

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.04.2018

CORAM

THE HONOURABLE Mr.JUSTICE K.KALYANASUNDARAM

W.P.No.8285 of 2013
& M.P.No.1 of 2013

1. Vaithilingam
2. Panchalingam

... Petitioners

v.

1. Junior Engineer,
Tamil Nadu Electricity Board,
Vennandur, Rasipuram Taluk,
Namakkal District.
2. The Chief Engineer,
Tamil Nadu Electricity Board,
No.800, Anna Salai,
Chennai - 600 002.
3. The Chairman,
Tamil Nadu Electricity Board,
No.800, Anna Salai,
Chennai - 600 002.
4. State of Tamil Nadu,
Rep. by its Secretary,
Department of Electricity,
Fort St. George,
Chennai - 600 009.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus to direct the respondents to pay Rs.10 lakhs towards compensation for the death of petitioners' son Selvaraj by electrocution on 31.05.2004.

For Petitioners : M/s.P.Jagadeesan

For Respondents : Mr.S.K.Rameshuwar, (for R1 to R3)

: Mr.V.Shanmuga Sundar, Spl.G.P.(for R4)

ORDER

The parents of the deceased Selvaraj, who died due to electrocution on 31.05.2004, have come up with this Writ Petition seeking compensation of Rs.10 lakhs.

2. Heard the learned counsel for the petitioner, the learned Standing Counsel for the respondents 1 to 3 and the learned Special Government Pleader appearing for the 4th respondent.

3. According to the petitioners, on 31.05.2004 at 12.30 pm, when their deceased son Selvaraj was grazing cow in the waste land of one Arulganesan, he came into contact with a live wire and due to electrocution, he died on the spot. The Vennandur Police had registered a case under Section 174 of Cr.P.C. on the same day and the deceased was subjected to postmortem by the Government Doctors. The petitioners have further stated that their son was studying 5th standard at that time and he was a brilliant student and he has a bright future, but unfortunately he died in the accident.

4. The petitioners would further state that they issued a notice on 13.07.2004, seeking compensation of Rs.5,00,000/-. In reply, dated 29.07.2004, though the respondents have admitted the accident, denied their liability. So the petitioners filed a suit as in forma pauperis in O.P. No.45 of 2004, but it came to be dismissed on 13.04.2006 by the Principal District Judge, Namakkal. Against the said order, the petitioners have preferred an appeal before this Court in C.M.A.No.2813 of 2006, at the time, they were advised to file Writ Petition.

5. The second respondent in his counter affidavit has stated that on 31.05.2004, the cow came into direct contact with electric wire, which was cut off from the pole due to heavy wind and rain and in an attempt to rescue the cow, the deceased got electrocuted. It is further stated that the petitioners have already approached the Civil Court seeking compensation on the same cause of action, hence this Writ Petition is not maintainable and it is also liable to be dismissed on the ground that the accident is beyond the control of the respondent department, which was an act of God.

6. In the case on hand, it is not in dispute that the petitioners' son died at the age of 11 years due to electrocution on 31.05.2004. It is also not in dispute that the petitioners had approached the Civil Court claiming compensation of Rs.10,00,000/-. However, it is pertinent to note that the suit was filed as in forma pauperis, which shows the financial status of the petitioners.

7. From the perusal of the counter affidavit, it is seen that the respondents have not denied the accident, but opposing the claim on the grounds that the petitioners cannot seek remedy before two different forums and the accident was only due to the act of God. It is further evident from the records that even

after lapse of 14 years, the petitioners have so far not received any compensation.

8. The learned counsel for the petitioners submitted that the petitioners filed O.P.No.45 of 2004 as in forma pauperis before the Principal District Court, Namakkal, as it was dismissed and an appeal in C.M.A.No.2813 of 2006, has been filed and in the event of petitioners succeeding in the appeal, the matter would be remanded back and the possibility of getting compensation in near future is very bleak. So they undertake to withdraw the appeal.

9. It is evident from the records that the petitioner belongs to last stratum of the society and they have been struggling for more than a decade to get their legitimate claim knocking doors of different forums. In these backdrop, I do not find any justification to scuttle the claim of the petitioners on technicalities.

10. The deceased died due to electrocution has been proved and the contention of the Department that on the fateful day, heavy wind and rain resulted in snagging of live wire is not supported by any material. So the accident had taken place only due to the negligence of the respondents has been proved by the petitioners. The Hon'ble Supreme Court in the case of R.K.Malik and another vs. Kiran Pal and others reported in 2009 (14) SCC 1 has awarded compensation of Rs.2,25,000/- with interest of 7.5% per annum for the children, who died between the age group of 10 to 15 years, by following the earlier decisions of the Supreme Court.

11. The learned counsel for the petitioner by placing reliance on the decision of the Supreme Court in the case of Kishan Gopal and another vs. Lala and others reported in 2014 (1) SCC 244, submitted that for the death of 10 year old child, the Hon'ble Supreme Court has awarded compensation of Rs.5,00,000/- with interest at 9% per annum. In my considered opinion that Kishan Gopal judgment will not have application to the facts of this case, since in that case, the deceased was found assisting the parents in their agricultural operation, but in the case on hand, admittedly, the deceased was a student. Therefore, the decision in the case of R.K.Malik would squarely apply to the present case.

12. In view of my findings, the Writ Petition is allowed and the respondents are directed to pay compensation of Rs.2,25,000/- (Rupees two lakhs and twenty five thousand only)

along with interest at the rate of 9% per annum from the date of death, i.e., from 31.05.2004 till the date of payment. The respondents shall pay the compensation to the petitioners within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

pvs

To

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4. The Secretary,
State of Tamil Nadu,
Department of Electricity,
Fort St. George,
Chennai - 600 009.

+1cc to Mr.S.K.Rameshuwar, Advocate sr.no.29139
+1cc to M/s.P.Jagadeesan, Advocate sr.no.28792

W.P.No.8285 of 2013

nr 16/05/2018