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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.12.2018

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THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.30272 of 2017

and

WMP No.32994 of 2017

S.Jayagantha

...Petitioner

vs.

1. The Secretary to Government,
Energy Department,
Fort St.George, Chennai-9.
2. The Chairman,
Tamilnadu Electricity Generation & Distribution
Corporation (TANGEDCO) Ltd.,
No.144, Anna Salai,
Chennai 600 002.
3. The Chief Engineer,
Tamilnadu Electricity Generation & Distribution
Corporation (TANGEDCO) Ltd.,
No.10, East Main Road,
Vellore 632 506.
4. The Superintending Engineer,
Tamilnadu Electricity Generation & Distribution
Corporation (TANGEDCO) Ltd.,
No.10, East Main Road,
Vellore 632 506.
5. The Assistant Engineer, (O & M) (East)
Tamilnadu Electricity Generation & Distribution
Corporation (TANGEDCO) Ltd.,
Kalavai, Vellore.

... Respondents

Prayer:Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of mandamus to direct the respondents to pay Rs.25,00,000/- (Rupees twenty five lakh only) as compensation and damages for the death of petitioner's husband Mr.Sekar on 19.08.2017 and her bullock along with interest at the rate of 12% per annum from the date of death till the date of payment.



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For Petitioner : Mr.R.Subburaj

For Respondents : Mr.D.Suriyanarayanan for R1
Additional Government Pleader

Mr.M.Varun Kumar for R2 to R5
Standing Counsel

O R D E R

The petitioner seeks for a mandamus directing the respondents to pay a sum of Rs.25 lakhs as compensation and damages for the death of the petitioner's husband, Sekar on 19.08.2017 and her bullock along with interest at the rate of 12% per annum.

2. The case of the petitioner is as follows:

The petitioner's husband was an agriculturist coolie and they have three female children, out of whom, two are school going. On 19.08.2017, at about 5.00 a.m., the petitioner's husband went to their agricultural land with cattle and at that time, the electricity over head main line was snapped and fell down on him and consequently, he died on the spot. One of the bullock also died. Since it was a live wire, the petitioner's husband was not able to be shifted to the hospital. The petitioner lodged a complaint with the police in Crime No.165 of 2017 for the offences under Section 174 of Cr.P.C. The Post Mortem Report clearly mentioned that her husband died due to the electric shock. Therefore, the above said facts would reveal that the death of her husband and the bullock was due to the carelessness and negligence of the respondents and the respondents did not maintain the over head line properly and had they done so, the loss of life would have been averted. The petitioner's husband was 54 years and was earning Rs.500 per day. He was also running a milk business and thus, earning Rs.500/- through that business. Therefore, he earned a minimum of Rs.1000/- per day. The three children are female and the petitioner faces great financial difficulty in maintaining them and the family. The respondents have not even paid exgratia amount of Rs.2 lakhs in terms of the Board Proceedings No.5 dated 29.04.2013.

3. A counter affidavit is filed by the respondents, wherein it is stated as follows:

The writ petition is not maintainable and proper remedy is to file a civil suit. On 19.08.2017 at 5.00 a.m., the petitioner's husband Sekar went to his agricultural field, where



he and his bullock got electrical shock from the low tension wire, which was already snapped and fell down in the previous night. He died due to his negligence and voluntary act. He should have avoided in going to the field that too, in abnormal climatic condition. The natural calamities are beyond the control of the respondents and it is purely an act of Vis Major. The petitioner had not produced any document to prove the earning of her husband. The respondents are not liable to pay any compensation to the petitioner and however, on humanitarian ground, the respondent Board had considered the representation of the petitioner and sent a letter on 14.12.2017 to the petitioner directing her to submit certain certificates. But till date, the petitioner had not submitted any documents.

4. Learned counsel appearing for the petitioner, after reiterating the averments made in the accompanying affidavit filed in support of the petition, further submitted that the Board is willing to pay only Rs.2 lakhs which is hardly sufficient. Therefore, he submitted that this Court can fix appropriate compensation, as the respondents themselves have admitted in the counter affidavit that the death was due to the electrocution. In support of his contention, he relied on a decision of Madurai Bench of this Court reported in (2013) 2 MLJ 302, Arulmeri vs. Superintendent Engineer, TNEB and a decision of this Court reported in 2017 (1) CTC 668, R.Kumar vs. The Secretary to Government, Electricity Department, to contend that under identical circumstances, this Court has rejected the objections raised by the E.B. and granted compensation.

5. On the other hand, the learned counsel for the respondents submitted that even though the death was due to the electrocution, the same was caused due to the negligence and voluntary act of the deceased in going to the field in early hours, that too, in abnormal climatic condition. Therefore, he submitted that the amount claimed by the petitioner is exorbitant, apart from the fact that the Board is not liable to pay such huge compensation.

6. Heard both sides.

7. The petitioner is the widow of the deceased, who lost his life due to the electrocution on a fatal day viz., 19.08.2017. The deceased left the petitioner and his three daughters as his legal heirs. The death of the petitioner's husband due to electrocution is not disputed by the respondents. On the other hand, as already stated supra, they admitted that the live wire got snapped due to heavy wind and rain, which caused the electrocution on the petitioner's husband. Needless to state that the respondents are duty bound to make periodical check up and inspection and maintain the poles, wires, cables,



more particularly during the rainy seasons and during the time whenever there is an indication that a strong wind or heavy rain is expected, in order to avoid all these untoward incidents as happened in this case. Snapping of live wire cannot be brushed aside, simply as an act of God, in the absence of any material to show that despite the genuine attempt made by the authorities in maintaining the poles and live wires, such snapping took place. When the responsibility is on the Department in maintaining the poles and live wires, they cannot blame the deceased in attending his routine work. Because of the negligence on the part of the Department, a very precious and valuable life of a person is snatched away due to the electrocution, thereby making his whole family to stand on street. Hence, this Court is of the view that the respondents are bound to compensate the petitioner. The very same issue was considered by the learned Single Judge of this Court in W.P.No.15285 of 2013 dated 26.10.2016 reported in 2017 (1) CTC 668, R.Kumar vs Electricity Department, wherein the learned Single Judge. The Secretary to Government, has observed at paragraph 6 and 7 as follows:

"6.The first question that needs to be addressed is whether the snapping of OH-LT live-wire due to heavy wind and rain, would amount to an "Act of God". It is needless to mention that prior to installation of live-wire, careful precaution must be taken to ensure that the electric wires which are prone to come in contact with the public if snapped in times of heavy rain and wind, are installed with utmost durability and endeavour to withstand such unforeseen calamity. Rigorous periodical inspection needs to be conducted to such installation to avoid any untoward incident. Absence of the precaution would amount to negligence on the part of the respondents. It is common knowledge that rain tends to become heavy only after gradual and constant down-pour thereby turning into storm or gale wind, which are always predictable and hence precautions like cutting down the power supply to the openly installed live wires and transformer is essential during such untoward incidents.

7. In the case on hand, the live wire, to which, the deceased Victor came into contact, had snapped either due to poorly installed electric pole or lack of proper and periodical maintenance of the same. The respondents do not seem to have taken any precaution to cut down the power supply, when heavy rains and winds were anticipated. I do not find any of the reasonings put forth by the learned counsel for the second respondent in its counter affidavit as well as during his oral submissions to the effect that the accident was due to an "Act of God". On the other hand, the unfortunate incident is attributable due to the negligence on the part of the concerned officials of the second respondent."



8. I am in full agreement with the finding rendered by the learned Single Judge. Likewise, the other objections raised by the respondents that the writ petition is not maintainable, is also answered by this Court in a case reported in (2013) 2 MLJ 302, Arulmeri vs Superintendent Engineer, TNEB, where this Court has rejected the objection of the electricity board with regard to the maintainability of the writ petition. Therefore, this Court is of the view that the respondents are bound to compensate the petitioner.

9. The next question is how much the compensation. Though the petitioner has claimed the compensation of Rs.25 lakhs, I do not find any materials placed before this Court for granting such huge compensation except the fact that the petitioner was an agricultural coolie and also was vending milk. However, considering the age of the deceased as 54 and considering the fact that he was an agricultural coolie and also vending milk, which facts are not disputed by the respondents and further considering the fact that a bullock belonging to the deceased family also lost its life and further considering the fact that the deceased left the petitioner as well as the three daughters as the dependants, this Court finds that a just and reasonable compensation payable to the petitioner would be Rs.5 lakhs, since even according to the Board Standing Order, they would pay a sum of Rs.2.5 lakh in these nature of cases. Accordingly, this writ petition is allowed in part and the respondents are directed to pay a sum of Rs.5 lakhs (Rupees Five Lakhs) to the petitioner towards compensation with interest at the rate of 6% per annum from the date of the death of the deceased husband viz., 19.08.2017, within a period of four weeks from the date of receipt of a copy of this order. No costs. The connected miscellaneous petition is closed.

vri

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Secretary to Government,
Energy Department,
Fort St.George, Chennai-9.
2. The Chairman,
Tamilnadu Electricity Generation & Distribution
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Kalavai, Vellore.

+lcc to Mr.R.Subburaj, Advocate, S.R.No.84807
+lcc to The Govt.Pleader, vide, S.R.No.85124.

W.P.No.30272 of 2017

AK(CO)
KAK(09/01/2019)