents by sending several representations for the payment of compensation for the act of negligence on the part of the Electricity Board. Since the respondents have not taken action in response, the petitioner was forced to seek compensation by filing the present writ petition. From the representation sent by the petitioner, it is seen that the daughter-in-law of the petitioner was also died subsequently as because of the sudden death of her husband in her presence on the spot.

4.Per contra for the averment of the petitioner, the 4th respondent has filed a counter affidavit and contended that the allegations of the petitioner are baseless. The 4th respondent further contended that the writ petition is not maintainable, since disputed question of fact regarding the act of negligence involved would not be decided in the writ petition and hence, the only remedy to the petitioner is to file a civil suit. It is also further contended that the house of the deceased situates nearby a burial ground and the people used to throw the garlands and the same causing the weakening the electric line. Due to that the line gets weaken and could not bear the load of High Tension and therefore, the conductor gets snapped. It is further contended by the 4th respondent that monthly maintenance is also carrying out in all transmission line and that too high tension transmission line. Accordingly, on 06.04.2010, the maintenance work was carried out in the said electric line. Hence, the respondent prayed for the dismissed of the writ petition.

5.Heard Mr.R.Pandi Maharaja, learned counsel appearing for the petitioner and Mr.K.Guru, learned Additional Government Pleader

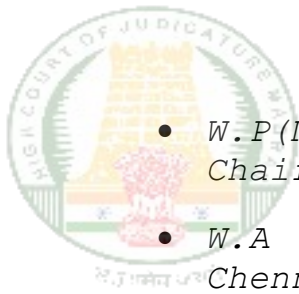
appearing for the first respondent and Mr.SMS Johnny Basha, learned standing counsel appearing for the respondents 2 to 4.

6.The learned Counsel appearing for the petitioner argued and reply to the counter of the 4th respondent that the cause of death of the deceased was admitted by the 4th respondent in Para No.4 of counter affidavit that "*due to the line gets weaken and could not bear the load of high tension and therefore conductor gets snapped*". According to the aforesaid statement of the 4th respondent, the fact of death is admitted due to the negligence on the part of the 2nd to 4th respondents. However, knowing the facts very well that if the electric lines gets weakened, the respondents concerned were more lethargic in maintaining the same in a proper manner, and it casts liability on the 2nd to 4th respondents. Further it is brought to the notice of this court that as the snapping of the said electric line is admitted, they are liable to compensate the death of the son of the petitioner.

7.The learned counsel for the petitioner further contended that it is a well settled principal of law declared by the Hon'ble Apex court that if the facts are not in dispute, the legal heir of the victim of the riot, custodial killing or death due to negligence on the part of the state authorities, can claim compensation in writ proceedings. The only impediment in entertaining the writ petition is, there may be factual disputes such as the manner of death, whether there was negligence or not, the age and income of the deceased, etc.,. In this case, there is no dispute with regard to the manner of death, age of the deceased. At the same time, the negligence also admitted in the counter of the 4th respondent. Hence the present writ petition is maintainable. Further, the 1st respondent is exonerated from the instant proceedings as he is not a necessary party to the case.

8.In support of his contention, the learned Counsel for the petitioner has placed reliance on the following decisions.

- (2009) 1 MLJ 634 (T. M Kamalanathan Vs Government of Tamil Nadu rep by its Secretary to Social Welfare Department, Chennai and others)
- (2011) 4 MLJ 607 (Ponnu Sankan @ Kumar Vs State of Tamil Nadu rep by its Secretary to Government, Energy Department, Chennai and others)
- (2014) 3 CTC 553 (Mrs, Saroja Vs Government of Tamil Nadu and Tamil Nadu Electricity Board)
- (2009) 6 SCC 121 (Smt.Sarala Verma and Others Vs Delhi Transport Corporation and another)



- W.P(MD) No. 14838 of 2011 (S. Kavikkuyil and Others Vs The Chairman, TNEB and Others)
- W.A (MD) Nos. 1020 and 1021 of 2012 (The Chairman, TNEB Chennai and others Vs Karuppayee Ammal)

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9.This Court in a case reported in (2011)4 MLJ 607 (cited supra) held as follows:-

"12.The Board cannot shirk their responsibility by accusing the political party for having erected the flex board near the electric line. The provisions of the Electricity Act and the rules and regulations made thereunder contains detailed provisions about the erection of structures and the situation of dangerous materials near the electric line. The Electricity Board is not powerless in such situations. In case a political party or any other public erects flex board and other materials near the electric line, it is the duty of the Board to see that such structures are removed at the earliest point of time. The line should be erected in such a way that it will not snap on account of any external objects touch the line.

15.Section 68 gives authority to a District Magistrate to remove the trees, structures or objects placed near an overhead line. The Board should be vigilant in the matter of maintenance of electric lines and they cannot be heard to say that without their permission, political parties have erected flex board and the incident has happened only because of the contact of such flex boards with the electric line.

16.The negligence of the Electricity Board is writ large. Though they have admitted that a political party has erected a flex board very near to the line, they have not taken any action to remove the flex board. Therefore, the Electricity Board cannot avoid the liability. The mother of the petitioner died only on account of electrocution. It is not the responsibility of the petitioner to prove as to how the electric line was snapped. The petitioner or his mother had no control over the electrical system as well as the transmission line. Therefore, in such circumstances, onus is heavy on the Electricity Board to demonstrate that they were not responsible for the incident."

10.On considering the rival contentions on the either side and after perusal of the materials available on records and at the outset, this court finds that the respondents have categorically admitted in their counter affidavit that the deceased died of electric shock. In addition, the cause of death of the deceased has been clearly reflected in the First Information Report and the Postmortem report. Therefore, the



contention put forth on the side of the respondents that there are disputed question of facts in this writ petition has no legs to stand and accordingly, it is rejected and I am of the view that the 2nd to 4th respondents are liable to pay the compensation to the petitioner for the death of the petitioner's son namely, Muthupandi due to electrocution.

11. Now the next question that arises for consideration is the quantum of the compensation which the entirety.

Loss of income

12. According to the petitioner, at the time of death, the deceased was aged 40 years and he was working as driver in a private carrier, but no evidence has been adduced in this regard, at the same it is to be noted that the 4th respondent has disputed the employment of the deceased. It is well settled law that though the claimant has not proved the income of the deceased, the notional income of the deceased could be taken at Rs.6,000/-per month. In addition to that in view of decision reported in 2012 SCC 421 (Santhose Devi Vs National Insurance company Ltd and others), 30% of income can be added towards future prospects. Accordingly, if 30% is added towards future prospects with the notional income, the monthly income would be comes at Rs.7,800 (Rs.6,000+30% of 6000=7800).

13. In addition to that in view of the aforesaid judgment reported in (2012 SCC 421 (Santhose Devi Vs National Insurance Company Ltd and others), the deduction towards person and living expenses of deceased would be 1/3rd where the number of dependent family members is 2 to 3. Accordingly, 1/3rd is deducted towards personal expenses, the loss of income of the deceased would be Rs.5,200/- [(Rs.6000/- = Rs.30% of 6000/-=7800-1/3rd towards personal expenses (Rs.2,600)= Rs.5,200]

Multiplier

14. As regards the adoption of multiplier, it is to be taken into consideration the law laid down by the Hon'ble Supreme Court in the case of Smt. Sarala Varma and others Vs Delhi Transport Corporation and another reported in (2009) 6 SCC 121, the Hon'ble Apex Court compared the multiplier indicated in various decision with the multiplier mentioned in the Second schedule of Section 163-A of Motor Vehicles Act and identified table. Relevant portion of the said judgment is extracted as under:

We therefore hold that the multiplier to be used should be as mentioned in column (4) of the table above (prepared by applying Susamma Thomas, Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years that M-17 for 26 to 30 years, and M-16 for 31 to 35 years,



M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years -7 for 61 to 65 years and M-5 for 66 to 70 years.

15. In view of the dictum laid down by the Hon'ble Supreme Court in *Sarla Verma's case*, the correct multiplier to be adopted in this case is as per column (4) of the Table that is 15. Accordingly, applying the multiplier of 15 to the income of Rs. 5,200/- per month, the compensation towards loss of income is worked out as Rs. 10,60,800/- (5200X12X15).

Loss of love and affection:

16. The father of the deceased has lost her son and he is entitled to a sum of Rs 50,000/- towards loss of love and affection and accordingly a sum of Rs 50,000/- is awarded under the head loss of love and affection to the petitioner.

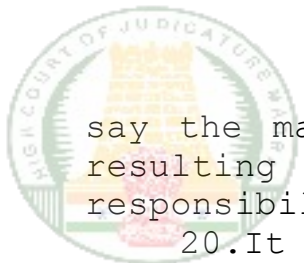
Funeral Expenses:

17. In the case of *Rajesh and others Vs. Rajbir Singh and others*, the Hon'ble Supreme court while awarding compensation under the head funeral expenses has held as under:

We may also take judicial notice to the fact that the Tribunals have been quite frugal with regard to award of compensation under the head funeral expenses. The head funeral expenses does not mean the fee paid in the crematorium or fee paid for the use of spacers in the cemetery. There are many other expenses in connection with funeral and, if the deceased is a follower of any particular religion, there are several religious practices and conventions pursuant to death in a family. All those are quite expensive. Therefore, we are of the view that it will be just, fair and equitable, under the head funeral expenses in the absence of evidence to the contrary for higher expenses, to award at last an amount of Rs.25,000/-

18. Taking note of ratio down in the above decision, this Court awards a sum of Rs.25,000/- towards funeral expenses.

19. All in the above, I consider that the petitioner being the father of the deceased Muthupandi is entitled to get the compensation due to the death caused due to the negligence and carelessness of maintaining of the electric wire and pole as in improper manner at the quantum of Rs.10,00,000/- as he prayed in the writ petition since Article 21 of the Constitution of India guaranteed the right to life to a citizen. It is the constitutional obligation of the State to protect the life, liberty and property of a person and where the State, that is to



say the machinery without any justification fails, in such duty resulting in loss to a person, the State cannot avoid its responsibility.

20. It is also made clear that the Electricity Board is liable to pay compensation for the death caused by electrocution due to snapping of lines. Apart from this, the Electricity Board is empowered and duty bound to remove structures erected near electric line cannot shirk their responsibility of payment of compensation to accidents due to electrocution by citing reason of erection of structures near electric line causing snapping of lines.

21. The materials available on record gives a clean indication that the incident was purely on account of the negligence of the Electricity Board and therefore, the petitioner has made out a case for award of compensation and hence, I am of the view that the Respondents 2 to 4 are liable to pay the compensation of Rs.10,00,000/- to the petitioner.

22. In the result, this writ petition is allowed and the petitioners are entitled to the total compensation of Rs.10,00,000/- at the rate of 6% of interest per annum from the date of filing of this writ petition till the date of realization. The respondents are directed to pay the said compensation amount to the petitioners within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(AS)

/True copy/

Sub Assistant Registrar(CS)

To

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Government of Tamil Nadu, Fort St. George, Chennai.
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Madurai District.

+1cc to Mr.R.Pandi Maharaja, Advocate in SR.78586

+1cc to Mr.S.M.S.Johny Basha, Advocate in SR.78382

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