

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.32348 of 2012

1.Mr.S.Jayaraman
2.Mr.J.Elumalai
3.Mrs.Manjula
4.Mr.J.Govindan
5.Selvi.Alamelumangai
6.Selvi.Jaya
7.Master.Paramasivam
8.Selvi.Jayakkodi

... Petitioners

Vs

1.Tamil Nadu Generation and Distribution Corporation Ltd.,
Rep by its Chairman,
No.144, Annasalai,
Chennai-2.

2.The District Collector,
Villupuram District,
Villupuram.

3.The Executive Engineer (O&M),
Tamil Nadu Generation and Distribution Corporation Ltd.,
Ulunthurpettai Division,
Ulunthurpettai,Villupuram District.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, to direct the respondents to pay compensation to a tune of Rs.10,00,000/- [Rupees Ten Lakhs only] for the death of Desammal @ Periyapappa who died due to electrocution on 16.01.2010 at Senthamangalam V.Periyakuppam Village, Ulunthurpettai Taluk, Villupuram District.

For Petitioners : Mr.G.Shanmugam

For Respondents : Mr.M.Varunkumar for RR1 & 3
: Mr.T.M.Pappiah,
Special Government Pleader for R2

O R D E R

Heard Mr.G.Shanmugam, learned counsel for the petitioners and Mr.M.Varunkumar, learned counsel appearing for the first and third respondents and Mr.T.M.Pappiah, learned Special Government Pleader appearing for the second respondent.

2. The petitioners have approached this Court, seeking the following relief,

"To issue a Writ of Mandamus, to direct the respondents to pay compensation to a tune of Rs.10,00,000/- [Rupees Ten Lakhs only] for the death of Desammal @ Periyapappa who died due to electrocution on 16.01.2010 at Senthamangalam V.Periyakuppam Village, Ulunthurpettai Taluk, Villupuram District."

3. The case of the petitioners is as follows:-

The first petitioner was married to one Ms.Desammal @ Periyapappa in the year 1975 and from the wedlock, three sons and four daughters were born who are the petitioners 2 to 8 herein. On 16.01.2010, at about 8 a.m., the first petitioner's wife went to the motor pumpset located in the land near Vandipalayam Railway Gate, Villupuram District, in order to fetch water. She did not return home though it was located very near to the residence. After a search, it was found that the first petitioner's wife was electrocuted and died in the land belonging to him.

4. According to the first petitioner, there was a high voltage over head line above his land and the same was not properly maintained and the over head line fell on the land and unknowingly his wife had come into contact with the same and died due to electric shock on 16.01.2010. In regard to the above incident, a complaint was also lodged before the Inspector of Police, Thirunavalur Police Station, Villupuram District. An FIR was also registered in FIR No.7/2010 under Section 174 of Cr.P.C. The postmortem report was also submitted, disclosing the fact that the first petitioner's wife had died due to high voltage electric shock.

5. According to the petitioner, the fatal incident has occurred only due to the carelessness and negligence on the part of the first respondent Corporation and no proper care had been taken in maintaining the over head electric line. The casualty could have been averted and the large family of the petitioners would not have suffered a tragic loss of an important member of the family viz., the first petitioner's wife and the mother of the other petitioners herein. Therefore, he has approached this Court, seeking Rs.10,00,000/- compensation for the death of his wife.

6. Upon notice, learned counsel appearing for the respondents, entered appearance and filed a detailed counter affidavit. According to the counter affidavit, the deceased had touched the snapped wire negligently and died due to the impact and there was no negligent on the part of the Corporation. According to the counter affidavit, there was a heavy rain with gusty winds and the snapping of the electric wire was an 'Act of God' and no negligence could be therefore attributed to the Corporation.

7. From the above facts and circumstances of the case, it has become clear that the over head electric line got snapped and fallen on the land owned by the first petitioner. No sensible person knowingly will touch a snapped wire and invite a tragic consequences. As rightly contended by the learned counsel for the petitioners, the first petitioner's wife unknowingly had come into contact with the live wire and this Court can safely infer that this was due to improper maintenance, the electric wire had snapped and fell on the land. The Corporation cannot be allowed to take refuge under the plea of 'Act of God' and denying the petitioners' due compensation. In fact, the Corporation itself has recognized such accidents and has passed Board Proceedings, granting Rs.2,00,000/- compensation for any fatal accidents, regardless of the fact whether the victim was at fault or not. Such being the case, the payment of compensation cannot be resisted or contested by the respondent Corporation.

8. However, while computing the compensation, this Court has to see what is fair and reasonable under the circumstances of the case. As regards the issue of payment of compensation to such victims, this Court time and again has entertained several writ petitions and ordered payment of compensation ranging from Rs.5,00,000/- to Rs.30,00,000/-, depending upon the facts and circumstances of each case.

9. This Court, even recently on 06.12.2017, has passed orders under similar circumstances, granting little over Rs.6,00,000/- with 9% interest from the date of writ petition till the date of payment. The following cases which are referred to in the order passed by this Court in W.P.No.24079 of 2008 dated 06.12.2017, would be of great significance for providing just and reasonable compensation.

(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 lay 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. 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.

(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.

10. After taking note of the settled legal principles on the subject matter and considering the above facts and decisions submitted by the learned counsel for the petitioners, this Court is of the considered view that Rs.10,00,000/- compensation as prayed for in the writ petition, whether the same can be awarded in the absence of any averments in the affidavit filed in support of the writ petition. No basis of such compensation has been disclosed and it appears that the first petitioner's wife was a homemaker and was not employed. At the same time, the role of homemaker assumes very great importance in running the family, particularly, in the present case, there were seven children, out of seven, four are daughters.

11. It is needless to mention that the presence of the victim would have been a great succor to the family in the day-to-day affairs and no amount of compensation can be said to be just and reasonable as the loss of wife/mother cannot be compensated in terms of money. At the same time, reasonable and fair compensation has to be arrived at, on the basis of the established legal principles as said forth above and this Court is of the considered view that grant of compensation of Rs.2,00,000/- cannot said to be a just and reasonable, in the facts and circumstances of the case. The Corporation cannot shirk its responsibility for payment of just and reasonable compensation to the family of the victim due to the negligence on their part.

12. In the aforesaid circumstances, this Court arrives at a compensation payable to the petitioner at Rs.5,00,000/-, is just and reasonable as full and final settlement towards the claim of the petitioners. The amount of Rs.5,00,000/- shall carry an interest of 9% per annum, from the date of writ petition till the date of payment. Therefore, the first respondent is directed to pay the compensation of Rs.5,00,000/- to the first

petitioner, after obtaining consent from the other petitioners. In case of minor petitioners, the 1st petitioner shall receive the compensation as guardian of the minors with an undertaking that appropriate portion of the compensation will be utilized for their welfare. The direction shall be complied with by the first respondent within a period of six weeks from the date of receipt of a copy of this order.

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

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

gsk

To

- 1.The Chairman,
Tamil Nadu Generation and Distribution Corporation Ltd.,
No.144, Anna salai, Chennai-2.
- 2.The District Collector,
Villupuram District,
Villupuram.
- 3.The Executive Engineer (O&M),
Tamil Nadu Generation and Distribution Corporation Ltd.,
Ulunthurpettai Division,
Ulunthurpettai, Villupuram District.

+1cc to Mr.M.Varun Kumar, Advocate SR.No.7500
+1cc to Mr.N.Elaya Raja, Advocate SR.No.7644
+1cc to Government Pleader SR.No.8407

W.P.No.32348 of 2012

VGII (CO)
GN(26/02/2018)

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