

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10364 OF 2018

Sadashiv Namdeo Katke

.. Petitioner

Versus

State of Maharashtra & Ors.

.. Respondents

-
- Mr. V.S. Talkuke for the Petitioner
 - Mr. Y.S. Kochare, AGP for Respondent No. 1
 - Ms. Anjali Shailendar Baxi for Respondent No. 2
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CORAM : AKIL KURESHI &
S.J. KATHAWALLA, JJ.

DATE : AUGUST 21, 2019.

P.C.:

1. This petition is filed by an unfortunate person who received serious injuries which have rendered him virtually totally disabled to do any manual or skilled work to earn his living. According to the petitioner, he was asked by respondent Nos. 6 and 7, the employees of the Maharashtra State Electricity Distribution Company Ltd ("**MSEDCL**" for short) to climb 11 KW poll to tighten a nut to repair the disrupted electricity supply. According to the petitioner, after ensuring that the electricity supply through wires was discontinued, he carried out the instructions. However, the

supply was not discontinued and therefore, he received electric shock and fell from the poll leading to serious injuries to both of his hands which were amputated. He has, therefore, filed this petition seeking compensation from MSEDCL and rest of the respondents.

2. The case of the MSEDCL in brief is that the petitioner was not the employee of the company and even if he may have been directed by respondent Nos. 6 and 7 to carry out some work, the MSEDCL was not responsible for the same. The MSEDCL is not responsible for any accident which may have occurred. Nevertheless, in paragraph 6 of the affidavit in reply filed by the MSEDCL, it is stated as under:-

"5. I state that from aforesaid pleadings Shri Kadam (Operator) and Shaikh (Sr. Technicians) ordered Petitioner to do the work. I state that as per the Rule, Shri Shaikh is Technician and his duty is only of maintenance of line while Shri Kadam is an operator who has duty of maintenance of entire sub-station and its equipments. I state that they have no power to appoint any person to get work done from the outsider. I state that in the sub-station no one has power to appoint employee being a protective area.

6. I state that the accident was informed to the Electrical Inspector as per Rule. I state that, the Electrical Inspector visited the site and prepared report without taking the statement of Shri Shaikh

and Kadam I state that the Report of the Electrical Inspector also states that the petitioner was not an employee of the Respondent no. 2 and the Petitioner had done the work without using the safety measures required under the rules. The Petitioner is third person / outsider but accident occurred due to electrocution therefore entitled for compensation as per the rules of these Respondents. I state that the petitioner was called upon to produce the relevant document for payment of compensation, however, he failed to comply the same. Therefore, compensation as per Rules not paid to him."

3. Three things prima facie emerge from the material on record. Firstly, the occurrence of the accident is not seriously disputed by any of the respondents. Secondly, the injuries suffered by the petitioner through such incident is also not in dispute. Even the MSEDCL does not dispute that, though the petitioner was not an employee of the MSEDCL, he had done the work under the instructions of respondent Nos. 6 and 7. However, though the MSEDCL contended that such instructions could not have been issued. The MSEDCL also admits that whatever be the circumstance, as per the rules, the petitioner is entitled for ex gratia compensation as per the policy of the MSEDCL contained in the administrative circular No. 332 dated 22.3.2011.

4. The claim of the petitioner for compensation would depend on establishment of certain facts including his current income on the date of the accident. The question of vicarious liability of the MSECL to pay the compensation even if the injuries can be stated to be as a result of negligent act of respondent Nos. 6 and 7 who are the employees of the MSEDCL would have to be gone into. These are the issues which can be dealt with in a civil suit. For which purpose, we permit the petitioner to file appropriate proceedings before the competent court.

5. However, respondent No. 2 – MSEDCL cannot escape its liability to pay the compensation as per its circular No. 332 dated 22.3.2011. For such purpose, the petitioner would approach the MSEDCL with appropriate application and documents. The MSEDCL shall release the compensation payable as per its policy within four weeks from the date of receipt of such an application. It is made clear that irrespective of any clause in the rules or regulations, such payment shall be made without a precondition that the same would be by way of full and final settlement or that the

petitioner would be precluded from raising any further claim before any forum. Writ Petition is accordingly disposed of.

[S.J. KATHAWALLA, J.]

[AKIL KURESHI, J]