BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.01.2018

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P(MD)No.4239 of 2014
and
M.P(MD)No.2 of 2014

1.Jeyabarathy
2.Minor Selvakumar
3.Minor Mohan Kumar
4.Minor Saranya
5.Minor Santhiya
6.Minor Miniasamy Pandian
(Minor Petitioners 2 to 6 are represented by their mother and guardian – Jeyabarathy, the first petitioner herein.)

7.Chelliah
8.Annammal ... Petitioners

Vs.

1.The Chairman,
Tamil Nadu Electricity Board,
Office of the Chairman,
No.800, Anna Salai,
Chennai – 2.

2.The Superintending Engineer,
Tamil Nadu Electricity Board,
Tuticorin Electricity Distribution Circle,
Ettayapuram Road,
Tuticorin.

3.The Executive Engineer,
Operation and Maintenance,
Tamil Nadu Electricity Board,
Ettayapuram,
Tuticorin.

4.The Assistant Engineer – Distribution,
Tamil Nadu Electricity Board,
Tuticorin Electricity Distribution Circle,
Sundaravelpuram,
Tuticorin.

5.The Electrical Inspector,
Tamil Nadu Electricity Board,
NPS Complex, 2nd Floor,
Tuticorin - 628 002.

6.The District Collector,
Tuticorin District,
Karmelpuram,
Collectorate,
Tuticorin. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a writ of Mandamus directing the respondents to pay a compensation of Rs.25,00,000/- (Rupees Twenty Five Lakhs only) together with interest to the petitioners.

For Petitioner : Mr.Niranjan S.Kumar
for Mr.V.Balaji

For Respondents : Mr.A.U.Ramanathan for R.1 to R.5

Mr.M.Alagathevan,
Special Government Pleader for R.6

* * * * *

ORDER

The first petitioner - wife of the deceased C.Baskar, a fisherman by profession; the petitioners 2 to 6 - children of the deceased and the respondents 7 and 8 - parents of the deceased, have come before this Court seeking a writ of Mandamus to direct the respondents to pay a sum of Rs.25,00,000/- (Rupees Twenty Five Lakhs only) together with interest towards compensation for the death of the deceased C.Baskar due to electrocution.

2. Facts-in-brief, are as follows:

2.1. On 03.12.2013 at 11.30 a.m., the deceased C.Baskar, aged 31 years, while returning to his house, through a salt pan near Sangu Godown, Threspuram, Thoothukudi, came into contact with a live electrical line of an electric pole, that was lying at a height of 4 feet and died due to electrocution. When he was taken to Thoothukudi Medical College Hospital for treatment, he was declared dead.

2.2. Thereafter, a case in Cr.No.747 of 2013 under Section 174 Cr.P.C., was registered by Thoothukudi North Police Station, on the very same day. On 04.12.2013, the post-mortem was also conducted by the doctors of Department of Forensic Medicine, Thoothukudi Medical College, Thoothukudi.

2.3. In the post-mortem report, it is opined that the cause of death of the deceased was due to electrocution.

2.4. Having lost her husband, who was the sole bread-winner of the family of the petitioners, the first petitioner and the respondents 7 and 8 moved before the respondents seeking compensation to the tune of Rs.25,00,000/-, however, her grievance remained the same till date.

2.5. Hence, the petitioners are before this Court.

3. Denying the claim of the petitioners as baseless, the respondents 1 to 4 filed the counter affidavit for himself and on behalf of the other respondents and *inter alia,* contended that the deceased was negligent while passing through the electric lines and came into contact with a live electric line and got electrocuted. Further, it is contended that since there are disputed questions of fact, the writ petition is not maintainable and the proper course for the petitioners to seek compensation, is only before the civil Court and hence, prayed for the dismissal of this writ petition.

4. Mr.Niranjan S.Kumar, learned Counsel for the petitioners made the following submissions:

4.1. The cause of death of the deceased was admitted by the respondents even in their counter affidavit itself and hence, they cannot take a different stand to contend that the writ petition is not tenable.

4.2. It is well settled position of law that when the facts are not in dispute, the legal heirs of the victims of riot, custodial killing or death due to negligence on the part of the State Authorities, can claim compensation in the writ proceedings and hence, the present writ petition is maintainable.

4.3. In the First Information Report which came to be lodged immediately after the death of the deceased, the cause of the death had been clearly stated that due to electric shock, the deceased was thrown away and subsequently, he died.

4.4. The Doctor, who conducted the autopsy, opined that the deceased would appear to have died of complications of electrocution.

4.5. When that being the case of the petitioners, the respondents are not justified in not considering the claim of the petitioners for compensation without any valid reasons.

4.6. Therefore, the petitioners prayed this Court for the above relief.

5. In support of his contentions, he placed reliance on the following decisions:

(i) *Raman v. Uttar Haryana Bijli Vitran Nigam Limited and others* reported in *(2014) 15 Supreme Court Cases 1.*

(ii) *R.Pareetha Beevi v. The Chairman, Tamil Nadu Electricity Board* reported in *2014 (2) CWC 337.*

(iii) *S.Theivanai v. The Commissioner, Corporation of Madurai, Madurai and others* reported in *2015 (0) Supreme (Mad) 1546.*

(iv) *K.Sumathi v. The Government of Tamil Nadu and others* reported in *2016 (0) Supreme (Mad) 44.*

(v) *R.Kumar v. The Secretary to Government, Electricity Department, Government of Tamil Nadu* reported in *2017 (1) CTC 668.*

(vi) *P.Siva Shakthivel v. Chairman, Tamil Nadu Electricity Board* reported in *(2017) 6 MLJ 520.*

6. Per contra, Mr.A.U.Ramanathan, learned Standing Counsel appearing for the respondents 1 to 5, reiterating the averments in the counter affidavit, made the following submissions:

6.1. The writ petition is not maintainable as there are disputed questions of fact involved herein as to the death of the deceased and the death of the deceased had occurred only due to the Act of God and not because of the negligence on the part of the respondent - Electricity Board.

6.2. The petitioners have to work out their remedy before the competent civil Court seeking compensation for the death of the deceased.

6.3. The respondents cannot be mulcted with the liability much less vicarious liability for the alleged death of the deceased, which, had happened while the deceased negligently came into contact with the electric line.

6.4. The respondents denied the manner of the occurrence that had taken place, of which, the deceased was allegedly thrown away due to electrocution.

6.5. The petitioners failed to let in evidence both oral as well as documentary to prove their case and in such an event, this Court, under Article 226 of the Constitution cannot delve deep into the same and decide the issue regarding the compensation.

6.6. The proper recourse for the petitioners is only by way of a suit before the civil Court and hence, prayed for the dismissal of this writ petition as not maintainable.

7. I have considered the rival submissions and perused the materials available on record.

8. The deceased in the present case, died of an unnatural death, which drove the petitioners to seek compensation before the respondents, who did not choose to consider the same so far and accordingly, the petitioners are before this Court.

9. At the outset itself, this Court points out that the respondents have categorically admitted in their counter affidavit that the deceased died of electric shock. In addition, the cause of death of the deceased has been clearly reflected in the First Information Report and the Post-mortem Report. Therefore, the contention put forth on the side of the respondents that there are disputed questions of fact in this writ petition, has no legs to stand and accordingly, it is rejected.

10.Now, the next question that arises for consideration is the quantum of compensation to which the petitioners are entitled to.

Loss of Income:

11. According to the petitioners, the deceased was 31 years at the time of the death and he earned a sum of Rs.19,500/- (Rupees Nineteen Thousand and Five Hundred only) per month, by fishing, but, no evidence has been adduced in that regard. It is well settled that the Court cannot direct the claimants to prove the income of the deceased - fisherman, by material evidence, more particularly, in the case on hand, the deceased was a fisherman at the time of the fatal accident. Hence, this Court is of the view that the notional income of the deceased could be fixed as Rs.6,000/- per month and after deducting 1/3rd amount towards his personal expenses, a sum of Rs.4,500/- per month could be arrived at, as the monthly loss of income.

Multiplier:

12. As regards the multiplier to be adopted, in the case of *Sarla Verma and Others vs. Delhi Transport Corporation and another* reported in *2009 (2) TN MAC 1 (SC)*, the Honourable Supreme Court, compared the multiplier indicated in various decisions with the multiplier mentioned in the second schedule of Section 163-A of Motor Vehicles Act and identified a table. Relevant portion of the said judgment would read as under:

"19. In New India Assurance Co. Ltd. vs. Charlie [2005 (10) SCC 720], this Court noticed that in respect of claims under section 166 of the MV Act, the highest multiplier applicable was 18 and that the said multiplier should be applied to the age group of 21 to 25 years (commencement of normal productive years) and the lowest multiplier would be in respect of persons in the age group of 60 to 70 years (normal retiring age). This was reiterated in TN State Road Transport Corporation Ltd. vs. Rajapriya [2005 (6) SCC 236] and UP State Road Transport Corporation vs. Krishna Bala [2006 (6) SCC 249]. The multipliers indicated in Susamma Thomas, Trilok Chandra and Charlie (for claims under section 166 of MV Act) is given below in juxtaposition with the multiplier mentioned in the Second Schedule for claims under section 163A of MV Act (with appropriate deceleration after 50 years) :

Age of deceased	Multiplier Scale as envisaged in General Manager, Kerala State Road Transport Corporat-ion, Trivandr-um v. Susamma Thomas and others, 1994(2) SCC 176	Multiplier Scale as adopted by U.P. State Road Transport Corporat-ion and others v. Trilok Chandra and others, 1996 (4) SCC 362	Multiplier Scale in U.P. State Road Transport Corporation and others v. Trilok Chandra and others, 1996(4) SCC 362 as clarified in New India Assurance Company Ltd. v. Charlie and another, 2005 (10) SCC 720	Multiplier Specified in Second Column in the Table in Second Schedule to the MV Act	Multiplier actually used in Second Schedule to M.V. Act (as seen from the quantum of compensation)
(1)	(2)	(3)	(4)	(5)	(6)
Upto 15 years	-	-	-	15	20
15 to 20 years	16	18	18	16	19
21 to 25 years	15	17	18	17	18
26 to 30 years	14	16	17	18	17
31 to 35 years	13	15	16	17	16
36 to 40 years	12	14	15	16	15
41 to 45 years	11	13	14	15	14
46 to 50 years	10	12	13	13	12
51 to 55 years	9	11	11	11	10
56 to 60 years	8	10	9	8	8

Age of deceased	Multiplier Scale as envisaged in General Manager, Kerala State Road Transport Corporat-ion, Trivandr-um v. Susamma Thomas and others, 1994(2) SCC 176	Multiplie r Scale as adopted by U.P. State Road Transport Corporat-ion and others v. Trilok Chandra and others, 1996 (4) SCC 362	Multiplier Scale in U.P. State Road Transport Corporatio n and others v. Trilok Chandra and others, 1996(4) SCC 362 as clarified in <u>New India Assurance Company Ltd. v. Charlie and another, 2005 (10) SCC 720</u>	Multiplier Specified in Second Column in the Table in Second Schedule to the MV Act	Multiplier actually used in Second Schedule to M.V. Act (as seen from the quantum of compensati on)
61 to 65 years	6	8	7	5	6
Above 65 years	5	5	5	5	5

20. Tribunals/courts adopt and apply different operative multipliers. Some follow the multiplier with reference to Susamma Thomas (set out in column 2 of the table above); some follow the multiplier with reference to Trilok Chandra, (set out in column 3 of the table above); some follow the multiplier with reference to Charlie (Set out in column (4) of the Table above); many follow the multiplier given in second column of the Table in the Second Schedule of MV Act (extracted in column 5 of the table above); and some follow the multiplier actually adopted in the Second Schedule while calculating the quantum of compensation (set out in column 6 of the table above). For example if the deceased is aged 38 years, the multiplier would be 12 as per Susamma Thomas, 14 as per Trilok Chandra, 15 as per Charlie, or 16 as per the multiplier given in column (2) of the Second schedule to the MV Act

or 15 as per the multiplier actually adopted in the second Schedule to MV Act. Some Tribunals, as in this case, apply the multiplier of 22 by taking the balance years of service with reference to the retiring age. It is necessary to avoid this kind of inconsistency. We are concerned with cases falling under section 166 and not under section 163A of MV Act. In cases falling under section 166 of the MV Act, Davies method is applicable. 21. 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, -7 for 61 to 65 years and M-5 for 66 to 70 years."

In view of the dictum laid down by the Honourable Supreme Court in S*arla Verma's case*, the correct multiplier to be adopted in this case as per column (4) of the Table is '16''. Accordingly, applying the multiplier of '16' to the income of Rs.4,500/- per month, the compensation towards "loss of income" is worked out as Rs.8,64,000/- (Rupees Eight Lakhs and Sixty Four Thousand only) [Rs.4,500/- x 12 x 16].

Loss of Consortium:

13. Insofar as the compensation under the head 'loss of consortium', the Honourable Supreme Court in the case of *Rajesh and others vs. Rajbir Singh and others*, reported in *2013 (2) TN MAC 55 (SC)* was pleased to hold as under:

"20. The ratio of a decision of this Court, on a legal issue is a precedent. But an observation made by this Court, mainly to achieve uniformity and consistency on a socio-economic issue, as contrasted from a legal principle, though a precedent, can be, and in fact ought to be periodically revisited, as observed in Santosh Devi v. National Insurance Company Limited and others, 2012 (2) TN MAC 1 (SC). We may, therefore, revisit the practice of awarding compensation under conventional heads: Loss of Consortium to the spouse, Loss of Love, care and guidance to children and Funeral Expenses. It may be noted that the sum of Rs.2,500/- to Rs.10,000/- in those heads was fixed several decades ago and having regard to

> inflation factor, the same needs to be increased. In Sarla Verma and others v. Delhi Transport Corporation and another, 2009 (2) TN MAC 1 (SC), it was held that compensation for Loss of Consortium should be in the range of Rs.5,000/- to Rs.10,000/-. In legal parlance, 'consortium' is the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. That non-pecuniary head of damages has not been properly understood by our Courts. The loss of companionship, love, care and protection, etc., the spouse is entitled to get, has to be compensated appropriately. The concept of non pecuniary damage for Loss of Consortium is one of the major heads of award of compensation in other parts of the world more particularly in the United States of America, Australia, etc. English courts have also recognized the right of a spouse to get compensation even during the period of temporary disablement. By Loss of Consortium, the Courts have made an attempt to compensate the loss of spouse's affection, comfort, solace, companionship, society, assistance, protection, care and sexual relations during the future years. Unlike the compensation awarded in other countries and other jurisdictions, since the legal heirs are otherwise adequately compensated for the pecuniary loss, it would not be proper to award a major amount under this head. Hence, we are of the view that it would only be just and reasonable that the Courts award at least rupees one lakh for Loss of Consortium."

Keeping in mind the above ratio, this Court awards a sum of Rs.1,00,000/- under the head 'loss of consortium' to the first petitioner/wife of the deceased.

<u>Loss of Love and Affection:</u>

14. The petitioners 2 to 6 - minor children of the deceased have lost their father and the petitioners 7 and 8 - parents of the deceased have also lost their son and hence, they are entitled to a sum of Rs.50,000/- (Rupees Fifty Thousand only) each, towards 'loss of love and affection' and accordingly, a sum of Rs.3,50,000/- (Rupees Three Lakhs and Fifty Thousand only) is awarded under the head 'loss of love and affection' to the petitioners 2 to 6 as well as the respondents 7 and 8.

<u>Funeral Expenses:</u>

15. In the case of *Rajesh and others vs. Rajbir Singh and others, reported in 2013 (2) TN MAC 55 (SC)*, the Honourable Supreme Court, while awarding compensation under the head funeral expenses has held as under:

> "18. We may also take judicial notice of the fact that the Tribunals have been quite frugal with regard to award of compensation under the head "funeral expenses". The "price index", it is a fact has gone up in that regard also. The head "funeral expenses" does not mean the fee paid in the crematorium or fee paid for the use of space in the cemetery. There are many other expenses in connection with funeral and, if the deceased is a follower of any particular religion, there are several religious practices and conventions pursuant to death in a family. All those are quite expensive. Therefore, we are of the view that it will be just, fair and equitable, under the head "funeral expenses", in the absence of evidence to the contrary for higher expenses, to award at least an amount of Rs.25,000/-."

Taking note of the ratio laid down in the above decision, this Court awards a sum of Rs.10,000/- (Rupees Ten Thousand only) towards 'funeral expenses'.

Transportation Expenses:

16. Further, this Court awards a sum of Rs.10,000/- (Rupees Ten Thousand only) towards the transportation expenses, that occurred while the deceased was taken to the hospital for treatment.

Total Compensation:

17. Accordingly, the total compensation, to which, the petitioners are entitled to, would be, as follows:

S.No.	Description	Amount Awarded by this Court (Rs.)
1.	Loss of Income	8,64,000.00
2.	Loss of Consortium	1,00,000.00
3.	Loss of love and affection	3,50,000.00
4.	Transportation Expenses	10,000.00
5.	Funeral Expenses	10,000.00
Total		13,34,000.00

18. In the result,

(i) This writ petition is allowed and the petitioners are entitled to the total compensation of Rs.13,34,000/- (Rupees Thirteen Lakhs and Thirty Four Thousand only) along with interest at the rate of 7.5% per annum, from the date of filing of this petition till date of realisation.

(ii) The apportionment of compensation to the petitioners would be as follows:

S.No.	Petitioners	Amount (Rs.)
1.	1st petitioner - wife of the deceased	3,00,000.00
2.	2nd petitioner – minor son of the deceased	1,80,000.00
3.	3rd petitioner – minor son of the deceased	1,80,000.00
4.	4th petitioner – minor daughter off the deceased	1,80,000.00
5.	5th petitioner – minor daughter of the deceased	1,80,000.00
6.	6th petitioner – minor son of the deceased	1,80,000.00
7.	7th petitioner – father of the deceased	67,000.00
8.	8th petitioner – mother of the deceased	67,000.00
Total		13,34,000.00

(iii) The respondents are directed to deposit the entire compensation amount along with interest before the Indian Bank, High Court Branch, Madurai Bench of Madras High Court, Madurai - 625 023, within a period of six weeks from the date of receipt of a copy of this order.

(iv) The petitioners 1, 7 and 8 are permitted to withdraw their respective share amounts in the compensation amount and the respective share amounts of the minor petitioners are directed to be kept in an interest bearing Fixed Deposit, initially for a period of three years, renewable thereafter, till they attain majority.

(v) The first petitioner is permitted to withdraw the interest accrued thereon once in three months for the welfare of the minor petitioners.

(iv) There shall be no order as to costs.

(v) Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CSI)

/True Copy/

Sub-Assistant Registrar

To

1.The Chairman,
Tamil Nadu Electricity Board,
Office of the Chairman,
No.800, Anna Salai,
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2.The Superintending Engineer,
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+One cc to The Special Government Pleader, SR>No.43994

rsb
RL/8C/12P/KK/SAR1/6/2/2018

ORDER MADE IN
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and
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