

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 05.01.2018

DELIVERED ON: 18.01.2018

CORAM:

THE HON'BLE MR. JUSTICE V. PARTHIBAN

W.P. No.16984 of 2011

- 1 V. Annapoornam
2 Minor V. Archanapriya
3 Minor V. Arulranjai
4 Sundarambal Petitioners
- vs.
- 1 The Chairman
Tamil Nadu Electricity Board
800 Anna Salai
Chennai 600 002
2 The Superintending Engineer
Tamil Nadu Electricity Board
Chennai Region South
Virugambakkam
Chennai
3 The Chairman
Corporation of Chennai
Ripon Buildings
Chennai 600 003 Respondents

(R3 impleaded as per order dated 19.11.2012
passed in M.P. No.1 of 2012 in W.P. No.16984
of 2011)

Writ Petition filed Article 226 of the Constitution of India seeking a writ of mandamus directing the respondents herein to make payment of compensation and solatium to the tune of Rs. 23 lakhs to the petitioners for the untimely and sudden death caused to Vellaisamy, S/o Pandian, aged 48 years, due to electrocution which happened on 08.10.2010, forthwith.

For petitioner Mr. A.V. Arumugam

For RR 1 & 2 Mr. S.K. Rameshuwar

For R3 Mr. P.H. Arvinth Pandian
Additional Advocate General
for Mr. A. Nagarajan
Standing Counsel

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ORDER

The petitioners, who are the legal heirs of one Vellaisamy, have preferred this writ petition seeking compensation of Rs.23 lakhs for the demise of the said Vellaisamy due to electrocution on 08.10.2010.

2 A vignette of the facts leading to the filing of this writ petition, is as under:

2.1 Vellaisamy was working as an employee in a shop from 2000. He was drawing wages for each day's work at the rate of Rs.450/- plus over time allowances, which works out to Rs.3,950/- per week. He was the sole breadwinner of his family. On the fateful day, he came into contact with a live wire and due to the said impact, he died instantly. A police complaint was also lodged on the same day at Koyambedu Police Station.

2.2 Since the death of Vellaisamy was on account of negligence on the part of respondents 1 and 2 for which they are vicariously liable to pay compensation to his legal heirs, who are depending upon his earning, this writ petition is filed by his legal heirs, seeking compensation of Rs.23 lakhs.

3 In the counter affidavit filed by the second respondent-Electricity Board, it is contended that the writ petition against them is not maintainable as the death of Vellaisamy had taken place due to electrocution from the Chennai Corporation electric lamp post, for which, the Corporation of Chennai alone is responsible or liable in the event of any legal liability, inasmuch as the said electric lamp post is owned, controlled and maintained by Corporation of Chennai. According to the Electricity Board, supply of electricity would be given at one main point and thereafter, the Corporation of Chennai will lay the underground cable and erect the street lamp posts and will distribute electricity through their underground cable to all the street electric lamp posts from the main point; therefore, if at all any liability is to be mulcted, it is only on the Corporation of Chennai and not on the Electricity Board.

4 At this, the petitioners had taken out an application

for impleadment of Chennai Corporation as the third respondent and the same was allowed and accordingly, Chennai Corporation was also impleaded as the third respondent.

5 The third respondent also has filed counter affidavit, as per which, there is no negligence on their part and therefore, they are not liable to pay any compensation to the petitioners.

6 The substance of the averments as found in paragraph no.4 of the counter affidavit of the third respondent is extracted below:

"I respectfully submit that Mr. Vellaisamy, the husband of the first petitioner herein died due to electrocution on 08.10.2010 in compound wall of the building at No.212, Kalamman Koil Street, Chinmaya Nagar, Chennai 600 092, the owner of the building used loose wires for the display boards of the clinics in the said building namely GVM Ortho Clinic, Vinayaka Physiotherapy and Pain Relief Clinic and Dental Clinic. The accident occurred due to negligence of the owner of the building. I further submit that in the FIR copy registered by the K-10 Police Station, it was mentioned that the place of death was the compound wall of the building at No.212, Kalamman Koil Street, Chinmaya Nagar, Chennai 600 092."

7 The learned counsel for the petitioners would submit that the compensation, as claimed in the writ petition, is on the basis of the judgment of the Supreme Court in National Insurance Company Ltd. vs. Pranay Sethi and others [2017 (2) TN MAC 606 (SC)] and therefore, the compensation claimed, as such, is just and reasonable.

8 However, the averments contained in the affidavit filed in support of the writ petition do not disclose as to what extent either of the respondents is negligent while maintaining the electric wire. However, it is beyond cavil that Vellaisamy had died due to electrocution and that by itself, would be a ground for the petitioners to claim reasonable and adequate compensation. Yet, while holding so, this Court has to see to what extent, the petitioners are entitled to compensation in terms of various rulings of the Supreme Court and also this Court. Although a memo of calculation was submitted by the petitioners claiming Rs.23,57,584/-, the same does not garner any support from any material sources for this Court to straightaway accept the same and grant compensation. This is more so when the compensation is claimed only on the basis of the averments in the affidavit and not by any material evidence in the form of filing a civil suit for claiming adequate compensation and damages.

9 Be that as it may, this Court, while exercising its jurisdiction under Article 226 of the Constitution of India, time and again, has been confronted with such claims and such claims have been entertained by this Court and this Court has also awarded compensation as it has deemed fit, on the basis of the facts and circumstances of each case.

10 Very recently, this Court allowed W.P. No.24079 of 2008 vide order dated 06.12.2017, wherein, this Court has extracted in extenso, various orders passed by the Supreme Court and this Court. The extract of the various decisions made by this Court in the said order dated 06.12.2017 are re-produced below:

"9. The learned counsel for the petitioner, in support of his contentions for a grant of just and reasonable compensation, has relied on the following decisions:

(I) In the case of Sarla Verma (Smt) and others Vs. Delhi Transport Corporation and another, reported in (2009) 6 Supreme Court Cases 121. The relevant portion of the judgment at Paragraph Nos.16, 17 and 18, are extracted below:-

"16. Compensation awarded does not become "just compensation" merely because the Tribunal considers it to be just. For example, if on the same or similar facts (say the deceased aged 40 years having annual income of Rs.45,000/- leaving his surviving wife and child), one Tribunal awards Rs.10,00,000/- another awards Rs.5,00,000/- and yet another awards Rs.1,00,000/- all believing that the amount is just, it cannot be said that what is awarded in the first case and the last case is just compensation. "just compensation" is adequate compensation which is fair and equitable, on the facts and circumstances of the case, to make good the loss suffered as a result of the wrong, as far as money can do so, by applying the well-settled principles relating to award of compensation. It is not intended to be a bonanza, largesse or source of profit.

17. Assessment of compensation though involving certain hypothetical considerations, should nevertheless be objective. Justice and justness emanate from equality in treatment, consistency and thoroughness in adjudication and fairness and uniformity in the decision-making process and the decisions while it may not be possible to have mathematical precision or identical awards in assessing compensation, same or similar facts should lead to awards in the same range. When the factors/inputs are the same, and the formula/legal principles are the same, consistency and uniformity and not divergence and freakiness, should be the result of adjudication to arrive at just compensation, In *susamma Thomas*, this Court stated : (SCC p.185, para 16)

"16....The proper method of computation is the multiplier method. Any departure, except in exceptional and extraordinary cases, would introduce inconsistency of principle, lack of uniformity and an element of unpredictability, for the assessment of compensation."

18. Basically only three facts need to be established by the claimants for assessing compensation in the case of death:

- (a) age of the deceased;
- (b) income of the deceased; and
- (c) the number of dependants.

The issues to be determined by the Tribunal to arrive at the loss of dependency are:

(i) additions/deductions to be made for arriving at the income;

(ii) the deduction to be made towards the personal living expenses of the deceased; and

(iii) the multiplier to be applied with reference to the age of the deceased.

If these determinants are standardised, there will be uniformity and consistency in the decisions. There will be lesser need for detailed evidence. It will also be easier for the insurance companies to settle accident claims without delay."

The judgment also referred to for applying multiplier in regard to different age groups as found in paragraph 42, which is extracted below:-

"42. 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 is M-17 for 26 to 30 years, 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, M-7 for 61 to 65 years and M-5 for 66 to 70 years."

(II). In the case of The Chairman, Tamil Nadu Electricity Board and another Vs. Parvathi Ammal and 6 others, reported in 2003 (4) CTC 517. The Hon'ble Division Bench of this Court, dealing with similar cases of electrocution as held in the following paragraph nos.16,17,18,19 and 20, which are extracted below:-

"16. The requirements of the tort of negligence has been summarized in Clerk & Lindsell on Torts, 15th Edition-1982, Sweet and Maxwell.

"The tort is committed when damage, which is not too remote, is caused by the breach of a duty of care owed by the defendant to be plaintiff. In traditional terminology the ingredients of liability are a duty, of care, breach and damage; but for reasons that will become apparent, each of these terms is so ambiguous that unnecessary confusion results. Between them they yield an irreducible minimum of six requirements namely,

(i) the existence in law of a duty of care situation, i.e., one in which the law attaches liability to carelessness. There has to be recognition by law that the careless infliction of the kind of damage in suit on the type of person to which the plaintiff belongs by the type of person to which the defendant belongs is actionable

(ii) Careless behaviour by the defendant, i.e., it failed to measure up to the standard and scope set by law.

(iii) Foreseeability that such conduct would have inflicted damage on the plaintiff and of the kind of which he complains. (This is what is implied in the statement that the duty of care has to be "owed" to the plaintiff).

(iv) A causal connection between the defendant's carelessness and the damage. When these four requirements are satisfied, the defendant is liable in negligence. The and only then do the next two considerations arise, namely,

(v) The extent of the damage attributable to the defendant; and

(vi) The monetary estimate of that extent of damage.

There is no magic in the order as set out, nor should it be supposed that Courts proceed from points (i) to (vi) in sequence."

17. In our case, the first four ingredients are satisfied. It has been established that the Department was at fault in not taking the necessary precautions to prevent

theft. The lineman concerned was not a resident of the locality, though the rules require him to be a resident of the locality. The rules further require that the workmen should periodically conduct inspection and check that no theft has taken place. The circuit breaker had not been shown to have been fixed. Thus, there is a overwhelming material to show that the accident was entirely due to the negligence on the part of the Department.

18. In *Nirmal Thirunavukkarasu and others Vs. Tamil Nadu Electricity Board etc.*, 1984 (97) L.W.42, it has been held that:

"overhead electric wires carrying heavy load of electric energy are highly dangerous and if any human being or animal comes into contact with the same, the consequences are fatal. Hence, great care and caution are expected of the Electricity Board in laying, installing and maintaining overhead wires and generally these wires do not snap and fall down. If therefore, such a thing happens, a prima facie inference can be drawn that there has been carelessness or negligence on the part of the Electricity Board in transmitting electric energy or in maintaining the transmission lines. The Electricity Board has also to take precaution against dangers of live wires snapping and falling down under unforeseen circumstances, by providing for automatic disconnection of supply of electric energy."

19. Rule 91 of Indian Electricity Rules, 1956 provides that every overhead line which is not covered with insulating material and which is erected over any part of a street or other public place or any factory or mine or on any consumer's premises shall be protected with a device approved by the Inspector for rendering the line electrically harmless in case it breaks. If the precaution under this Rule is taken, the line, in case it breaks, would become dead and harmless. Needless to say that in the instant case, precautions contemplated had not been taken. The points arising for decision in this regard are answered against the appellants.

20. The next question relates to damages.

"The amount of money as reparation for the results of tortious conduct for which the law holds the wrongdoer responsible is determined by applying as far as possible the general principles of restitution integrum. In many cases, a perfect compensation is hardly possible and would be even be unjust. The Court in doing justice between the parties considers the general rules as to damages with some liberality and does not apply them rigidly, and, thus the damages are in difficult cases normally limited to a sum which can in the circumstances be

considered as reasonable amount of compensation. Courts should not also be in such cases allow a calamity to turn into a windfall. In ascertaining the pecuniary loss caused to the dependants, it must be borne in mind that these damages are not to be given as solatium for the loss of a son or daughter, wife or husband, father or mother, not on sympathetic or sentimental consideration, but only with reference to pecuniary loss. The pecuniary loss has to be concluded with reference to reasonable expectation of pecuniary benefit from the continuance of the life of the deceased."

(III). In the case of K.Sampath @ Chidambaranathan Vs. The Superintendent Engineer-I, Puducherry, reported in 2013, Writ L.R.176. This is also the case of death by electrocution and the Electricity Board was held to be liable vicariously by the learned Judge of this Court. The relevant portion of the said judgment at Paragraph Nos. 9,10 and 11, which are extracted below:-

"9. Payment of compensation can be ordered by the High Court in appropriate case, particularly when there is no factual disputes, under Article 226 of the Constitution of India is no longer res integra, in this regard, the following decisions can be usefully referred to.

(i) In AIR 2000 SC 988:(2000) 2 SCC 465 (Chairman, Railway Board Vs. Chandima Das), a sum of Rs.10 lakhs was awarded as compensation to a Bangladeshi National, who was sexually assaulted by Eastern Railway employee. Order of the High Court awarding the said compensation was upheld by the Supreme Court.

(ii) In AIR 2001 SC 3668:(2001) 8 SCC 151=2002-1-L.W.491 (M.S.Grewal V.Deep Chand Sood), Rs.4.10 lakhs each was awarded for the unfortunate death of 14 young children, who died due to drowning in a river, when they were on picnic organised by the School Authorities.

(iii) In (2005) 9 SCC 586 (MCD Vs. Association of Victims of Uphaar Tragedy) the Supreme Court ordered payment of compensation to the families of those, who died in uphaar Tragedy and directed the MCD to deposit Rs.3,01,40,000/- (Rupees Three Crores One lakh and Forty Thousand) and 50% of the said amount was directed to be distributed to the claimants.

(iv) In 2011 AIR SCW 4916 (Delhi Jal Board V. National Campaign for Dignity and Rights of Sewerage and Allied Workers), the Supreme Court

enhanced the compensation awarded by the High Court of Delhi to sewerage workers' family to Rs.3.29 lakhs, over and above Rs.1.71 lakhs already paid by the Government.

Insofar as our High Court is concerned, the said issue is dealt with in several cases. A few decisions are as follows:

(a) 2001 WLR 174 (C.Chinnathambi V. State of Tamil Nadu)-Rs.1.50 lakhs with 12% interest was ordered to be paid to each school students, who died while water tank broke and fell on them.

(b) 2004 WLR 346 (Smt.R.Dhanalakshmi V. Government of Tamil Nadu)-Rs.9.00 lakhs was ordered to be paid to the family of a prisoner, who was killed while in custody.

(c) 2004 WLR 611 (DB) (The Chief Secretary to the Government of Tamil Nadu V. Mr.R.Selvam)-Rs.5.00 lakhs was ordered to be paid by the State due to the killing of a medical student inside the Government Medical College Hostel.

(d) 2006 WLR 13 (DB) (C.Thekkamalai V. State of Tamil Nadu) - The Division bench enhanced the compensation from Rs.75,000/- to Rs.5.00 lakhs for the rape victim, who was illegally arrested and raped.

(e) 2006 WLR 608 (Lakshmana Naidu (decd) V. State of Tamil Nadu & Another)-a sum of Rs.5.00 lakhs was ordered as compensation to the family of the deceased.

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(f) 2008 (6) CTC 144 (P.N.Kanagaraj V. Chief Secretary, State of Tamil Nadu) - Rs.4.10 lakhs with 9% interest was ordered for the death of a school boy.

(g) 2009 (1) CTC 434 (Subramaniam V. State of Tamil Nadu) - A sum of Rs.3.50 lakhs was directed to be paid for the death of the student in the school due to negligence of the Government School Teacher.

(h) 2010 WLR 851 (DB) : 2010 (1) CWC 455 (T.Sekaran V. State of Tamil Nadu & others) - A sum of Rs.9,07,000/- was directed to be paid to the family of a person, who was shot dead by the Security Warden of Madurai Central Prison.

(i) 2011 (1) CWC 786 (The Registrar Administration, Madurai Bench of Madras High Court V. Secretary to Government, (Home Department) - A sum of Rs.10 lakhs was ordered to the family of an advocate, who died due to not providing immediate medical treatment, in the High Court premises.

(j) 2011 (6) CTC 636 (P.Ravichandran V. The Government of Tamil Nadu) - A sum of Rs.18.00 lakhs was ordered as compensation to the victim, who suffered 100% disability while doing drainage work.

(k) 2012 (2) CTC 848 (Ganesan V. The State of Tamil Nadu) - A sum of Rs.10.00 lakhs was ordered to be paid by the State to the family of a victim, who died due to bomb attack while travelling in a Transport Corporation Bus.

(l) In (2011) 1 MLJ 1409 (V.Ramar V. Director of Medical and Rural Health Services) this Court directed the State to pay a sum of Rs.5.00 lakhs to the family of a woman, who died during delivery due to the negligence of the Government Hospital authorities.

(m) In (2011) 1 MLJ 1329 (Thangapandi V. Director of Primary Health Services) - A sum of Rs.5 lakhs was ordered to the family of a woman, who died after delivery, due to not giving proper treatment by Government Hospital Doctors.

(n) In W.P.No.23003 of 2011 dated 24.11.2011, this Court awarded a sum of Rs.10.00 lakhs to the family of a deceased student as he was killed while staying in Government Hostel.

(o) In W.P.No.20081 of 2007 dated 04.06.2012, I had an occasion to award a sum of Rs.29.26 lakhs to the petitioner therein, who lost both his parents due to fall of a tree on the road side.

Applying the above decisions to the facts of this case, I am of the view that the respondent department is liable to pay compensation to the family of the petitioner for the death of petitioner's wife Malathy due to electrocution on 17.05.2009.

10. There is no codified law for arriving at the quantum of compensation in cases of this type. The enactments like Motor Vehicles Act, 1988; Workmen Compensation Act, 1948; and fatal Accidents Act, 1855 may be applied for arriving at the just compensation. In the decision reported in (1969) 3 SCC 64 (C.K.Subramania Iyer V. T.Kunhikuttan Nair) the Supreme Court held that there is no exact uniform rule for measuring the value of human life and the measure of damages cannot be arrived at precisely. In the decision reported in (2001) 8 SCC 151 (M.S.Grewal V. Deep Chand Sood) the Supreme Court held that multiplier method may be adopted to arrive at the just compensation. The age of the deceased can also be taken for arriving at a correct multiplier as per the judgment of the Supreme Court reported in 2011 (5) LW 408 (P.Somanathan & others V. District Insurance Officer & Another).

11. How the Court should decide the cases of this nature is emphasised by the Supreme Court in the decision reported in (2011) 10 SCC 634 (Ibrahim V. Raju). In para 9 of its held thus:

"9. This Court has time and again emphasised that the officers, who preside over the Tribunals adopt a proactive approach and ensure that the claims filed under the Act are disposed of with required urgency and compensation is awarded to the victims of the accident and/ or their legal representatives in adequate measure keeping in view the relevant factors. Unfortunately, despite repeated pronouncements of this Court in which guiding principles have been laid down for determination of the compensation payable to the victims of road accidents and/or their families, the Tribunals and even the High Courts do not pay serious attention to the imperative of awarding just compensation to the claimants."

In (2009) 13 SCC 422 (Reshma Kumari V.Madan Mohan) the Supreme Court pointed out the need of giving just compensation to the victim. In paragraphs 26 and 27 it is held thus:

"26. The compensation which is required to be determined must be just. While the claimants are required to be compensated for the loss of their dependency, the same should not be considered to be a windfall. Unjust enrichment should be discouraged. This Court cannot also lose sight of the fact that in given cases, as for example death of the only son to a mother, she can never be compensated in monetary terms.

27. The question as to the methodology required to be applied for determination of compensation as regards prospective loss of future earnings, however, as far as possible should be based on certain principles. A person may have a bright future prospect; he might have become eligible to promotion immediately; there might have been chances of an immediate pay revision, whereas in another (sic situation) the nature of employment was such that he might not have continued in service, his chance of promotion, having regard to the nature of employment may be distant or remote. It is, therefore, difficult for any Court to lay down rigid tests which should be applied in all situations. There are divergent views. In some cases it has been suggested that some sort of hypotheses or guess work may be inevitable. That may be so".

This Court is bound to bear-in-mind the above stated principles for arriving at just compensation."

In the above decision, the learned Judge had referred to several decisions where this Court had granted compensation ranging from Rs.5,00,000/- to Rs.29,26,000/- for loss of life due to negligence.

(IV). In the case of Saroja Vs. Government of Tamil Nadu, rep. by its Secretary, Electricity Department and another, reported in 2014 (3) CTC 553. This is also a case of death due to electrocution where the Electricity Board was found to be negligence in maintaining power cables. The learned Judge of this Court has also adverted to various decisions of this Court, in granting compensation in similar situations and finally held that the petitioner therein was entitled to a sum of Rs.6,04,600/- only towards compensation for the death of petitioner's minor son. In fact, learned Judge also directed to pay the amount with interest at the rate of 7.5% per annum, from the date of writ petition till the date of deposit.

(V). In the case of R.Pareetha Beevi and 2 others Vs. The Chairman, TNEB and 3 others, reported in 2014 (2) CWC 337. Yet another learned Judge of this Court has granted

compensation after adverting to various decisions of this Court and ultimately awarded Rs.5,00,000/- for the loss of the petitioner's family member. This was a case of custodial death. The learned Judge also directed payment with interest at the rate of 6% per annum, from the date of writ petition till the date of payment.

(VI). Recently, the learned Judge of this Court in the case of P.Siva Shakthivel Vs. The Chairman, Tamil Nadu Electricity Board and another, in W.P.No.1845 of 2010, passed an order on 31.07.2017, granting compensation of Rs.6,00,000/- for the loss of petitioner's daughter with the interest at the rate of 12%. This is also a case where the School going girl had come into contact with the live Electricity cable in the road, while returning from School and got electrocuted and succumbed to the injuries. The learned Judge thought fit to grant Rs.6,00,000/- as compensation on the basis of several orders passed in similar situation."

11 Thus, after taking note of the settled legal principles on the subject matter and considering the above facts and decisions, this Court is of the considered view that to meet the ends of justice, the total compensation payable to the petitioners can be fixed at Rs.7.50 lakhs. The said quantum is predicated on the fact that the first petitioner, the wife of the deceased, is a widow aged 35 years, the second petitioner, who is the daughter of the deceased, is aged 13 years, the third petitioner, who is the son of the deceased, is aged just 2 years and the fourth petitioner is the mother of the deceased, all of whom are dependents of the deceased for their very survival and to eke out their livelihood.

12 This Court, in the past, has granted compensation ranging from Rs.6 lakhs to Rs.29 lakhs depending on the facts and circumstances of each case and the Courts have also held there is no strait-jacket and definite formula to fix any particular figure as the compensation payable in cases of this nature. Yet, this Court, while exercising its jurisdiction has to adopt some thumb rule while awarding a reasonable and adequate compensation.

13 In such perspective of the matter, this Court, after considering the facts and the materials placed on record, is of the view that a compensation of Rs.7.50 lakhs would not only be just and reasonable but would also meet the ends of justice. Accordingly, the third respondent, who is vicariously liable for the accident, is directed to pay a sum of Rs.7.50 lakhs as compensation to the petitioners, at any rate, within a period of four weeks from the date of receipt of a copy of this order, with interest at the rate of 9% per annum from the date of this writ petition till the date of payment.

With the above direction and observation, this writ petition stands disposed of. Costs made easy.

cad

Sd/-
Assistant Registrar

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Sub-Assistant Registrar

To

1 The Chairman
Tamil Nadu Electricity Board
800 Anna Salai
Chennai 600 002

2 The Superintending Engineer
Tamil Nadu Electricity Board
Chennai Region South
Virugambakkam
Chennai

3 The Chairman
Corporation of Chennai
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