



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 24.03.2017

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THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

WP(MD)No.3426 of 2013

A.Kadhar Ibrahim

.. Petitioner

Vs.

1. State Represented through its
Home Secretary,
St. George Fort,
Chennai - 600 009.

2. Tamil Nadu Electricity Board,
represented by its Chairman,
800, Anna Salai, Chennai - 6.

3. Assistant Electrical Engineer,
(Distribution),
Tamil Nadu Electricity Production and Distribution,
Sikkal,
Ramanad District - 623 528.

4. The Inspector of Police,
Vaalinkkam Police Station,
Ramanathapuram District.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to quash the impugned Order passed by the 2nd Respondent in his vide proceedings Ka.No.Vu.Mi.Po/Vi Ni/Sikkal/Aa.No.008/11 dated 11.11.2011 and consequently direct the Respondents 1 to 3 to provide a just and fair compensation to the petitioner's son namely Mohammed Saibudin.

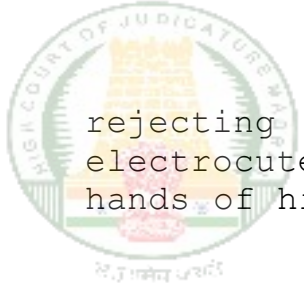
For Petitioner : Mr.S.M.A.Jinnah

For Respondents : Mr.K.Guru (for R1 and R4)

Government Advocate

Mr.S.M.S.Johny Basha (for R2 and R3)

O R D E R

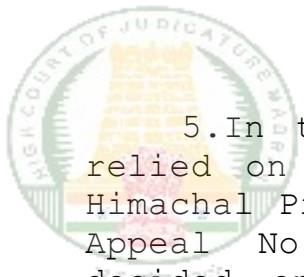


rejecting the plea of the petitioner for compensation for the electrocuted burn injuries which resulted the amputation of both hands of his son namely Mohamed Saibudheen aged about 15 years.

2.The case of the Petitioner is that on 03.10.2011 at about 4.30 P.M., the Petitioner's minor son who was studying his 10th Standard got entangled in electrocution and thereby sustained grievous burnt injuries on his both hands. The place of the unfortunate incident is nearby the Government Health Centre play ground at Vaalinokkam in Ramanathapuram District. Immediately after the occurrence, the injured boy was taken to Government Hospital, Ramanathapuram and thereafter referred to Madurai Government Rajaji Hospital. In the said hospital on 31.10.2011, surgery was performed and the toe of left leg and both hands below knee of the minor were amputated. The authority of the Department of Plastic, Reconstructive Surgery, opined that due to post electrical burns and presented gangrene in the injured parts they were amputated.

3.The further case of the Petitioner is that in this regard the Petitioner lodged a complaint before the Vaalinokkam Police station and a case in FIR No.81/ 2011 came to be registered on 24.12.2011 for the offence under section 338 of IPC. Further, on 05.11.2011 the Petitioner sent a representation to the 3rd Respondent in this regard, but it was not considered on the other hand the same was rejected on 11.11.2011. The said letter is impugned in the Writ Petition. Further, it is the case that the son of the Petitioner is almost became totally disable and the same was registered with the Disabled Rehabilitation Office in Ramanathapuram vide Registration No.9516 dated 19.12.2011. Further the artificial limb would fetch the cost of the Rs.24,00,000/- for both limbs. Moreover, even after the quotation obtained from one J.S.J. Health Care Equipments, a manufacturer of artificial limbs, the petitioner sent another representation to the 2nd and 3rd Respondents on 20.02.2013 that was also not considered, hence the writ petition was filed along with Miscellaneous Petition for Interim Direction to the 2nd and 3rd Respondents to pay a sum of Rs.24,00,000/-for the fixation artificial limbs.

4.The learned counsel for the Petitioner has submitted that the son of the Petitioner lost both his hands due to the poor maintenance of high tension electrical wire by the 2nd and 3rd Respondent. He also pointed that the high tension electrical wire was not properly maintained by considered the danger of electricity. So, he prays that the Petitioner's son is entitled to get compensation and same may be ordered as prayed for.

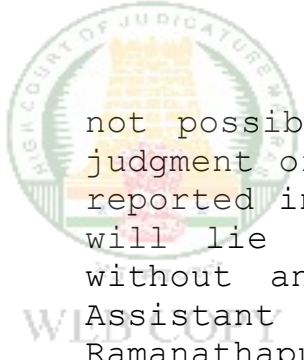


5. In this regard the learned counsel for the Petitioner has relied on a judgment of the Hon'ble Supreme Court in State of Himachal Pradesh and others Vs. Naval Kumar @ Rohit Kumar in Civil Appeal No.1339 of 2017 arising out of S.L.P.(C)No.9471/2015 decided on 02.02.2017 and prays that the Petitioner's son is entitled to a total compensation of Rs.1,00,00,000/- as the 2nd and 3rd Respondent alone are responsible for the incident. Further, by drawing attention of this court with regard to the educational carrier of the son of the Petitioner at the time of the gruesome accident, the learned counsel has submitted that even the fixation of artificial limbs would not substitute the originality.

6. Per contra, the learned counsel appearing for the 2nd and 3rd Respondents submitted that the 2nd and 3rd Respondents are no way responsible for the negligent act of the minor boy as he only jumped and tried to touch the electrical wire. His contention before this court is based on the averments made in para No.4 of his counter affidavit. So, for the sake of convenience Para No.4 of the counter affidavit is reproduced here under:

"I respectfully submit that on 03.10.2011 at around 04.30 P.M the Petitioners son met with an electrical accident and his hand got burnt. Later on, his two hands were amputated due gangrene on left hand and stump closure on the right hand. When the case was reported to the Board, on spot inspection it was found that the wire was not disconnection and the entire wire was intact. The wire is beyond the primary health centre and not near the playground. The place is a secluded place and nobody will go there since the back waters of the ocean runs across the land. In short the place is a dangerous place. Due to heavy wind on 03.10.2011 there was sag in the electrical line. The accident occurred when the injured boy tried to play with the electrical wire by jumping and tried to hold the wire. Therefore the board is not responsible for the negligent act of the boy who has jumped and tried to touch the electrical wire. The negligence is fully on the part of the petitioner's son and not even an iota of negligence could be attributed on the part of the board. Since there is no negligence on the part of the board the respondents are not liable to pay compensation. Over and above the Petitioner has not provided proper and continuous treatment to the victim before the proper authority."

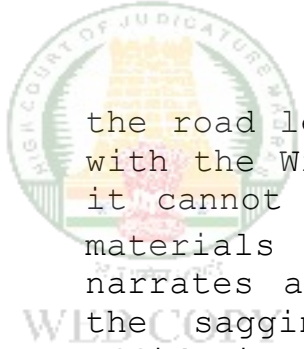
7. So, the 2nd and 3rd Respondents are no way responsible and further submitted that the alleged negligence of the 2nd and 3rd Respondents must be proved by way of adducing evidence which is



not possible in the writ petition. Moreover, he has relied on a judgment of Hon'ble Supreme Court in Gothavari Sugar Mills Limited reported in 2011 2 SCC 439 that for the tortious liability no writ will lie and the quantum of compensation cannot be determined without any evidence. Further a sketch was also filed by the Assistant Engineer, Distribution TANGEDCO, Sikkal from the Ramanathapuram District. The sketch would show the running of the existing of high tension line with 11 Kilo Watt electricity and also the place of the accident, and finally he prays for the dismissal of the writ petition.

8.I heard Mr.S.M.A.Jinnah, learned counsel for the petitioner, Mr.K.Guru, learned Government Advocate for the respondents 1 and 4 and Mr.S.M.S.Johny Basha, learned counsel for the respondents 2 and 3 and perused all the materials available on records.

9.It is the case of the Petitioner that both hands of the Petitioner that is the forearms below knee were amputated which is not disputed by the contested Respondents. Further, the accident is not disputed but the dispute is only with regard to the negligence of the minor boy as per the version of the 2nd 3rd Respondents and on the other hand as per the Petitioner, negligence is on the part of the 2nd and 3rd Respondents for the cause of the accident. So, it is the duty of this court to ascertain as to whether the negligence is on the part of the minor boy or on the part of the 2nd and 3rd Respondents. In this regard the sketch filed by the 3rd Respondent is subjected for scrutiny and which would amply prove that the place of the accident is not a secluded place as submitted in the counter affidavit that nobody will go there since the back water of the sea runs across the land. Further, the sketch would show, a road towards Vaalinokkam village is in existence and in the northern side of the said road sea water is flowing. However, in between the sea water and the road the building of the Primary Health Centre is available and nearby in the eastern side of the Primary Health Centre, a play ground is also available. Further, in between the high tension electric line and the road a distance of 13 meter is shown in the rough sketch. Apart from that the in the existing road leads to Primary Health Centre the high tension electric line runs across the road and along with the road leads to Vaalinokkam Village. So, it cannot be stated that the place of the accidents is a secluded place. Moreover, it is admitted in the counter affidavit that due to heavy wind on 03.10.2011 there was sag in the electrical line. Admittedly it is the high tension electrical line and the same cannot be allowed to run in a very minimum height, because according to the 2nd and 3rd Respondents the injured boy touched the wire by have a jump. So, it is clear that the high tension line was allowed to pass with a very minimum height which across



the road leads to a Primary Health Centre. Though this court deals with the Writ Petition in Article 226 of the constitution of India it cannot shirk its responsibility in appreciating the available materials on record. The sketch filed by the 2nd respondent narrates and speaks more about the place of occurrence. Further, the sagging of electrical line is admitted in the counter affidavit. So, from the aforesaid discussion, I come to the conclusion that the improper maintenance of the high tension electric line is the cause for the accident. The 2nd and 3rd Respondents are not expected to maintain such high tension electrical line with a minimum height to touch by a jump that too by boy, studying his X standard. As this court has concluded that the 2nd and 3rd Respondents are the cause for the unfortunate accident, this court is to ascertain the quantum of the compensation.

10. The age of the Minor son of the Petitioner is about 15 years and he was studying his 10th Standard at the time of the incident. This court is able to visualize the unexpected and sudden loss of both hands of the boy. It is very unfortunate to record here that the 2nd and 3rd Respondents must be vigilant in a very cautious manner to maintain the electrical line. It is difficult to live without both hands that too the loss of both hands was suddenly due to an accident. At this juncture judgment relied on by the counsel for Petitioner is taken up for consideration:

"The High Court held and, in our view, rightly that the incident in question occurred due to negligence of the State and its authorities and hence the State was vicariously liable to compensate the respondent for the losses sustained by the respondent. It may be mentioned that the State rightly did not challenge this finding and hence we need not go into its correctness. The High Court further held and, in our view, rightly that having regard to the family background of the respondent and further respondents excellent performance as a brilliant student in studies, he would have easily earned Rs.30,000/- per month in his life. We find no good ground to interfere in this finding of fact, which, in our opinion, is based on proper material on record.

The High Court, however, further awarded Rs.10,00,000/- towards loss of companionship, life amenities/pleasures, and happiness, Rs.10,00,000/- for pain and suffering, mental distress, trauma and discomfort and inconvenience, Rs.10,00,000/- towards attendant/nursing expenses, and lastly, RS.5,00,000/- for securing artificial/robotic limbs and future medical expenses. In our considered view, the award of



compensation under these 4 heads appears to be on very higher side and is not supported by any evidence. It is, in our view, based on assumptions and presumptions to which we do not concur. In our view, entitlement under these heads is one thing and the quantum of grant of compensation under these heads is another thing. In this case, as rightly urged by the learned counsel for the appellant-State that lump sum award of compensation under these heads is on higher side and is not supported by any evidence. It is, therefore, not legally sustainable.

In our considered view, taking into consideration the facts and circumstances of the case such as respondent's family background, his age (8 years), nature of permanent disability suffered by the respondent, his performance in studies, the determination of monthly/yearly income made by the High Court, expenses incurred and all the relevant factors, which are usually taken into account in awarding compensation to the victim, the respondent is held entitled for a total lump sum compensation of Rs.90,00,000/- (Rs.Ninety lacs) together with interest payable at the rate of 6% p.a in place of Rs.1,25,00,000/- awarded by the High Court.

The award of Rs.90,00,000/- together with interest payable at the rate of 6% p.a., in our view, would fetch sufficient regular monthly income to the respondent by way of interest alone, if the awarded sum is deposited in the Bank and would thus take care of respondents upbringing and other needs for the rest of his life. The award of compensation determined by us is just and reasonable compensation payable to the respondent.

In view of foregoing discussion, the appeal succeeds and is allowed in part. The impugned order is modified to the extent indicated above by reducing the compensation awarded by the High Court.

In other words, the compensation awarded by the High Court is, accordingly, reduced from Rs.1,25,000,00/- to Rs.90,00,000/- with interest payable at the rate of 6% p.a from the date of filing of the writ petition."

11.Here according to the Petitioner the cost for the artificial limbs would come around Rs.24,00,000/-. Since, the son of the Petitioner has lost both his limbs, he is entitled to get both artificial limbs. In this regard the respondents have not stated anything about the cost of the artificial limbs in the counter affidavit as they have pleaded that they are not responsible for the accident. However, as this court has concluded that the 2nd and 3rd Respondents are responsible for the accident, the ratio laid down by the Hon'ble Supreme Court referred by the



counsel for the Petitioner applied here and the Petitioner is entitled to get a compensation of Rs.24,00,000/- towards the cost of the both artificial hands. The judgment relied on by the counsel for the 2nd and 3rd respondents would have no application at all to the facts and circumstances of the present case on hand.

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12. Further as per the judgment of the Hon'ble Supreme Court cited above, this Court need not specify the award of compensation on other heads by explaining what will be the quantum the claimant would get on each head. In this case, the petitioner's son is entitled Rs.15,00,000/- with the interest at the rate of 6% per annum.

13. In the result:

(a) this writ petition is allowed by setting aside the order passed vide proceedings No.Ka.No.Vu.Mi.Po/Vi Ni/Sikkal/Aa.No.008/11 dated 11.11.2011, by the 2nd respondent;

(b) the respondents 1 to 3 are hereby directed to pay the compensation a sum of Rs.15,00,000/- to the petitioner's son, namely Mohammed Saibudin, with interest at the rate of 6% per annum from the date of filing of the writ petition;

(c) the said exercise shall be done within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar(CS-I)

/True copy/

Sub Assistant Registrar

To

1. The Principal Secretary to Government (Home Department),
St. George Fort, Chennai - 600 009.

2. The Chairman,
Tamil Nadu Electricity Board,
800, Anna Salai, Chennai - 6.

3. The Assistant Electrical Engineer,
(Distribution),

Tamil Nadu Electricity Production and Distribution,
Sikkal, Ramanad District - 623 528.



4. The Inspector of Police,
Vaalinokkam Police Station,
Ramanathapuram District.

+1cc to M/S. S.M.S.Johny Basha , Advocate, in SR No.17788

+1cc to Special Government Pleader in SR.No.18191

order made in
WP (MD) No.3426 of 2013
24.03.2017

vsa

MKV-CM-VR-SAR 3/7.2.2018/8P-7C