

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.1890 OF 2017

Balaji s/o Sheshrao Lamdade
Age: 42 Yrs., occu. Agril.
R/o Takalgaon, Tq.Loha,
District Nanded. = **PETITIONER**

VERSUS

- 1) Maharashtra State Electricity
Distribution Co. Ltd.
Estrella Batteries Expansion
Building, Ground Floor,
Plot No.1, Dharavi Road,
Matunga, Mumbai-400019.
Through its administrative
Head.
- 2) The Superintending Engineer
M.S.E.D.C.Ltd.
Anna Bhau Sathe Chowk,
VIP road, Nanded,
Tq. And Dist. Nanded. = **RESPONDENTS**

Mr.VB Dhage, Advocate for Petitioner;
Mr.PB Paithankar, Advocate for Respondents.

**CORAM : SUNIL P.DESHMUKH &
SMT.VIBHA KANKANWADI,JJ.**

DATE : 2nd DECEMBER,2019.

JUDGMENT (Per:- Smt.VIBHA KANKANWADI,J.)

- 1) Rule. Rule made returnable forthwith and
the matter is taken for final disposal at the
admission stage by consent of all the parties.

2) Present petition has been filed, invoking the constitutional powers of this Court under Article 226 of Constitution of India, for issuing writ of mandamus to direct the respondents to pay compensation of Rs.5,00,000/- with interest @18% as per the circular dt.20-11-2008 and 22-03-2011 to the petitioner.

3) The facts giving rise to the petition are that, the petitioner and his entire family had gone to attend marriage ceremony at village Dahikalamba on 16-04-2012. A tent was erected for the marriage ceremony. There was storm in the village just before the marriage in which the tent was damaged and articles were flying in the air. Wife of the petitioner – Lalitabai had caught hold of an iron rod for safety. However, the high-voltage live electric wire fell down on the tent. The said wire had touched the iron rod, which resulted in electric shock to Lalitabai. She became unconscious and was shifted to hospital. She was declared dead by the hospital authorities. Many other persons also got injuries due to the electric shock. Incident was informed to police on 17-04-2012 and

accidental death was registered. Postmortem has been carried out. Investigation was done by Taluka Magistrate. Report has been submitted to police. Talathi and Circle Officer have also submitted their report. Lalitabai got electrocuted due to the negligence of respondent authorities and therefore they are liable to pay compensation to the petitioner, who is her legal representative.

4) It has been further contended that there are circulars issued on 20-11-2008 and 22-03-2011 by respondent authorities for the financial assistance to the legal representatives of those persons, who die in an accident due to electric shock. In view of these circulars, compensation for death is Rs.2,50,000/- and superior authorities can increase the same up to Rs.5,00,000/-. In fact, the respondents ought to have released the said financial assistance to the petitioner in view of the said circulars. When authorities did not give effect to those circulars, petitioner had approached learned District Consumer Forum for compensation. The said complaint was allowed by the said authority by its judgment and order dt.11-08-

2014. The respondents had approached the appellate authority. It was held by the appellate authority that consumer forum has no jurisdiction to grant compensation as per the said circulars as petitioner can not be said to be the 'consumer' within Section 2 (d) of Consumer Protection Act. Hence, this writ petition is filed for getting compensation.

5) Respondents have not filed reply.

6) Heard learned Advocate Shri. V.B.Dhage for petitioner and learned Advocate Shri. P.B. Paithankar for respondents.

7) It has been vehemently submitted on behalf of petitioner that facts of the case are not in dispute. Lalitabai got electrocuted on the said date as the high voltage live wire had come in contact with iron rod which she had held for her safety in the storm. The police report and other papers support the said story. Respondents are therefore, liable to pay compensation. The compensation as per the circular of 20-11-2008 was

fixed amount in cases of death irrespective of age and earning capacity of deceased person. The said amount is now increased to Rs.4,00,000/- by circular 09-03-2016. Reliance has been placed by him on the decision in **Smt. Shashikalabai v/s. State of Maharashtra and another [AIR 1999 SC 706]**; wherein another circular came into force when claim for compensation was pending, Hon'ble Supreme Court held that the claimant will be entitled to get benefit of additional compensation in view of new circular.

8) Learned Advocate for respondents submitted that there is no dispute about circulars issued by Maharashtra State Electricity Distribution Co. Ltd. Police papers show that Lalitabai died due to electric shock on 16-04-2012. Therefore, compensation payable would be as per the circular prevailing at that time.

9) At the outset, it can be noted that there is no dispute about the fact that Lalitabai got electrocuted on 16-04-2012, when she was attending a marriage ceremony. Her hand came in contact with

a live wire which fell on the tent erected for marriage ceremony. Petitioner has filed report submitted by Police Officer to Sub-divisional Police Officer, Kandhar, Panchnama prepared by police, report submitted by technical expert, postmortem report, inquest panchnama, etc. These papers clearly support the story put forward by petitioner. In fact, the report given by expert of the respondents contains a list of names of those persons to whom immediate financial assistance was recommended. The said list includes the name of wife of the petitioner, but it is stated that amount of Rs.20,000/- is given on 20-04-2012. That means the respondents have accepted that Lalitabai got electrocuted on that day and it was not on account of any human intervention.

10) Maharashtra State Electricity Distribution Co. Ltd. had issued administrative circular No.192 on 20-11-2008 for payment of compensation and immediate financial assistance in case of fatal/ non-fatal accidents to outsiders (human being as well as animals). A fixed sum of Rs.2,00,000/- irrespective of age and earning

capacity of the deceased person has been prescribed in this circular. Thereafter, by circular dt.22-03-2011, the said amount was increased to Rs.2,50,000/-. Therefore, on the date of accident in our case, the circular dt 22-03-2011 was capable of being implemented. The circular does not stipulate any reduction in the amount of compensation at the whims of any officer. The circular dt.20-11-2008 makes provision for immediate financial assistance of Rs.20,000/-; in case of fatal accident to human being. That means the respondents had held the petitioner as person entitled to get financial assistance as per the circulars. The said circulars as it appears, have been implemented by the respondents only to the extent of immediate assistance. There was no hurdle for them to give rest of the amount as per the said circulars to the petitioner. The said circular dt. 20-11-2008 also makes it clear that any ad-hoc payment made should be adjusted from the final amount. Therefore, petitioner was entitled to get entire fixed amount as per the circular dt. 22-03-2011 and it can be said that his claim was still pending, when he approached Consumer Forum.

Unfortunately, he could not succeed in that round of litigation as it has been held by the appropriate authority that he is not the 'consumer' as defined under Consumer Protection Act. His petition came to be dismissed on the ground of jurisdiction.

11) Now one more administrative circular appears to have been issued by the Distribution Company on 09-03-2016 for enhancement in the compensation that was declared in the earlier circulars dt. 20-11-2008 and 22-03-2011. It was increased to Rs.4,00,000/- in case of fatal accidents. Thus, when the claim of the petitioner was still pending, and the amount of compensation has been increased, then in view of the decision in **Shashikalabai** (supra), the petitioner is entitled to get compensation at enhanced rate.

12) It will not be out of place to mention here that as regards the 'untoward accidents' defined under Railways Act also payment of compensation is governed by the Schedule and various circulars. The amount of compensation

undergoes revision periodically. Therefore, certain decisions of Apex Court under the said Act can be considered here also. Hon'ble Supreme Court in ***Rathi Menon Vs. Union of India [AIR 2001 SC 1333]***, held that *"The compensation must be fixed as per what on Rules prescribed at the time of making the order for payment of compensation and not in terms of money value which prevailed on date of accident."* The observations are, *"The relevance of the date of untoward incident is that the right to claim compensation from the Railway Administration would be acquired by the injured on that date. The statute did not fix the amount of compensation, but left it to be determined by the Central Government from time to time by means of rules. Hence the time of ordering payment is more important to determine as to what is the extent of the compensation which is prescribed by the rules to be disbursed to the claimant."* Thereafter, in ***N. Parameswaran Pillai Vs. Union of India & another [AIR 2002 SC 1834]***, it was held that, *"In view of authoritative pronouncement made in Rathi Menon's case (supra), the appellants were entitled to enhancement in the compensation"*. In that case,

the legal representatives of the deceased had claimed compensation of Rs.2,00,000/- but then in the meantime, the Central Government had enhanced the compensation and, therefore, compensation at the enhanced rate was granted. Here also the compensation to be paid is not fixed by any statute. The Distribution Company has made those rules under its powers and periodically the amount of compensation reviewed or reconsidered. Hence, in this case also petitioner is entitled to get compensation at the enhanced rate i.e. Rs.4,00,000/-.

13) Now, the question will arise regarding interest to be paid on the said amount of compensation. The circular prescribes only fixed rate. In ***Shashikalabai***'s case interest has been awarded @12% p.a. from the date of order passed by the High Court. We may turn to those pronouncement under Railway's Act which have settled the issue regarding rate of interest also. In ***N. Parameswaran Pillai*** (supra), the Hon'ble Supreme Court had allowed the petition and granted interest on the total sum. In ***Thazhathe Purayil Sarabi and***

Ors. vs. Union of India and Anr., [AIR 2009 SC 3098], it has been held, that the interest can be awarded either from the date of the claim and from the date principal sum adjudged to be payable and/or awarded. It has been observed, thus,-

"Though, there are two divergent views, one indicating that interest is payable from the date when claim for the principal sum is made, namely, the date of institution of the proceedings for the recovery of the amount, the other view is that such interest is payable only when a determination is made and order is passed for recovery of the dues. However, the more consistent view has been the former and in rare cases interest has been awarded for periods even prior to the institution of proceedings for recovery of the dues, where the same is provided for by the terms of the agreement entered into between the parties or where the same is permissible by statute. Accordingly, the order of the Railway Claims Tribunal directing payment of interest on default of the payment of the principal sum within a period of 45 days would not be sustainable. When there is no

specific provision for grant of interest on any amount due, the Court and even Tribunals have been held to be entitled to award interest in their discretion, under the provisions of Section 3 of the Interest Act and Section 34 of the Civil P.C..”

14) Thereafter in **Union of India vs. Rina Devi**, AIR 2018 SC 2362, the point of liability of the railways to pay compensation was considered. It was held that, *“The liability will accrue on the date of the accident and the amount applicable as on that date will be the amount recoverable, but the claimant will get interest from the date of accident till the payment at such rate as may be considered just and fair from time to time”*.

15) Further in the decision of **Union of India vs. Radha Yadav**, [AIR 2019 SC 1410], it has been observed -

*“The issue raised in the matter does not really require any elaboration as in our view, the judgment of this Court in the case of **Rina Devi** (AIR 2018 SC 2362) is very clear. What this Court has laid down is that the*

amount of compensation payable on the date of accident with reasonable rate of interest shall first be calculated. If the amount so calculated is less than the amount prescribed as on the date of the award, the claimant would be entitled to higher of these two amounts. Therefore, if the liability had arisen before the amendment was brought in, the basic figure would be as per the Schedule as was in existence before the amendment and on such basic figure reasonable rate of interest would be calculated. If there be any difference between the amount so calculated and the amount prescribed in the Schedule as on the date of the award, the higher of two figures would be the measure of compensation. For instance, in case of a death in an accident which occurred before amendment, the basic figure would be Rs.4,00,000/-. If, after applying reasonable rate of interest, the final figure were to be less than Rs.8,00,000/-, which was brought in by way of amendment, the claimant would be entitled to Rs.8,00,000/-. If, however, the amount of original compensation with rate of interest were to exceed the sum of Rs.8,00,000/- the compensation

would be in terms of figure in excess of Rs.8,00,000/-. The idea is to afford the benefit of the amendment, to the extent possible. Thus, according to us, the matter is crystal clear. The issue does not need any further clarification or elaboration".

16) Taking into consideration these pronouncements as they were relating to payment of compensation and interest, they are made applicable here. In this case also petitioner was entitled to get compensation as per the circular of the respondents on account of death of his wife due to electrocution. In the meantime the amount of compensation was increased by other circulars. Therefore, petitioner is entitled to get compensation of Rs.4,00,000/- as the directions to pay compensation would be issued to respondents by this order. However, since, the liability to pay the amount of compensation as against the respondents had arisen before the amendment in the circular was brought in on 09-03-2016; petitioner would be entitled to the reasonable rate of interest on Rs.2,50,000/- only, which was his basic entitlement as per circular dt.22-03-2011, which

was prevailing when his wife expired.

17) It has been accepted by both the parties that there is no other forum available for the petitioner to seek redressal of his grievance. He can not approach any other forum for getting the said fixed amount of compensation declared as per the circular. No doubt, he can approach to Civil Court for getting compensation for any tortuous act of the Company; however, it will not be relating to implementation of the circular. Hence, case is made out by the petitioner for the exercise of powers of this Court under Article 226 of Constitution of India for issuing writ. We therefore, proceed to pass following order,-

ORDER

- i) Writ Petition is hereby partly allowed.
- ii) Respondents are directed to pay amount of Rs.4,00,000/- (Rupees Four Lakhs only) to the petitioner together with interest @9% p.a. on the amount of Rs.2,50,000/- (Rupees Two Lakh Fifty Thousand only) from 16-04-2012 i.e. the

date of death of wife of petitioner till actual realization of entire amount.

iii) Respondents to pay the entire amount within a period of four months.

iv) The amount paid to the petitioner, in view of circular dt.20-11-2008, be adjusted from the final amount.

v) Rule made absolute on above terms.

(SMT. VIBHA KANKANWADI,J.) (SUNIL P.DESHMUKH, J.)

BDV
fldr 19.12.19