

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:18.07.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.44952 of 2006

A.Shanthi

... Petitioner

Vs.

1.The Superintending Engineer,
Tamilnadu Electricity Board,
Chennai Electricity Distribution,
Circle/Central, 110, K.V.Valluvarkottam
S.S.Complex, Chennai-600 034.

2.The Commissioner,
Corporation of Madras,
"Rippon Buildings"
Chennai-600 003.

3.The General Manager (North),
Chennai Telephones,
N.S.C Bose Road 6th Floor.
Flower Bazzar Exchange,
Chennai-600 001.

(R3 Impleaded as per order dated
28.09.2011 in M.P.No.1 of 2011
in W.P.No.44952 of 2006)

... Respondents

Prayer: Writ Petition filed under Article 226 of the
Constitution of India, praying for issuance of a Writ of
Mandamus, directing the respondents to pay adequate compensation
to the petitioner for the death of her son.

For Petitioner : Mr.P.D.Selvaraj

For Respondent : Mr.P.R.Dhilipkumar
Standing counsel.

O R D E R

The petitioner has filed this Writ Petition seeking issuance
of Mandamus, directing the respondents to pay adequate
compensation to the petitioner for the death of her son.

2.The case of the petitioner is that the petitioner had only one son namely Naresh and was studying in IX std in a Government School at Ariyalur. On 16.08.2002, at about 9.45 p.m., while her son was walking on the road opposite to Basin Bridge Police Station, there was rain water stagnant on the road and he stamped on a live electrical wire, which was protruding from the surface and the same was left unclosed by the respondent after carrying out electrical maintenance work and as a result, due to electrocution the petitioner's son died on the spot. Thereafter, Police investigated the case and registered an FIR in Crime No.231 of 2002 and the postmortem was conducted on 17.08.2002. According to the petitioner, the accident happened only due to electrocution and the carelessness of the respondents. Accordingly, the petitioner has filed a petition claiming adequate compensation for loss of a person. However, the respondents, immediately after the accident had paid Rs.25,000/- as compensation. Aggrieved by the meager amount of compensation, the petitioner has filed the present writ petition.

3.Heard both sides.

4.The learned counsel for the respondent does not dispute the fact that the petitioner's son died due to electrocution. He further submitted that considering the age of the victim, there was a part consideration and paid a compensation of Rs.25,000/-. However, when there is undisputed question involved in this case, the proper and appropriate remedy is only to approach the competent Civil Court. Therefore, filing the Writ Petition under Article 226 is not permissible one.

5.The issue involved in this case is whether Article 226 of the Constitution of India, maintainable for awarding compensation. In this regard, the following decision made in unreported judgment in the case of V.Annapoornam and others Vs. The Chairman, Tamil Nadu Electricity Board and two ors. Dated 18.01.2018 would give answer with regard to the maintainability of the Writ Petition for awarding the compensation, when a person died or injured in the electrocution due to improper maintenance of the Electricity Board. The relevant portion of the order is extracted hereunder:

(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."

1. 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.

6.On perusal of the above decisions, it is clear that the Writ Petition is maintainable for awarding compensation, when there is no undisputed disputes involved in the case. In the present case, admittedly the petitioner's son died due to electrocution for improper maintenance of the respondent. The respondent accepted guilt and had already paid Rs.25,000/- as compensation. Whether the compensation is fair or not is the issue before this Court.

7.This Court is guided by the previous decision for awarding compensation. Accordingly, this Court is satisfied to award the compensation in favour of the petitioner. The details of the award is as follows:

Loss of Earning Capacity	4,500/- X $\frac{2}{3}$ X 12 X 15	Rs. 5,40,000/-
Loss of Love and Affection and Funeral Charges		60,000/-
Total		6,00,000/-

8.In the present case also, the petitioner's age and the victim's age are similar to that of the case cited supra, this Court is inclined to follow the same decision and award a compensation of Rs.6,00,000/- together with an interest of 6% per annum.

9.The respondents are directed to pay the aforesaid compensation alongwith 6% interest directly to the petitioner within a period of twelve weeks from the date of receipt of copy of this order. The interest at 6% p.a., should be paid from the date of accident till the date of deposit of compensation.

10. Accordingly, the Writ Petition is disposed of on the above terms. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1. The Superintending Engineer,
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Chennai Electricity Distribution,
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Chennai-600 001.

+1cc to Mr.P.R.Dhilipkumar, Advocate Sr.47755
+2cc to Mr.P.D.Selvaraj, Advocate Sr.47772

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srg 28/08/2018

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