

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: February 13, 2018

Judgment delivered on: March 07, 2018

+ W.P.(C) 9947/2016
SATISH KUMAR

..... Petitioner

Through: Mr. Shiv Charan Garg, Adv.

versus

BSES YAMUNA POWER LTD AND ANR

..... Respondents

Through: Mr. Manish Srivastava, Adv. for R1.
Mr. Vikas Bhadana, Adv. for R3.
Mr. Sandeep Jain, Adv. for
Ms. Shabnam, the neighbour.
Mr. Rahul Bakshi, Adv. for PS-
Karawal Nagar.

CORAM:

HON'BLE MR JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

1. The present petition has been filed with the following prayers:-

“It is, therefore, most respectfully prayed that under the facts and circumstances stated above and in the interest of justice and equity, this Hon’ble Court may graciously be pleased to :-

- i) pass appropriate writ, direction or order to the respondents in the facts and circumstances of the case;*
- ii) direct the respondents no.1 and 2 to pay a*

sum of Rs.10,00,000/- jointly and severally to the petitioner as compensation;

iii) direct the respondents no.1 and 2 to hold enquiry against the responsible officer due to spoiling life of a child;

iv) Cost of the petition may also be awarded in favour of the petitioner and against the respondents;

v) Any other or further relief or order which this Hon'ble Court may deem fit and proper also be passed in favour of the petitioner and against the respondent."

2. It is the case of the petitioner that he along with his wife and two children aged about 10 years and 4 years were residing in A-469, Gali No. 10, Phase-VI, Shiv Vihar, East Karawal Nagar, Delhi-110094. On May 19, 2016 a high voltage wire of the BSES Yamuna Power Ltd broke down and fell on all of them, which resulted in their burning. It is stated, on June 24, 2016, the petitioner's son's leg was amputated to save his life. On July 14, 2016 he gave a complaint in writing to the SHO, PS Karawal Nagar, Delhi. On July 18, 2016 the son of the petitioner expired during his treatment in the hospital. It is his case, no official came and contacted him for registration of FIR against BSES, respondent No.1. On July 21, 2016, the petitioner again sent a letter to the SHO and intimated about the death of his son. However, no FIR was registered even then. On July 29, 2016, a representation under Section 156(3) Cr.PC was sent to the DCP, North-East District, which resulted in an FIR No 0259 under Section 285/337/304 IPC dated August 03, 2016 was registered against the respondent No.1.

3. It is his case, the incident has resulted in great mental

agony, trauma and monetary loss due to the negligence on the part of the respondents, for which he is liable to be compensated. I may state here that initially the petition was filed against two parties BSES Yamuna Power Ltd and the Government of NCT of Delhi. Thereafter, on the submission of the learned counsel for the respondent No.1 Reliance General Insurance Company Ltd, respondent No.3 was also impleaded as a respondent.

4. The respondent No.1 has filed a counter affidavit, wherein it is the stand that the present petition under Article 226 of the Constitution of India is not maintainable in view of the judgment of the Supreme Court in the case of ***Chairman, Grid Corporation of Orissa Ltd & others v. Sukamani Das and Anr (1999) 7 SCC 298***, wherein it was held that all the cases where action in tort and negligence are required to be established, writ petition is not the proper remedy and the claimant has to establish the same before the Civil Court. It is the case of the respondent No.1 that on May 19, 2016 at about 9.50 am, a complaint was received by duty T.O about the snapping of an HVDS line in Gali no.9, Phase-VII, Shiv Vihar, Delhi. The T.O. forwarded the information to the then on duty line men Rajeev Sharma and Ramlal, both of whom immediately switched off supply of electricity to the area from the RMU and went to the aforementioned spot where an HVDS line was found lying down on the ground. It is also stated that the owner of the house under construction adjacent to the petitioner's house was issued a notice on May 15, 2016 for maintaining the safety requirements as per law. It is the case of the respondent No.1 that the owner of the

adjacent house failed to comply with the safety requirements, a complaint against the owner of the house under construction adjacent to the petitioner's house was lodged on May 19, 2016 with SHO, PS Karawal Nagar. It is averred that an enquiry of the respondent No.1 has revealed that HVDS line has been pulled towards the opposite side of the gali by tying rope around it. It is further stated that such an act was the doing of the owner of the house adjacent to the petitioner's, who tied rope around the HVDS line and pulled the same to facilitate the lantern saria to reach the upper floor and that it's due to such an illegal act of the owner of the adjacent house, the wires were snapped and the HVDS line socket fell on the ground. It is the case of the respondent No.1 that there was no complaint of any sparking or fault in the HVDS line before the incident.

5. The respondent No.2 has not filed any counter affidavit.

6. The respondent No.3, in its counter affidavit has also taken an objection on the maintainability of the petition by relying upon the judgment in the case of ***Chairman, Grid Corporation of Orissa Ltd & others (supra)***. The respondent No.3 also relied upon the judgment of this Court in the case of ***Duli Chand & Anr v. State & Anr Writ Petition (Civil) Nos. 12457/2006 and 12458/2006***, wherein it was held that issues involving disputed question of facts can only be decided by the Civil Court and not in a writ petition. The respondent No.3 also refers to an insurance policy having been issued in favour of the respondent No.1 for the period between April 02, 2016 to April 01, 2017 and the liability of the respondent No.3, if any would be subject to the

terms and conditions of the said policy only and cannot be beyond the said terms and conditions in any case whatsoever. It is also stated, if any liability is saddled against the respondent No.1, the same would be only of Rs.5,00,000/- as per Compulsory Excess Clause of the insurance policy. It is also stated that if any liability is fastened upon, then the same must be first discharged by the respondent No.1 and thereafter the claim shall be lodged by the respondent No.1 with the respondent No.3.

7. Rejoinder to the counter affidavits has been filed.

8. I have heard the counsel for the parties including Mr. Sandeep Jain, Advocate for Ms. Shabnam, the owner of the adjacent property. After hearing the counsel for the parties, the counsels were directed to file written submissions. The respondent No.1 has only filed the written submissions. I note that the learned counsel for the petitioner has already filed a synopsis, which is on record.

9. Mr. Shiv Charan Garg, learned counsel for the petitioner apart from reiterating the case as set up in the pleadings on behalf of petitioner has also relied upon the judgment of the Supreme Court in the cases of *Chairman, Railway Board v. Mrs. Chandrima Dass & Ors AIR 2000 SC 988*, *Fatima and Anr v. National Zoological Park 232 (2016) DLT (DB)*. He also relied upon the judgment of the Supreme Court in the case reported as *2011 (14) SCC 481 MCD v. Association of Uphaar Tragedy Victims*. He reiterates the prayers as made in the writ petition.

10. Mr. Manish Srivastava, learned counsel appearing for the respondent No.1 would challenge the maintainability of the writ

petition stating that there is no negligence on the part of the respondent No.1, which resulted in the unfortunate incident. According to him, as per the report of enquiry conducted by Accident Committee, it is clear that the accident occurred due to the electric current from broken HVDS lead, which had fallen down due to unauthorized interference by the owner of the adjacent house to the petitioner. According to him, the owner of the house tied rope around the HVDS line and pulled the same towards opposite side to facilitate lantern saria to reach the upper floor and owing to the unwanted pull, the messenger wire got snapped and HVDS line socket fell down causing burning. According to him, it was the owner of the adjacent house who failed to comply with the safety requirements. A complaint against the owner of the house under construction was also lodged on May 19, 2016. He relied on the investigation done by the Delhi Police, which corroborated the incident and the aforesaid facts. In the final report, the Police has categorically concluded Ms. Shabnam the owner of the adjacent house is responsible for electrocution of the deceased Master Ronak. It is his case that there is no dereliction of duty/negligence on the part of the respondent No.1. On the quantum of compensation, the claim of Rs.10,00,000/- made in the prayer clause is without any basis. It is also stated, such a claim must necessarily be proved by way of a trial. He relies upon the following judgments in support of his case on the maintainability of the writ petition:-

(i) *Chairman, Grid Corporation of Orissa Ltd & others v. Sukamani Das and Anr (1999) 7 SCC 298;*

(ii) ***SDO, Grid Corporation of Orissa Limited v. Timudu Oram (2005) 6 SCC 156;***

(iii) ***Abdul Haque and Ors v. BSES Yamuna Power Ltd and Ors 142 (2007) DLT 526;***

(iv) ***W.P.(C) No. 4140/2001 K.K. Mehta and Anr. v. Delhi Vidyut Board and Anr.***

11. On the question of quantum of compensation, he relies on the judgment of ***New India Assurance Co. Ltd. v. Satender and Ors AIR 2007 SCC 324.***

12. The learned counsel for the respondent No.3 has reiterated the stand taken by the said respondent in their counter affidavit.

13. The learned counsel for Ms. Shabnam would deny the liability of Shabnam to pay compensation.

14. Having heard the learned counsel for the parties, the first and foremost issue to be decided in this case is, whether the present petition is maintainable under Article 226 of the Constitution of India and the liability to pay any compensation need to be decided by way of a trial whereby evidence as to who was negligent need to be proved.

15. To answer this issue, it is necessary to first of all come to a conclusion that there are disputed question of facts. The respondent No.1 has taken a stand that in terms of the Accident Committee report dated July 07, 2016, it was because of the acts of the owner of the neighbouring property, who had tied the rope around the HVDS line and pulled the same towards the opposite side to facilitate the lanter saria to reach to the upper floor and

owing to the unwanted pull, the messenger wire got snapped and the HVDS socket fell down, which resulted in the unfortunate incident. It is also the case of the respondent No.1 that the Delhi Police investigated the incident, which corroborated the aforesaid facts. In fact, the respondent No.1 has stated that even the final report of the Delhi Police records the negligence on the part of Ms. Shabnam, who has admitted the same. In view of the aforesaid position, Mr. Srivastava may be right in disputing the liability of respondent No.1 to pay any compensation. It can be said, there are no disputed question of facts. The Supreme Court in the case of ***Chairman, Grid Corporation of Orissa Ltd (supra)***, has held that in the cases of actions in tort and negligence, the same is required to be first established by the claimants. The relevant conclusion of the Supreme Court are as under:-

“In our opinion, the High Court committed an error in entertaining the writ petitions even though they were not fit cases for exercising power under Article 226 of the Constitution. The High Court went wrong in proceeding on the basis that as the deaths had taken place because of electrocution as a result of the deceased coming into contact with snapped live wires of the electric transmission lines of the appellants, that “admittedly prima facie amounted to negligence on the part of the appellants.” The High Court failed to appreciate that all these cases were actions in tort and negligence was required to be established firstly by the claimants. Mere fact that the wire of the electric transmission line belonging to the appellant No.1 had snapped and the deceased had come into contact with it and had died was not by itself sufficient for awarding compensation. It also required to be examined

whether the wire had snapped as a result of any negligence of the appellants and under which circumstances the deceased had come into contact with the wire. In view; of the specific defences raised by the appellants in each of these cases they deserved an opportunity to prove that proper care and precautions were taken in maintaining the transmission lines and yet the wires had snapped because of circumstances beyond their control or unauthorized intervention of third parties or that the deceased had not died in the manner stated by the petitioner. These questions could not have been decided properly on the basis of affidavits only. It is the settled legal position that where disputed questions of facts are involved a petition under Article 226 of the Constitution is not a proper remedy. The High Court has not and could not have held that the disputes in these cases were raised for the sake of raising them and that there was no substance therein.”

16. The aforesaid position of law has been followed by Division Bench of this Court in the case of ***K.K. Mehta and Anr.*** (*supra*) and also in a latest judgment in the case of ***Rajeev Singhal & Anr v. M.C.D. (East Delhi Municipal Corporation) & Anr W.P.(C) No. 6349/2014.***

17. Further, in the case of ***Abdul Haque and Ors*** (*supra*), in para 11, it was held as under:-

“11. In its counter affidavit, the DVB raised a preliminary objection as to the maintainability of the petition on the ground that it involved disputed questions of fact. It was again pointed out that the DVB has ceased to exist and the successor-in-interest of the DVB, the BSES Yamuna Power Limited (BYPL) was imp leaded in its place. The BYPL by its affidavit dated 5.9.2005 placed on record a copy of the report dated 21.4.2005 of the

Accident Enquiry Committee which indicated that:

- 1. The illegal tappings are still existing and some of the residents of the colony are stealing electricity through these tappings.*
- 2. All deteriorated conductor has been replaced with Dog Conductor.*
- 3. The No. of residents of the area has extended their balconies/chajjas which has become accessible to BSES LV mains.*
- 4. As reported by Manager (Oprn) information has been submitted to the MCD and Police Authorities for taking appropriate action.*
- 5. The illegal construction are also found at site under LT Network of the Area due to which no proper vertical clearance found as per I.E. Rules.*
- 6. Guarding through earth wire is existing at site to avoid accident due to snapping of conductor as per safety measures.*

It was further pointed out in the Report that:

The Accident Enquiry Committee opined that similar conditions were prevailing at the time of accident. J.J. Cluster and J.J. Resettlement colony are still having considerable theft of energy which is a social problem and unless until strict laws are made to act as deterrent for the people indulging in theft of energy, it would be difficult to have 100% safety of consumer and residents in such like area.”

18. Insofar as the reliance placed by Mr. Garg on the judgment of the Supreme Court in the case reported as **(2017) 3 SCC 115 State of Himachal Pradesh and others v. Naval Kumar**

Alias Rohit Kumar, wherein, in the said judgment the Supreme Court has modified the order of the High Court, which granted compensation of Rs.1 Crore 25 Lacs to the respondent to Rs.90 Lacs with 6% interest. In the said case, the High Court has conclusively held the negligence of the State and had accordingly granted the said relief, which is not the case herein in view of my aforesaid conclusion.

19. Similarly, the judgments in the case of *Fatima and Anr (supra)*, *Chairman, Railway Board (supra)* and *Uphaar (supra)*, relied upon by Mr. Garg, would have no applicability in the facts of this case as in these cases also the Courts have held the authorities to be negligent/vicariously liable, which is not the case here.

20. That apart, there is an FIR registered against Ms. Shabnam and a final report has also been filed, but the same would not be conclusive, till such time the case is decided. Even, she appeared in these proceedings, on the basis of a Court notice issued to her. No relief can be granted in favour of the petitioner against Ms. Shabnam in these proceedings. That apart, there is an issue on the quantum of compensation as well. The appropriate would be that in the facts of this case, the petitioner is relegated to a Civil Court.

21. Pending adjudication by the Civil Court, it is noted that on February 09, 2017 attempt was made by the Court for the parties to arrive at an amicable settlement. The matter was also referred to the Delhi High Court Mediation & Conciliation Centre but no settlement could be arrived upon. There is no dispute that

the petitioner's son, had suffered burn injuries on his body resulting in amputation of his leg and subsequently his death. The loss cannot be compensated in terms of money. It is a common knowledge that such a loss would surely lead to mental agony, trauma. The petitioner must have incurred at least some expenditure. The trial may take time. Pending decision in such a suit, to provide succor to the petitioner and his family, this Court is of the view, in the peculiar facts of this case and without prejudice to the stand of the respondent No.1 and respondent No. 3, the respondent No.1 is directed to pay an amount of Rs.2,00,000/- to the petitioner as an ex-gratia amount. Ordered accordingly. It may be clarified here, this Court has not expressed itself on the negligence/culpability of the respondent No.1 or for that matter Ms. Shabnam. It goes without saying that the Civil Court shall decide the claim on merit on the basis of the facts, which arises for its consideration. Similar shall be in the case of FIR. The amount shall be paid within a period of two months from the date of receipt of copy of this order. Petition stands disposed of.

V. KAMESWAR RAO, J

MARCH 07, 2018/ak