



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 27.02.2018
PRONOUNCED ON: 13.03.2018

CORAM :

WEB COPY

THE HONOURABLE MR. JUSTICE V. BHARATHIDASAN

Writ Petition (MD) No.7878 of 2013
and
M.P (MD) No.1 of 2013

M.Chinnamani ... Petitioner
Vs.

- 1.The State of Tamil Nadu,
represented by its
Secretary to Government,
Energy Department, Fort St., George,
Chennai 600 009.
 - 2.The Chairman cum Managing Director,
Tamil Nadu Generation and Distribution Corporation Ltd.,
(TANGEDCO), 144, Anna Salai,
Chennai 600 002.
 - 3.The Superintending Engineer,
Madurai Electricity Distribution Circle,
Tamil Nadu Generation and Distribution Corporation Ltd.,
(TANGEDCO), Race Course Road, Pudur,
Madurai.
 - 4.The Executive Engineer,
Tamil Nadu Generation and Distribution Corporation Ltd.,
(TANGEDCO), Thirumangalam,
Madurai 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 a sum of Rs.10,00,000/- by way of compensation for the death of the petitioners son (late) Praveen Kumar aged 7 years due to electrocution with in a time frame that may be stipulated by this Court.

For Petitioner	: Mr.R.R.Kannan
For 1 st Respondent	: Mrs.J.Padmavathi Devi, Special Government Pleader.
For Respondents 2-4	: Mr.E.P.Venkateshwar, for Mr.S.M.S.Johny Basha Standing Counsel

ORDER

This writ petition has been filed seeking direction to the respondents to pay a sum of Rs.10,00,000/- by way of compensation for the death of the petitioner's son one Praveen Kumar, aged 7 years due to electrocution.



2. According to the petitioner, on 30.04.2012, while the petitioner, his wife and son Praveenkumar were returning after attending a temple festival in Shivarakottai Village, overhead electric live-wire fell on the petitioner's son which has resulted in electrocution. Thereafter, the petitioner took him to the Government Hospital, Thirumangalam where he was declared dead. Thereafter, a case was registered before the Kallikudi Police Station in Crime No.57 of 2012 for the offence under Section 174 Cr.P.C. Thereafter, postmortem was conducted on the body of the deceased and the Doctor has given opinion stating that the death was occurred due to cardio respiratory arrest due to electrocution.

3. The grievance of the petitioner is that due to poor maintenance of electricity supply lines, a live wire snapped and fell on the head of the petitioner's son who was aged about seven years at the time of occurrence. It is stated that the petitioner's son was academically sound and brilliant and he has very bright future. The occurrence has taken place only due to the negligence on the part of the respondent Electricity Board. Hence, the petitioner has filed the present writ petition seeking compensation for the death of his minor son.

4. The respondent Electricity Board has filed a counter affidavit stating that the respondent Board was properly maintaining electrical wires and poles and they have carried out maintenance work before the accident, on 04.02.2012. It is further stated that there was no electric accident occurred before and after the accident. But the accident has happened only due to the 'Act of God'. Therefore, the petitioner is not entitled to claim compensation from the respondents. It is further contended that since the act of negligence ought to be proved with evidence, the petitioner has to approach the Civil Court and cannot maintain a writ petition under Article 226 of the Constitution of India. The common law remedy is available by initiating appropriate action by establishing the facts to justify the quantum of compensation. It is further submitted that as per Board proceedings, now the respondent Board is paying a sum of Rs.2 lakhs for the accident of this nature. If the claim is over and the above said amount, recourse is open to the petitioner to approach the Civil Court.

5. I have considered the rival submissions made on either side and perused the entire materials available on record carefully.

6. The death of the petitioner's son due to electrocution is not disputed. It is also not disputed by the respondent Electricity Board that the death was due to snapping of live electrical wire fell on the petitioner's son. But it is the contention of the respondents that the accident was due to the 'Act of God'. The said contention cannot be countenanced for a simple reason that accident took place only due to the non maintenance of the electrical transmission line.

7. The proper maintenance of the electrical lines is the duty of the respondent Electricity Board. Section 68 of the Electricity Act, 2003 contains provisions relating to overhead lines which reads as follows:-



68.Overhead lines:- (1) An overhead line shall, with prior approval of the Appropriate Government, be installed or kept installed above ground in accordance with the provisions of sub-section (2).

(2)The provisions contained in sub-section

(1) shall not apply-

(a) in relation to an electric line which has a nominal voltage not exceeding 11 kilovolts and is used or intended to be used for supplying to a single consumer;

(b)in relation to so much of an electric line as is or will be within premises in the occupation or control of the person responsible for its installation;or

(c)in such other cases as may be prescribed.

(3)The Appropriate Government shall, while granting approval under sub-section (1), impose such conditions (including conditions as to the ownership and operation of the line) as appear to it to be necessary

(4)The Appropriate Government may vary or revoke the approval at any time after the end of such period as may be stipulated in the approval granted by it.

(5)Where any tree standing or lying near an overhead line or where any structure or other object which has been placed or has fallen near an overhead line subsequent to the placing of such line, interrupts or interferes with, or is likely to interrupt or interfere with, the conveyance or transmission of electricity or the accessibility of any works, an Executive Magistrate or authority specified by the Appropriate Government may, on the application of the licensee, cause the tree, structure or object to be removed or otherwise dealt with as he or it thinks fit.

(6) When disposing of an application under sub-section (5), an Executive Magistrate or authority specified under that sub-section shall, in the case of any tree in existence before the placing of the overhead line, award to the person interested in the tree such compensation as he thinks reasonable, and such person may recover the same from the licensee.

8.Rule 91 of the Indian Electricity Rules, 1956 provides for safety and protective devices which reads as follows:-

"91.Safety and protective devices:- (1)Every overhead line; (not being suspended from a dead bearer wire and not being covered with insulating material and not being a trolley-wire) erected over any part of street or other public place or in any factory or mine or on any consumers' premises shall be protected with a device approved by the Inspector for rendering the line electrically harmless in case it breaks.

(2)An Inspector may by notice in writing require the owner of any such overhead line wherever it may be erected to protect it in the manner specified in sub-rule

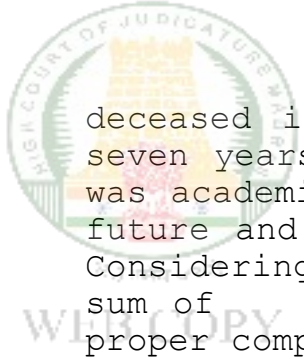
(1)."

9. As per Rule 91 of the said Rules, every overhead line should be protected with a device for rendering the line electrically harmless in case it breaks. It is an admitted fact that the accident took place due to the snapping of live electrical wire and if a proper device was provided by the respondent Electricity Board, as soon as the electrical wire snapped, the electricity supply would have been disconnected. But it is not the case of the respondent Electricity Board that they have provided such device as contemplated under Rule 91 of the above said Rules. It is also not the case of the respondent Electricity Board that the electrical overhead wire was snapped due to any heavy wind or rain so as to claim that the accident has occurred due to the 'Act of God' and cannot escape from their liability.

10. From the perusal of the materials, it could be seen that the accident took place purely due to the negligence of the respondent Electricity Board. When there is negligence on the face of it and there is infringement of Article 21 of the Constitution of India, this Court can always invoke its extraordinary jurisdiction under Article 226 of the Constitution of India and award compensation. The Hon'ble Supreme Court in *Tamil Nadu Electricity Board vs Sumathi and others* reported in 2000 (4) SCC 543 has held as follows:-

"In view of the clear proposition of law laid by this Court in Sukamani Das case when a disputed question of fact arises and there is clear denial of any tortious liability remedy under Article 226 of the Constitution may not be proper. However, it cannot be understood as laying a law that in every case of tortious liability recourse must be had to a suit. When there is negligence on the face of it and infringement of Article 21 is there it cannot be said that there will be any bar to proceed under Article 226 of the Constitution. Right of life is one of the basic human rights guaranteed under Article 21 of the Constitution. In U.P. State Coop. Land Development Bank Ltd. v. Chandra Bhavan Dubey, where one of us (Wadhwa, J.) was a party, this Court after examining various decisions of the courts on the power of the High Court under Article 226 of the Constitution observed that the language of Article 226 of the Constitution does not admit of any limitation on the powers of the High court for the exercise of jurisdiction thereunder though by various decisions of this Court with varying and divergent views, it has been held that jurisdiction under Article 226 can be exercised only when a body or authority, the decision of which is complained, was exercising its power in the discharge of public duty and that writ is a public law remedy."

11. In the said circumstances, the respondent Electricity Board has to pay adequate compensation to the petitioner. So far as compensation, it is settled law that quantum of compensation can be decided by applying the principles which guide the motor vehicle accidents claims tribunals. It is stated that the



deceased is the only son of the petitioner and the deceased was seven years at the time of the accident. It is also stated that he was academically sound and brilliant and he would have had a bright future and the petitioner also deprived of his love and affection. Considering all the above facts, this Court is of the view that a sum of Rs.2,00,000/- (Rupees two lakhs only) will be just and proper compensation for the loss of the petitioner's son. Apart from that the respondent Electricity Board has also admitted that as per the Board proceedings, the respondent Electricity Board is willing to pay a sum of Rs.2 lakhs as no fault liability for the death of the petitioner's son.

12.In fine, the writ petition is partly allowed. The respondent Electricity Board is directed to pay sum of Rs.4 lakhs (Rupees four lakhs only) as compensation to the petitioner within a period of eight weeks from the date of receipt of a copy of this order. If the respondent Electricity Board failed to pay the said amount within the above said period, they have to pay interest at the rate of 12% per annum from the date of default till the date of payment. No costs. Consequently, M.P(MD)No.1 of 2013 is closed.

Sd/-

Assistant Registrar(CSII)

/True Copy/

Sub-Assistant Registrar

To

- 1.The Secretary to Government, The State of Tamil Nadu,
Energy Department, Fort St., George,
Chennai 600 009.
- 2.The Chairman cum Managing Director,
Tamil Nadu Generation and Distribution Corporation Ltd.,
(TANGEDCO), 144, Anna Salai,
Chennai 600 002.
- 3.The Superintending Engineer,
Madurai Electricity Distribution Circle,
Tamil Nadu Generation and Distribution Corporation Ltd.,
(TANGEDCO), Race Course Road, Pudur,
Madurai.
- 4.The Executive Engineer,
Tamil Nadu Generation and Distribution Corporation Ltd.,
(TANGEDCO), Thirumangalam,
Madurai District.

+One cc to Mr.R.R.Kannan, Advocate, SR.No.54981

sms

RL/6C/5P/KK/SAR1/3/4/2018

Order made in
Writ Petition (MD) No.7878 of 2013
and
M.P(MD)No.1 of 2013
13.03.2018