

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.1845 of 2010
and
W.M.P.No.21119 of 2017

P.Siva Shakthivel

.. Petitioner

Vs.

1. The Chairman,
Tamil Nadu Electricity Board,
N.P.K.R.R. Maaligai,
No.800, Anna Salai,
Chennai-600 002.

2. The Assistant Engineer,
Tamil Nadu Electricity Board,
19/9, 4th Street, Jothi Nagar,
Chennai-600 019.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus to direct the respondents to pay Rs.6,75,000/- (Rupees six lakhs seventy five thousand only) towards compensation and rembursement of medical expenses.

For Petitioner : Mr.K.Malaikkannu
For Respondents: Mr.P.R.Dhilip Kumar

ORDER

The petitioner has come forward with this Writ Petition praying for issuance of a Writ of Mandamus to direct the respondents to pay Rs.6,75,000/- towards compensation and rembursement of medical expenses.

2. The petitioner herein is the father of the victim-girl. According to the petitioner, his elder daughter Prema, aged about 12 years, while returning from her School (St.Antony's Matriculation School) to her residence by her bi-cycle and while she was passing through water stagnated upto her ankle level at Mahalakshmi Nagar Main Road, fell down and came in contact with

a live electric cable on the road with her right hand, as a result of which, she was electrocuted and sustained grievous injuries. She was immediately admitted to Sugam Hospital, Thiruvottiyur, Chennai-600 019 and then at Kanchi Kamakoti Children Hospital, Nungambakkam, and on 22.08.2006, she succumbed to the injuries.

3. The petitioner preferred a complaint about the accident on the same day at about 8 p.m before Ennore Police Station, which was registered in FIR.No.583 of 2006. According to the petitioner, though the Electricity Board staff came to the residence and collected the details of the incident and assured relief for the petitioner's daughter's death, no action was taken by the respondents. The petitioner made a representation to the Tahsildar, Ambattur, who after making preliminary enquiry, recommended to the Collector, Thiruvallur District for granting of relief, vide letter dated 27.06.2007, who in turn recommended to the Secretary of the Chief Minister's Special Cell through Joint Commissioner, Revenue Administration, Chepauk to pay the monetary relief from the Chief Minister's General Relief Fund, vide letter dated 07.08.2007. Further, the Collector of Thiruvallur District, by letter dated 29.12.2007, furnished certain additional details to the Joint Commissioner of the Revenue Administration, Chepauk and recommended for granting monetary relief to the petitioner, but no relief was granted to the petitioner. The petitioner thereafter made a representation dated 01.12.2008 to the Additional Chief Secretary-cum-Commissioner, Revenue Administration, Chepauk, Chennai, but there was no response for the same.

4. It is the grievance of the petitioner that he had spent more than Rs.75,000/- towards medical expenses for the treatment of his deceased daughter, who was supporting the petitioner to run his small grocery shop and the petitioner had been suffering from mental agony due to the death of his elder daughter Prema. After issuing Lawyer's notice, dated 14.08.2009 to the respondents, for which, the second respondent responded and admitted that in heavy rainy days, it is common for electric induction in the cables and that the girl got hold of the electric cable by herself and hence, the TNEB is not responsible for the accident, the petitioner has come forward with the above Writ Petition for the relief stated supra.

5. Learned counsel for the petitioner contended that respondents should have undertaken preventive maintenance in the electricity line and the respondents had not strengthened the electrical wire line with necessary heights and the accident had taken place only due to the gross negligence of the respondents/Electricity Board, as a result of which, the electric wire had contacted the victim girl. Hence, the

respondents cannot escape from the liability. It is his further submission that the petitioner sent a representation to the respondents herein on 01.02.2008 requesting them to pay just and fair compensation, but the same was not considered. It is his stand that had the petitioner's daughter been alive, she would have completed her studies and got a decent job and would have atleast earned Rs.5,000/- per month with career prospects. But, due to the death of the victim-girl, the petitioner's life has become a tragedy now and the respondents are responsible and have to compensate for the same.

6. Learned counsel for the petitioner also added that the concept of strict liability in the context of snap electrocution came up for consideration before the Hon'ble Supreme Court in the case of Madhya Pradesh Electricity Board vs. Shail Kumari, reported in 2002 (2) SCC 162, wherein, the Supreme Court has granted compensation arriving at a finding that the live wire got snapped and fell on the public road which was partially inundated and the deceased rode over the wire, which twitched and snatched him resulting in his instantaneous electrocution. The Supreme Court in the said case, indicated the theory of foreseeable risk in the following paragraphs:

"7: It is an admitted fact that the responsibility to supply electric energy in the particular locality was statutorily conferred on the Board. If the energy so transmitted caused injury or death of a human being, who gets unknowingly trapped into it the primary liability to compensate the sufferer is that of the supplier of the electric energy. So long as the voltage of electricity transmitted through the wires is potentially of dangerous dimension the managers of its supply have the added duty to take all safety measures to prevent escape of such energy or to see that the wire snapped would not remain live on the road as users of such road would be under peril. It is no defence on the part of the management of the Board that somebody committed mischief by siphoning such energy to his private property and that the electrocution was from such diverted line. It is the lookout of the managers of the supply system to prevent such pilferage by installing necessary devices. At any rate, if any live wire got snapped and fell on the public road, the electric current thereon should automatically have been disrupted. Authorities manning such dangerous commodities have extra duty to chalk out measures to prevent such mishaps.

8. Even assuming that all such measures have been adopted, a person undertaking an activity involving hazardous or risky exposure to human life is liable under law of torts to compensate for the injury suffered by any other person, irrespective of any negligence or carelessness on the part of the managers of such undertakings. The basis of such liability is the foreseeable risk inherent in the very nature of such activity. The liability case on such person is known, in law, as "strict liability". It differs from the liability which arises on account of the negligence or fault in this way i.e., the concept of negligence comprehends that the foreseeable harm could be avoided by taking reasonable precautions. If the defendant did all that which could be done for avoiding the harm he cannot be held liable when the action is based on any negligence attributed. But such consideration is not relevant in cases of strict liability where the defendant is held liable irrespective of whether he could have avoided the particular harm by taking precautions".

7. Learned counsel for the petitioner has further referred to the case in *Alamelu Vs. State of Tamil Nadu*, reported in 2012 (114) A.I.C. 707, wherein, this Court directed the respondents therein to pay a sum of Rs.7,27,000/- (Rupees Seven Lakhs and Twenty Seven Thousand only) to the petitioner concerned in that case and directed to pay an interest at 6% from the date of the petition within a period of eight weeks. He also referred to the case in *Rabindra Nath Ghosal Vs. University of Calcutta*, reported in 2002 (7) SCC 478, wherein, 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. Apart from the above cited judgments, learned counsel for the petitioner also relied on another judgement in *R.Pareetha Beevi & Others Vs. The Chairman, Tamil Nadu Electricity Board (TNEB)* reported in 2014 Writ L.R. 739, wherein, in a similar circumstance, this Court had granted compensation of a sum of Rs.5,00,000/- to the petitioners therein for the loss of their family member.

8. Learned counsel for the respondents has filed a counter affidavit contending that the accident had occurred in 2006, but the Writ Petition was filed only in 2010 after a lapse of four years, and hence, the Writ Petition is liable to be dismissed on that ground. It is further contended that the deceased fell down into a pit filled with stagnated rain and drainage water and due to the damaged and poor maintenance of roads and improper

drainage system, she fell into the pit while riding her bi-cycle. As she fell into the pit with face down, she swallowed the stagnated impure water and while getting up, she got hold of the electric cable passing nearby the electrical post and the cable would have peeled off from the original position, and there may be some electric induction and she got electric shock. It is purely a case of an Act of God and the death was not on account of the negligence of the respondents in maintaining the electric cable. Hence, the Board did not take any steps or granted relief to the petitioner based on the petitioner's notice, dated 14.08.2009. Learned counsel for the respondents further contended that the petitioner has to approach only the Civil Court seeking necessary relief and the Writ Petition is not maintainable. At any rate, the Electricity Board cannot be faulted with.

9. Heard both sides and perused the materials available on record.

10. Taking into consideration the grievous injuries sustained by the petitioner's daughter who died after the incident, and in view of the judgment rendered by this Court in the case of R.Pareetha Beevi and others Vs. The Chairman, TNEB & others, reported in 2014 Writ L.R. 739, wherein this Court has awarded compensation to the victim's legal representatives on account of loss of life due to electrocution, this Court feels that the respondents have to pay suitable compensation to the petitioner.

11. There is no codified law for arriving at quantum of compensation in cases of these type of cases. The enactments like the Motor Vehicles Act, the Workmen's Compensation Act and the Fatal Accidents Act, may be applied for arriving at a just compensation. In the case on hand, the petitioner's daughter is a school going student. Since the victim girl succumbed to the injuries, this Court feels it appropriate to fix the minimum monthly income of the victim as Rs.3,000/- and following the ratio laid down by the Apex Court in the case of Sarla Verma and others vs. Delhi Transport Corporation and another, reported in 2009 (6) SCC 121, this Court has arrived at a just compensation under the following heads, viz.

Head under which compensation is awarded	Amount in Rs.
Loss of earning capacity (Rs.3000/- x 2/3 x 12 x 15)	3,60,000
Medical expenses	50,000

Head under which compensation is awarded	Amount in Rs.
Loss of love and affection to the parents of the deceased (Rs.12,500/- each)	25,000
Transportation to Hospital	20,000
Attendant Charges	20,000
Pain and Sufferings	1,00,000
Funeral expenses	25,000
Total	6,00,000

12. Therefore, having regard to the above calculation, this Court is of the view that the petitioner is entitled to a sum of Rs.6,00,000/- (Rupees Six Lakhs only) as compensation for the death of his elder daughter Prema in the incident. The respondents/Electricity Board are directed to pay the said amount as compensation to the petitioner, with interest at 6% per annum from the date of accident till the date of payment, within a period of three months from the date of receipt of a copy of this order, and the same could be reimbursed from the concerned staff who came and visited the petitioner and collected details and assured for necessary monetary relief, and the amount paid by the respondents Electricity Board shall be reimbursed from the concerned staff within one month of paying the compensation amount by the respondents, failing which the entire amount will fetch interest @ 12% per annum payable to the Electricity Board and for non-payment of amount within the stipulated time, the amount can be recovered from the officials concerned.

13. This Writ Petition is disposed of with the above directions and observations. No costs. Consequently, connected W.M.P. is closed.

Sd/-

Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

CS

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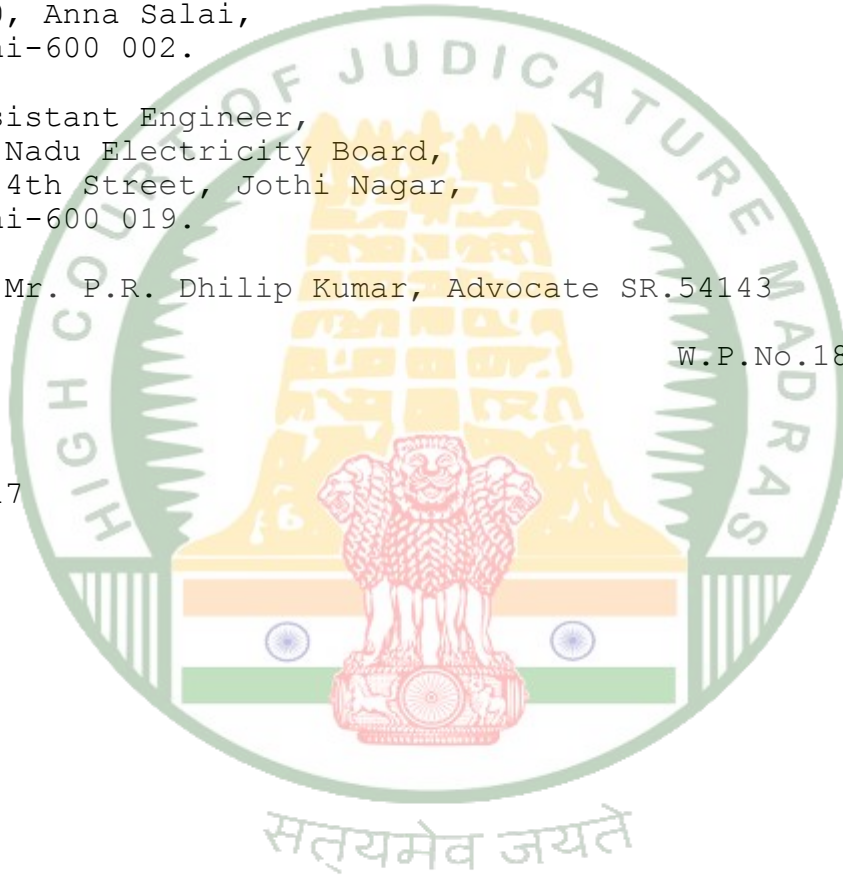
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+ 1 cc to Mr. P.R. Dhilip Kumar, Advocate SR.54143

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EU 24.08.17



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