



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.10.2017

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P(MD)No.12844 of 2014

1.P.Arivazhagan
2.A.Manikandan
3.A.Chithra

... Petitioners

Vs.

1.The Principal Secretary to the Government,
Energy Department,
Secretariat, Chennai.

2.The Tamil Nadu Electricity Board Limited,
represented by its
Chairman, Anna Salai, Chennai.

3.The Superintending Engineer,
TANGEDCO Ltd., Dindigul District.

4.The Divisional Engineer,
Tamil Nadu Electricity Board Ltd.,
Vathalagundu, Dindigul District.

5.The Executive Engineer,
Tamil Nadu Electricity Board Ltd.,
Vatlagundu East, Dindigul District.

6.The Assistant Executive Engineer,
Tamil Nadu Electricity Board Ltd.,
Nilakkottai,
Dindigul District.

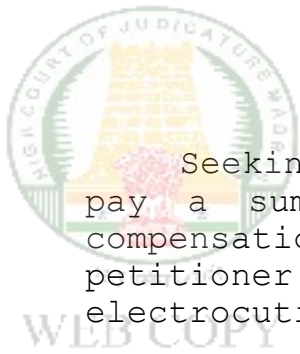
... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a writ of Mandamus directing the respondents 1 and 2 to issue a compensation amount of Rs.8,00,000/- (Rupees Eight Lakhs only) to the petitioners within a stipulated time.

For Petitioners : Mr.N.Karthik Kanna

For Respondents : Mr.J.Gunaseelan Muthiah
Government Advocate for R.1

Mrs.S.Srimathy
for M/s.S.M.S.Johnny Basha for R.2 to R.6
* * * * *

ORDER

Seeking a writ of Mandamus to direct the respondents 1 and 2 to pay a sum of Rs.8,00,000/- (Rupees Eight Lakhs only) towards compensation for the death of one Palaniammal, wife of the first petitioner and mother of the petitioners 2 and 3, who died due to electrocution.

2. Facts-in-brief, are as follows:

2.1. The first petitioner married one Palaniammal and out of the said wedlock, the petitioners 2 and 3 were born to them. The first petitioner is a coolie and his wife was doing agriculture and milk business and she was earning a sum of Rs.4,500/- (Rupees Four Thousand and Five Hundred only) per month. On the fateful day, i.e. 02.05.2013, a live wire cut down and fell on the wife of the first petitioner, by which, she suffered grievous injuries. While she was taking to the Government Hospital, Vadipatti, she breathed her last.

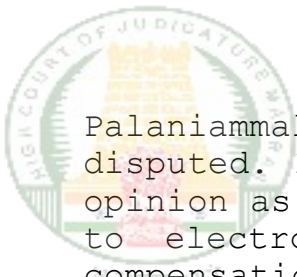
2.2. On 03.05.2013, the first petitioner lodged a complaint with the police and the same was registered in Cr.No.112 of 2013 under Section 174 of the Code of Criminal Procedure. Autopsy was conducted on the body of the deceased Palaniammal, wherein the cause of death was due to electrocution. Later, on 17.10.2013, the petitioners sent a representation to the respondents claiming compensation, however, the same did not procure any positive result.

2.3. Therefore, this writ petition has been filed.

3. Refuting the claim of the petitioners, the sixth respondent - Assistant Executive Engineer, Tamil Nadu Electricity Board, Nilakkottai, Dindigul District, filed a counter affidavit, wherein it is contended that the death of the wife of the first petitioner was caused due to the Act of God as on the date of occurrence, there was a heavy rain and moreover, the deceased put up a shed beneath the Lower Tension Electric lines, which led to the said occurrence. The plea of the petitioners that due to the negligence on the part of the respondents alone, the death of the deceased Palaniammal had occurred, was stoutly denied by the respondent - Board. Thus, they prayed for the dismissal of this writ petition.

4. The learned Counsel for the petitioners would submit that the cause of death of the deceased was admitted by the respondents even in their counter affidavit itself and hence, they cannot refute the same. He would further submit that it is well settled position of law that when the facts are not in dispute, the legal heirs of the victims of riot, custodial killing or death due to negligence on the part of the State Authorities, can claim compensation in the writ proceedings and hence, the present writ petition is maintainable.

5. Drawing the attention of this Court to the First Information Report as well as the Post-Mortem Report, the learned Counsel for the petitioner would contend that the cause of death of the deceased



Palaniammal was clearly stated therein and thus, it could not be disputed. Moreover, the Doctor who conducted autopsy, gave a final opinion as to the cause of the death of the deceased that it was due to electrocution and thus, the respondents are liable to pay compensation to the petitioners, he concluded.

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6. Per contra, the learned Counsel for the respondents 2 to 6 contended that the writ petition itself is not maintainable as there are disputed questions of fact involved herein as to the death of the deceased and the petitioners have to work out their remedy before the competent civil Court seeking compensation for the death of the deceased. The respondents cannot be mulcted with the liability much less vicarious liability for the alleged death of the deceased. The respondents denied the manner of the occurrence that had taken place and the petitioners also failed to let in evidence both oral as well as documentary to prove their case and in such an event, this Court, under Article 226 of the Constitution cannot delve deep into the same and decide the issue regarding the compensation. The proper recourse for the petitioners is only by way of a suit before the civil Court and hence, prayed for the dismissal of this writ petition as not maintainable.

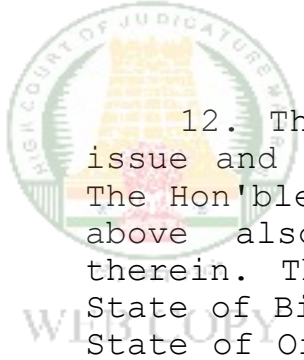
7. I have considered the rival submissions and perused the materials available on record.

8. The deceased in the present case, died of an unnatural death, that made the petitioners to claim compensation before the respondents, but, they did not consider the same so far and accordingly, the petitioners, who are the husband as well as children of the deceased, are before this Court.

9. At the outset itself, this Court points out 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 Post-mortem Report. Therefore, the contention put forth on the side of the respondents that there are disputed questions of fact in this writ petition, lacks merit and accordingly, the same is liable to be rejected.

10. At this juncture, the learned Counsel appearing for the respondents 2 to 6, on instructions, would submit that the petitioners have already made a representation dated 17.10.2013 to the respondents seeking compensation and if a reasonable time is granted by this Court, the same will be considered and suitable orders passed.

11. No doubt, nothing can compensate or equate the vacuum that is caused due to a death and further, in the case on hand, the petitioners are made to run from pillar to post seeking compensation.



12. This Court had, in several judgments, dealt with the same issue and ordered payment of compensation to the affected parties. The Hon'ble Division Bench of this Court in the judgment referred to above also granted compensation to the respondents/plaintiffs therein. The Hon'ble Supreme Court in the cases in Rudul Sah vs. State of Bihar, reported in (1983) 4 SCC 141 and Nilabati Behera vs. State of Orissa, reported in (1993) 2 SCC 746 has extensively dealt with the issue and held that the right to compensation is some palliative for the unlawful acts of instrumentalities which act in the name of public interest and Courts can grant compensation for deprivation of a fundamental right.

13. In such circumstances, this Court directs the second respondent to consider the claim of the petitioners in respect of payment of compensation for the death of the said Palaniammal on account of electrocution based on the representation dated 17.10.2013, submitted by the petitioners and pass appropriate orders thereon on merits and in accordance with law, within a period of six weeks from the date of receipt of a copy of this order in the light of the judgments of this Court as well as the Hon'ble Supreme Court (cited supra).

14. With the above direction, this writ petition stands disposed of. No costs.

Sd/-

Assistant Registrar (AD-II)

/True Copy/

Sub Assistant Registrar.

To

1. The Principal Secretary to the Government,
Energy Department, Secretariat, Chennai.
 2. The Chairman, Tamil Nadu Electricity Board Limited,
Anna Salai, Chennai.
 3. The Superintending Engineer, TANGEDCO Ltd., Dindigul District.
 4. The Divisional Engineer, Tamil Nadu Electricity Board Ltd.,
Vathalagundu, Dindigul District.
 5. The Executive Engineer, Tamil Nadu Electricity Board Ltd.,
Vatlagundu East, Dindigul District.
 6. The Assistant Executive Engineer,
Tamil Nadu Electricity Board Ltd., Nilakkottai, Dindigul District.
- +1CC to Mr. S.M.S. Johnny Basha Advocate, SR.No. 83897
+1CC to the Special Government Pleader SR.No. 84018

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