

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.12.2018

CORAM :

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.30289 of 2002
and
W.P. (MD).No.13990 of 2011

R.Sambandam

... Petitioner

vs.

1. General Manager,
Bharat Sanchar Nigam Limited,
CRDA Telecom District,
Kumbakonam.

2. Chief General Manager,
Bharat Sanchar Nigam Limited,
Tamilnadu Telecommunications Circle,
Administration, Chennai - 600 002.

3. The Superintending Engineer,
Tamilnadu Electricity Board,
Sirkazhi Division, Sirkazhi,
Nagapattinam District.

... Respondents

(R3 impleaded as per order dated 10.07.2014
by CSKJ in WP.MP.No.606/2011 in WP.No.30289 of 2002)

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a writ of Mandamus directing the respondents herein to pay a sum of Rs.20,00,000/- to the petitioner towards compensation for the loss of the petitioner's son late Rajendran on account of the defective functioning of the Telephone Exchange by which the petitioner's son late Rajendran sustained electric shock.

For Petitioner : Mr.S.Sadasharam

For Respondents: Mr.S. Udayakumar for R1 & R2
Mr.P.Gunaraj (SCEB) for R3

O R D E R

The lis on hand is filed for a direction to direct the

respondents to pay a sum of Rs.20 lakhs to the petitioner towards compensation for the loss of the petitioner's son Late.Mr.Rajendran on account of the defective functioning of the telephone exchange by which the petitioner's son Late Rajendran "sustained electric shock and died subsequently".

2. The learned counsel for the writ petitioner states that the writ petitioner was the subscriber for a telephone service connection in Telephone No.64545 under the first respondent. The said telephone connection was availed by the writ petitioner for his business purposes, more specifically, for running of the oil mill. The petitioner had closed the oil business and was running a grocery shop in his native place. The petitioner's son late Mr. Rajendran who was aged about 22 years was studying in AVC College of Engineering, Mannampandal, Mayiladuthurai during the year 2001. He was studying final year B.E. course in Electronics and Communications. Petitioner had spent huge amount for the purpose of his studies.

3. On 17.10.2001, the telephone connection in the premises of the writ petitioner was damaged on account of excess electricity supply. The officials of the respondents had failed to initiate appropriate remedial measures for the purpose of controlling the excess electricity supply in telephone cables. On account of their inaction and lapses, there was a huge fire accident in the telephone exchange itself. During that point of time, the son of the writ petitioner used the telephone connection provided in the premises of the writ petitioner and died on account of electrocution.

4. The learned counsel for the writ petitioner contended that the death occurred on account of the gross negligence on the part of the officials of the respondents and therefore, the writ petitioner is entitled for heavy damages.

5. The learned counsel appearing on behalf of the respondents 1 and 2, BSNL opposed the contention by stating that, it is an admitted fact that there was a fire accident on account of an excess electricity power supply by the telephone exchange. However, the accident and death took place on account of the mischief done by the son of the writ petitioner. More specifically, the son of the writ petitioner used scissors and cut the telephone cable which caused the major accident. Thus, the department cannot be held liable for the accident. On account of the illegal act of the son of the writ petitioner, the death occurred and therefore, the BSNL is not liable to pay any compensation to the writ petitioner.

6. The learned counsel for the 3rd respondent Electricity Board also contended that, even in case of excess electricity

power supply, it is the duty of the officials of the BSNL to disconnect the wires and sufficient technology is provided to control such excess electricity power supply in the cables. Thus, the officials of the BSNL had not acted immediately and controlled the excess supply of electricity in the cables.

7. The accident took place on account of the lapses on the part of the BSNL employees for which the Electricity Board officials cannot be held liable to pay compensation. Considering the arguments of the respective learned counsels on behalf of the writ petitioner as well as the respondents, this Court is of an opinion that, the parties to the lis admitted the fact that the death occurred on account of electrocution. Excess power supply of electricity in the cables are not disputed by the parties to the writ petition. However, the respondents are disputing the fact that they are not liable to pay compensation. When the respondents themselves had admitted the fact that there was a fire accident in the BSNL telephone exchange and there was an excess electricity power supply in the cables, the fact remains that the same caused accident, which resulted death of a young person.

8. The son of the writ petitioner was aged about 22 years at that time of his death and he was pursuing his final year B.E. course in the engineering college. Thus, this Court cannot compensate the mental agony caused to the members of the family by paying compensation in terms of money. However, a pragmatic approach is to be adopted in such nature of cases.

9. The facts leading to the death of the son of the writ petitioner was disputed by the respondents. However, those disputed facts and circumstances can never be adjudicated in a writ proceedings under Article 226 of the Constitution of India. In the event of any such factual disputes, the same ought to have been adjudicated by producing documents and by adducing evidences before the Competent Forum or before the Competent Court of Law. However, the basic facts which all are admitted are to be taken note of for the purpose of considering the present case. When the fire accident in the telephone exchange is admitted by the parties and the excess power supply of electricity in the telephone cables were also admitted by the parties to the present writ petition, this Court is of an opinion that the permissible minimum compensation is to be granted in order to mitigate the loss caused to the members of the family of the writ petitioner.

10. Considering the facts and circumstances, this Court is of an opinion that the principles of equity and fair play is to be applied in the present case on hand. Undoubtedly, it is a great loss to the family of the writ petitioner on account of

the sudden demise of the young person, who was pursuing his B.E., degree in the Engineering College with great ambitious. The expectations of the members of the family can never be compensated in terms of money. However, this Court has to balance the situation and grant compensation to mitigate the circumstances. The Tamil Nadu Electricity Board in their proceedings granted a minimum compensation of Rs.2,00,000/- (Rupees Two Lakh only) to be paid for the death occurred on account of the electrocution. This apart, the respondents 1 and 2 also contributed negligence in respect of controlling of the excess flow of electric power in the telephone cable in their telephone exchange. The official respondents 1 and 2 also had contributed for not initiating effective steps for controlling the excess supply of electricity power in the telephone cables.

11. Thus, this Court is of an opinion that all the respondents are jointly responsible and liable for the payment of compensation to the writ petitioner. Accordingly, the following orders are passed:

(i) The respondents 1 and 2 are directed to pay Rs.2,00,000/- (Rupees Two Lakh only) along with the interest at the rate of 4% per annum from the date of filing of the writ petition to the writ petitioner within a period of four weeks from the date of receipt of a copy of this order.

(ii) The 3rd respondent is directed to pay Rs.2,00,000/- (Rupees Two Lakh only) to the writ petitioner along with the interest at the rate of 4% per annum from the date of filing of the writ petition within a period of four weeks from the date of receipt of a copy of this order.

12. The writ petition stands allowed as indicated above. No costs.

Sd/-

Assistant Registrar (CS IV)

//True Copy//

Sub Assistant Registrar

Pkn/kak

To

1. General Manager,
Bharat Sanchar Nigam Limited,
CRDA Telecom District,
Kumbakonam.

2. Chief General Manager,
Bharat Sanchar Nigam Limited,
Tamilnadu Telecommunications Circle,
Administration, Chennai - 600 002.

3. The Superintending Engineer,
Tamilnadu Electricity Board,
Sirkazhi Division, Sirkazhi,
Nagapattinam District.

+1 cc to Mr.S.Sadasharam, Advocate Sr.No.82781

+1 cc to Mr.P.Gunaraj, Advocate Sr.No.83036

+1 cc to Mr.S.Udayakumar, Advocate Sr.No.83078

W.P.Nos.30289 of 2002

SKV(CO)
CSL/26.12.2018



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