

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.12.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.18983 of 2013
and
M.P.No.1 of 2013

Kumari

.. Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. by the Secretary to Government,
Energy Department,
Secretariat, St.George Fort, Chennai-600 009.
2. The Tamil Nadu Electricity Board,
Rep. by its Chairman,
N.P.K.R.R. Maaligai,
Electricity Avenue,
44, Anna Salai, Chennai-600 002.
3. Office of Assistant Engineer,
Kodungaiyur Electricity Department,
Kodungaiyur,
Chennai-600 118.
4. Corporation of Chennai,
Rep. by Superintending Engineer-Electrical,
Electrical Department,
Corporation of Chennai,
Rippon Building, Chennai-600 003.
5. Corporation of Chennai,
Rep. by Divisional Electrical Engineer-North,
Corporation of Chennai,
Rippon Building,
Chennai-600 003.

(Respondents 4 and 5 impleaded as per
order dated 04.10.2017 passed in

M.P.No.2 of 2013 in W.P.No.18983 of 2013)

.. 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 grant appropriate compensation to the petitioner as this Court may deem fit and proper considering the facts and circumstances of the case.

For Petitioner : Mr.V.S.Senthil Kumar

For Respondents : Mr.P.R.Dhilip Kumar for RR-2 and 3
Mr.T.C.Gopalakrishnan for RR-4 and 5
Mr.R.Venkatesh Government Advocate R1

ORDER

The petitioner has come forward with this Writ Petition praying for issuance of a Writ of Mandamus to direct the respondents to grant appropriate compensation to the petitioner as this Court may deem fit and proper considering the facts and circumstances of the case.

2. It is the case of the petitioner that her late husband and herself have been residing in Chennai and her husband was an auto driver. They are blessed with two daughters (who are married) and one son. Her husband is the sole bread winner of the family. Her husband used to go to the near-by shop every day in the morning to buy milk and on 10.01.2013 at about 5.30 a.m., as usually, her husband went to the near-by shop to buy milk. Without knowing that the electricity cable was cut and lying on the road unattended, her husband stamped the electricity cable and due to high voltage current passing into him, he screamed loudly and fell on the road. The petitioner along with her son and few neighbours, rushed to the place of occurrence and saw the petitioner's husband lying on the road without any response. He was taken to hospital where the Doctor declared that he was already dead. The petitioner gave a complaint to P-6 Kodungaiyur Police Station and FIR was registered in FIR.No.67 of 2013 and the Police personnel took the custody of the body of the petitioner's husband and thereafter, post-mortem was conducted in Government Stanley Hospital, and in the post-mortem certificate, the reason for the death is shown as electrocution.

3. It is the further case of the petitioner that the FIR and the Death Report filed by the Police personnel shows that the petitioner's husband died of electrocution. The respondent-Department's employees lackadaisical approach in maintaining the electricity cable, has resulted in the death of the petitioner's husband. They have not taken utmost care in maintaining the electricity cables. The petitioner's son does not have a permanent employment and she is finding it very difficult to run the family. The petitioner has sent a representation, dated 21.05.2013 to the second respondent seeking compensation. Since the said representation is not considered, the petitioner has filed this Writ Petition for the relief stated supra.

4. 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 and Corporation of Chennai, as a result of which, the electric wire had contacted the victim. Hence, the respondents cannot escape from the liability. It is his further submission that the petitioner sent a representation to the second respondent herein on 21.05.2013 requesting them to pay compensation, but the same was not considered. It is his stand that had the petitioner's husband been alive, he would have taken care of the petitioner's family. But, due to the death of the victim-husband, the petitioner's life has become a tragedy now and the respondents are responsible to compensate for the same.

5. Learned counsel for the respondents 2 and 3 by filing counter affidavit, contended that the deceased fell down on contacting a bare cable, which was utilised for the street lighting purpose by the Corporation of Chennai. The street light installation and its materials are purchased and utilised by the Corporation of Chennai and The TANGEDCO is not laying any cable in the middle of the road and they are merely giving the electricity supply for the street light. While the very liability is disputed by the respondents 2 and 3, only Civil Court has jurisdiction to decide the case.

6. Learned counsel for the respondents 4 and 5, by filing counter, contended that the people around the shop where the petitioner's husband was going, warned not to touch the wire lying on the road and inspite of public warning, the petitioner's husband took the wire and started to coil the wire around his left arm, and in that process, the current passed through the petitioner's husband's hand.

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

8. It is useful to refer a decision of the Apex Court in the concept of strict liability in the context of snap electrocution came up for consideration before the 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".

9. Further, in the case of Alamelu Vs. State of Tamil Nadu, reported in 2012 (114) A.I.C. 707, 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.

10. It is also useful to refer a 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.

11. It is also worthwhile to refer a judgement in the case of 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.

12. Taking into consideration the injury sustained by the petitioner's husband 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.

13. There is no codified law for arriving at quantum of compensation in 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.

14. Accordingly, while applying the decisions of the Supreme Court pertaining to motor accident cases in Sarla Verma and others Vs. Delhi Transport Corporation and another (2009 (6) SCC 121), Reshma Kumari Vs. Madan Mohan (2013 (9) SCC 65), Santosh Devi Vs. National Insurance Co. Ltd. (2012 (6) SCC 421), Rajesh Vs. Rajbir Singh & others (2013 (9) SCC 54) and Syed Sadiq and others v. Divisional Manager, United India Insurance Company Ltd., (2014 (2) SCC 735), this Court applies the same yardstick to this case of electrocution.

15. Even though it has been contended by the learned counsel for the petitioner that the petitioner was an auto driver, there is no proof or evidence produced in support of the same or there is any evidence to show that he is owning an auto. Hence, this Court takes into account the principles of motor accident victim compensation cases pertaining to the vegetable vendor in the case of Syed Sadiq and others v. Divisional Manager, United India Insurance Company Ltd., (2014 (2) SCC 735) to arrive at the

compensation. However, the accident in the said decision of Syed Sadiq, happened in the year 2008. In the present Writ Petition, the death of the petitioner's husband was of the year 2013. The Courts have arrived at a compensation in cases of accidents prior to 2008, taking into account the monthly income at Rs.3,000/-. However, in the absence of any proof furnished by the petitioner with regard to the avocation of the petitioner's husband and taking into consideration the avocation of the husband of the petitioner as Vegetable Vendor and following the said decision of the Supreme Court in the case of Syed Sadiq (cited supra), and, while applying the principles laid down in all the above decisions of the Supreme Court, the compensation has to be arrived at.

16. In the case on hand, this Court feels it appropriate to fix the minimum monthly income of the victim as Rs.6,500/- 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.6,500 + future prospects Rs.2,170/- less 1/3 for personal expenses) (6500+2170 -2170 x 12 x 11) (rounded off to nearest rupees) (deceased aged 52 years at the time of death)	8,58,000
Medical expenses	20,000
Loss of love and affection to the son of the deceased (two daughters married)	25,000
Transportation to Hospital	10,000
Funeral expenses	25,000
Loss of consortium to the petitioner	1,00,000
Total	10,38,000

17. Therefore, having regard to the above calculation, this Court is of the view that a sum of Rs.10,38,000/- (Rupees ten lakhs and thirty eight thousand only) could be fixed as compensation for the death of the petitioner's husband in the

incident. Accordingly, the said compensation is awarded and out of the above said compensation, the petitioner is entitled to 2/3 of the compensation, i.e. Rs.6,92,000/- (Rupees six lakhs and ninety two thousand only) and her son is entitled to 1/3 of the compensation, i.e. Rs.3,46,000/- (Rupees three lakhs and forty six thousand only). Since the laying of electric cable and maintenance of the same are left to the Corporation of Chennai and that the supply of electricity alone is extended by the Tamil Nadu Electricity Board, for the incident in question, on account of the deficiency in the service by the Corporation of Chennai, the Corporation of Chennai alone are liable to pay the amount of compensation arrived at as above. Accordingly, the respondents 4 and 5/Corporation of Chennai, are directed to pay the said amount as compensation to the petitioner, within a period of three months from the date of receipt of a copy of this order, failing which, interest @ 6% per annum will get attracted from the date of the accident till the date of payment.

18. Depriving interest on the compensation in this case, cannot be treated as a precedent in any other case. If any person who is going to quote this portion of the order for postponement/deprivation of interest, interest @ 12% will get attracted from the date of accident till the date of payment in those matters.

19. This Writ Petition is allowed with the above directions and observations. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
Energy Department,
Secretariat, St.George Fort, Chennai-600 009.
2. The Superintending Engineer-Electrical,
Electrical Department,
Corporation of Chennai,
Rippon Building, Chennai-600 003.
3. The Divisional Electrical Engineer-North,
Corporation of Chennai,
Rippon Building,
Chennai-600 003.

+1cc to Mr.T.C.Gopalakrishnan, Advocate, S.R.No.85554

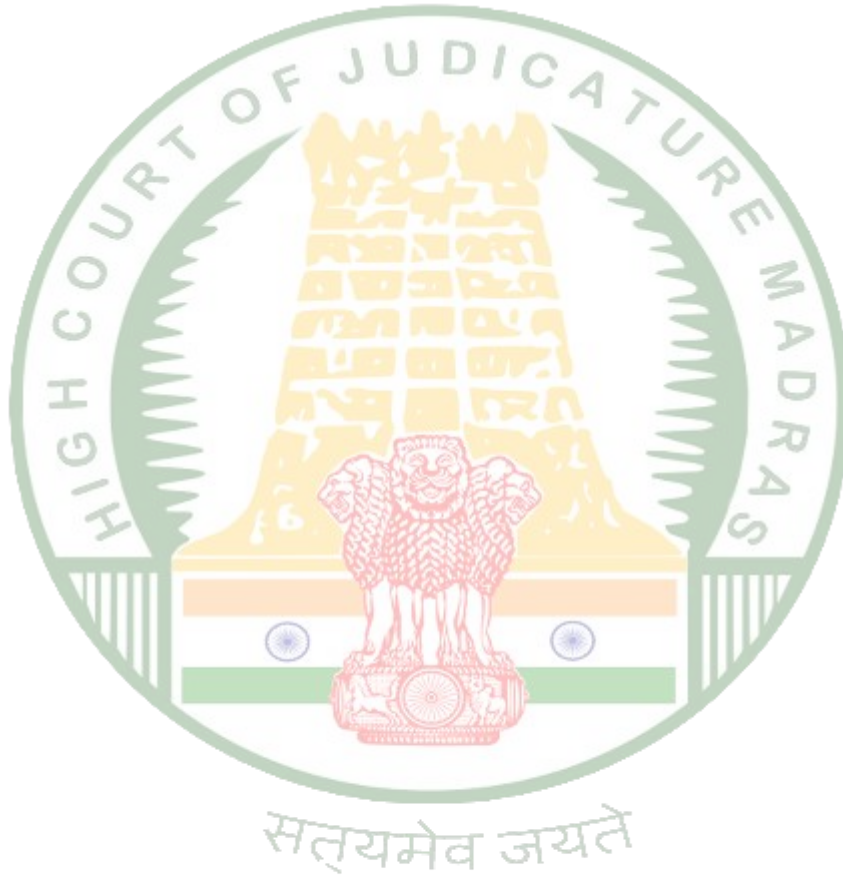
+1cc to Mr.P.R.Dhilipkumar, Advocate, S.R.No.85699

+1cc to Mr.V.S.Senthil Kumar, Advocate, S.R.No.86525

+1cc to the Government Pleader, S.R.No.86293

W.P.No.18983 of 2013

RRK (22/12/2017)



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