



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.04.2018

CORAM :

THE HONOURABLE MR.JUSTICE M.S.RAMESH

Writ Petition (MD) No.20143 of 2015

WEB COPY

M.Nagalakshmi

... Petitioner

Vs.

1. The Executive Enginner,
Tamil Nadu Generation and
Distribution Corporation Ltd.,
(formerly called Tamil Nadu
Electricity Board)
Dindigul District.
2. The Assistant Executive Engineer,
Tamil Nadu Generation and
Distribution Corporation Ltd.,
(formerly called Tamil Nadu
Electricity Board)
Nilakottai,
Dindigul District.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, to direct the respondents to pay the compensation amount of Rs.50 lakhs for the death of the petitioner's husband Moorthy who was working as a Sweeper under the Town Panchayat, Nilakottai, Dindigul District on the basis of the petitioner's representation dated 15.10.2015 within the time stipulated by this Court.

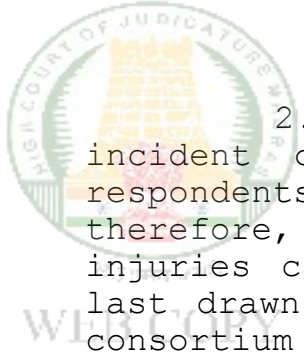
For Petitioner : Mr.S.Pugalendhi

For Respondents : Mrs.S.Srimathy

ORDER

The brief facts of the case is as follows:-

On 05.06.2014 at about 7.30. a.m, when the petitioner's husband was drawing water from the water tap situated near the Government Hospital, the electricity wires passing over the water tap snapped and fell on the body of the petitioner's husband namely, Moorthy and her daughter Sribharathy, owing to which, her husband died on the spot and her daughter sustained injuries. The incident occurred due to the negligence on the part of the respondents and therefore, they are liable to pay compensation. Since the petitioner's husband was employed as a sweeper in the Town Panchayat of Nilakottai drawing a monthly sum of Rs.16,120/- and was survived by his wife/the petitioner herein and two daughters and a son, a sum of Rs.50 lakhs has been claimed as compensation in the present writ petition.



2.The learned counsel for the petitioner submitted that the incident occurred due to the negligence on the part of the respondents in failing to maintain the over head electric wires and therefore, they are liable for the loss of her husband and the injuries caused to her daughter. Since the petitioner's husband's last drawn wages was Rs.16,120/- and also in view of the loss of consortium and dependency, the respondents are liable to pay Rs.50 lakhs as compensation.

3.The learned Standing Counsel for the respondents on the other hand submitted that the incident had occurred on 05.06.2014 due to heavy wind and rain and since the transmission lines were being maintained periodically, the respondents are not liable to pay any compensation to the petitioner and her family members.

4.The learned Standing Counsel further submitted that the water pump was erected beneath the electric lines by the local authorities without obtaining any prior permission and therefore, the local authority alone could be held responsible, if at all any compensation is awarded. Even otherwise, it is her submission that the compensation claimed is exorbitant.

5.I have given careful consideration to the submissions made by the respective learned counsels.

6.It is not in dispute that the petitioner's husband had died due to electric shock. The date of the incident is also not in dispute. It is the case of the respondents that due to heavy wind and rain on 05.06.2014 the electric lines came to be snapped and since they had periodically maintained the transmission lines, they are not liable to pay compensation.

7.I am unable to comprehend the submission of the learned Standing Counsel for the respondents that the liability cannot be fixed on them since the transmission lines were periodically maintained by them and the snapping of the electricity lines was due to heavy wind and rain on the fateful day. The respondent TANGEDCO is engaged in an inherently dangerous service which could pose a potential threat to the society in case of any negligence or failure of maintenance. As such, they would be under an obligation to provide the highest standards of safety. Whenever the naked transmission lines are erected on over head poles, maximum standards of safety needs to be adhered to. If these transmission lines happen to snap and fall on the ground, there is a potential danger to the general public. Therefore, the quality of the poles as well as transmission lines should be of the highest standards. Even assuming that the quality of the poles and transmission lines are procured among the best of the qualities, the erection of these over head lines should be named in such a way that the same should be secured in all kinds of climate and weather. In view of the potential danger attached to these electricity lines, the periodical inspection and maintenance is mandatory. The over head lines while



erection as well as during the course of maintenance should withstand any natural calamity which can normally be forecast.

8.It is not the case of the respondents that on the fateful day, there was a cyclone or a storm, the magnitude of which could overcome any amount of safety measures taken by the respondents. Even assuming that the stand of the respondents that the transmission lines snapped due to heavy wind and rain could only go to show that the poor maintenance of the transmission lines on the part of the respondents.

9.It would not be out of place to mention here that we are now exposed to modern technology whereby heavy winds or rains could be forecasted well in advance. Whenever such rain or heavy wind is forecasted, the respondents ought to have visualized the possibilities of snapping of wires and when they are of the view that the transmission lines will not withstand heavy wind or rain, the minimum precaution that could have been taken is to shut down the electricity supply through these transmission lines. In the instant case, this precaution was also not taken. In any event, the possibility that there was heavy rain and wind on 05.04.2014 itself is doubtful, since the same is not supported by any material except for a vague allegation in the counter affidavit. It is common knowledge that in the peak summer of 2014, the State of Tamil Nadu in particular, the Dindigul District did not face weather of such high magnitude.

10.The Hon'ble Apex Court in a judgment reported in (1987) 1 SCC 395 (M.C.Mehta and another Vs.Union of India and others) had an occasion to consider this aspect in the following manner:-

"...We are of the view that an enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas owes an absolute and non-delegable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous nature of the activity which it has undertaken. The enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity in which it is engaged must be conducted with the highest standards of safety and if any harm results on account of such activity, the enterprise must be absolutely liable to compensate for such harm and it should be no answer to the enterprise to say that it had taken all reasonable care and that the harm occurred without any negligence on its part. Since the persons harmed on account of the hazardous or inherently dangerous activity for its profit, the law must presume that such permission is conditional on the enterprise absorbing the cost of any accident arising on account of



such hazardous or inherently dangerous activity as an appropriate item of its overheads. Such hazardous or inherently dangerous activity for private profit can be tolerated only on condition that the enterprise engaged in such hazardous or inherently dangerous activity indemnifies all those who suffer on account of the carrying on of such hazardous or inherently dangerous activity regardless of whether it is carried on carefully or not. This principle is also sustainable on the ground that the enterprise alone has the resource to discover and guard against hazards or dangers and to provide warning against potential hazards. We would therefore hold that where an enterprise is engaged in a hazardous or inherently dangerous activity and harm results to anyone on account of an accident in the operation of such hazardous or inherently dangerous activity resulting, for example, in escape of toxic gas the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident and such liability is not subject to any of the exceptions which operate vis-a-vis the tortious principle of strict liability under the rule in Rylands Vs.Fletcher."

11.In view of the above observations, I do not have any hesitation to hold that the respondents are liable for the negligence in maintaining the over head transmission lines which caused the death of the petitioner's husband. As per the last drawn salary slip of the petitioner's husband, he was drawing a sum of Rs.16,120/- while employed as a sweeper in Town Panchayat, Nilakottai. He is survived by the petitioner, two daughters and a son. As per the death certificate, the petitioner's husband was aged about 41 years on the date of his death. These aspects are not in dispute.

12.Incidentally, the petitioner's daughter namely, Sribharathi also sustained injuries due to the electric shock but fortunately, she survived. Though no records have been produced before this Court with regard to the injuries sustained by the petitioner's daughter, the respondents, however, have not denied her injuries in their counter affidavit.

13.Taking into account the age of the petitioner's husband (i.e.) 41 years, it can be safely presumed that he could have lived for at least 19 more years. His death must have caused great sorrow in the family and while the petitioner would have incurred loss of consortium, the entire family members would have lost their dependency. Taking all these factors into account, it can be safely concluded that the four legal heirs of the petitioner's husband would have faced immense hardship with the loss of only earning member of the family and therefore, a sum of Rs.30 lakhs can be an adequate compensation to them.



14. At this juncture, learned Standing Counsel for the respondents submitted that the Town Panchayat, Nilakottai was responsible since they had installed the hand pump beneath the transmission lines without any prior permission of the respondents.

15. In view of my findings, I do not wish to go into this question since the Town Panchayat, Nilakottai is neither the party to the writ petition nor have the respondents produced any material to substantiate such a stand. Nevertheless, in case, the respondents are of the view that the negligence is on the part of the Town Panchayat, Nilakottai, it would be open to them to proceed against the Town Panchayat, Nilakottai in the manner known to law for having the compensation reimbursed from the Town Panchayat, Nilakottai. It is made clear that this Court has not expressed any of its view with regard to the liability or negligence on the part of the Town Panchayat, Nilakottai.

16. For the foregoing reasons, the respondents are directed to pay a sum of Rs.30 lakhs (Rupees thirty lakhs only) by way of compensation to the four legal heirs of Late. Murthy, on production of valid legal heirship certificate, within a period of eight weeks from the date of receipt of a copy of this order.

17. The writ petition stands allowed accordingly. No costs.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

+1CC to Mr.S.Pugalendhi, Advocate, SR.No.62816

+1CC to Mr.S.M.S.JOHNNY BASHA, Advocate, SR.No.62411

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