

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.08.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.36596 of 2003

L.Manikannan

.. Petitioner

Vs.

1.The Deputy Commissioner of Labour II,
DMS Compound,
Chennai - 600 005.

2.Rajamanickam

3.Deivanai

4.Tamilnadu Electricity Board,
Represented by Chairman,
No.800, Anna Salai,
Chennai - 600 002.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorari calling for the entire records connected with the impugned award in W.C.No.63 of 2001 dated 09.07.2001 passed by the 1st respondent and quash the same.

For Petitioner : Mr.S.N.Ravichandran

For R1 : Mr.R.S.Selyam
Government Advocate

For RR2 & 3 : Mr.P.Amarnath
for Mr.T.N.Sugesh

For R4 : Mr.K.Venkatesh
for Mr.P.R.Dhilip Kumar

ORDER

Writ Petition is filed for issuance of a writ of Certiorari calling for the entire records connected with the impugned award in W.C.No.63 of 2001 dated 09.07.2001 passed by the 1st respondent and quash the same.

2.The respondents 2 and 3 filed W.C.No.63 of 2001 against the petitioner before the first respondent, claiming a sum of Rs.3,00,000/- as compensation for the death of their son R.Mahendran, who died on 07.08.2000 when he came across high power tension wire, which was passing through the field of the petitioner. The deceased R.Mahendran was working as agricultural coolie in the field of the petitioner and was getting a sum of Rs.3,000/- as monthly income. The deceased R.Mahendran died during and in the course of the employment with the petitioner and therefore claimed the said amount as compensation from the petitioner. The petitioner denied that the deceased R.Mahendran was working in his field as agricultural coolie and was getting a sum of Rs.3,000/- as monthly income and that he was aged 20 years. The petitioner further stated in counter affidavit that the son of the respondents 2 and 3 Viz.,R.Mahendran was studying 9th standard 'F' Section in Guduvanchery Boys Higher Secondary School. The petitioner contended that the high power tension wire snapped unexpectedly and fell inside the field of the petitioner due to heavy rain and storm wind. The said R.Mahendran without knowing the same, came in contact with live wire and would have tried to pluck the snake guards for his personal use. The fourth respondent Electricity Board is responsible for the accident and petitioner is not liable to pay any compensation to the respondents 2 and 3 and prayed for dismissal of the W.C.

3.The second respondent examined himself as P.W.1 and Seni and S.K.Viswanathan were examined as P.W.2 and P.W.3 and 8 documents were marked as Exs.P1 to P8. The petitioner examined himself as R.W.1 and one K.Govindarajan as R.W.2 and marked 2 documents as Exs.R1 and R2. The first respondent considering the pleadings, oral and documentary evidence and materials placed before him, by the order dated 09.07.2003 directed the petitioner to pay a sum of Rs.2,25,000/- as compensation to the respondents 2 and 3 within 30 days from the date of copy of the order and on failure together with interest at 12% per annum from the date of occurrence till the date of payment. The petitioner has filed this Writ Petition challenging the said order impleading the Tamilnadu Electricity Board as fourth respondent and prayed to quash the order of the first respondent made in W.C.No.63 of 2001.

4.The learned counsel appearing for the petitioner contended that the fourth respondent is liable to pay the compensation to the respondents 2 and 3 as their son Viz.,R.Mahendran died due to electrocution and he was not an employee of the petitioner and he did not die during and in the course of the employment in the petitioner field.

5.The respondents 2 and 3 filed counter affidavit and contended that their son was employed by the petitioner and he cannot be permitted to shift the burden on the fourth respondent and avoid payment of compensation as ordered by the first respondent and prayed for vacating the interim stay. They also contended that against the order of the first respondent, the petitioner ought to have filed an appeal as contemplated under Workmen's Compensation Act and the Writ Petition filed by the petitioner is not maintainable. The order of the first respondent is in conformity with provisions of Workmen's Compensation Act and prayed for dismissal of the Writ Petition.

6.The notice to the fourth respondent was served on 13.02.2004. The fourth respondent did not file any counter affidavit. When the matter came up for hearing before this Court on 29.04.2019, this Court directed the fourth respondent to file a counter affidavit setting out their objections including their liability as fourth respondent was not a party before the first respondent in W.C.No.63 of 2001. This Court passed the said order in order to decide the issue in the Writ Petition itself instead of remanding the matter to the first respondent as the incident has taken place in the year 2000 and the compensation was awarded in the year 2001. The fourth respondent has not filed any counter affidavit till date, as directed by this Court.

7.Mr.K.Venkatesh, representing Mr.P.R.Dhilip Kumar, learned counsel appearing for the fourth respondent contended that as there was heavy rain and wind on the previous day, high power tension wire which was passing through the field snapped and fell in the field of the petitioner. The said incident is only an act of God and snapping of the wire is not due to improper maintenance of high power tension wire. The accident did not happen due to negligence on the part of the fourth respondent and therefore fourth respondent is not liable to pay any compensation to the respondents 2 and 3 and prayed for dismissal of the Writ Petition.

8.Heard the learned counsel appearing for the petitioner, learned Government Advocate appearing for the first respondent, learned counsel appearing for the respondents 2 and 3 and the learned counsel appearing for the fourth respondent and perused the entire materials on record.

9.From the materials available on record, it is seen that the son of the respondents 2 and 3 Viz.,R.Mahendran died due to electrocution on 07.08.2000. The respondents 2 and 3 filed W.C.No.63 of 2001 against the petitioner before the first respondent, claiming a sum of Rs.3,00,000/- as compensation

against the petitioner on the ground that their son died while he was working for the petitioner as an agricultural coolie in the field of the petitioner. The petitioner denied that the deceased R.Mahendran was his employee and contended that petitioner is not liable to pay any compensation and the accident was only due to negligence on the part of the fourth respondent and fourth respondent alone is liable to pay compensation. The fourth respondent was not a party before the first respondent in W.C.No.63 of 2001. Neither the petitioner nor the respondents 2 and 3 have taken steps to implead the fourth respondent as party in W.C.No.63 of 2001. Only after the first respondent passed an order directing the petitioner to pay a sum of Rs.2,25,000/- together with interest at the rate of 12% per annum, the petitioner filed the above Writ Petition impleading the Tamilnadu Electricity Board as fourth respondent. At the time of admission of the Writ Petition, this Court granted an order of interim stay.

10.The issue to be decided is whether the Writ Petition filed by the petitioner is maintainable when an appeal against the order of the first respondent is contemplated under the Workmen's Compensation Act and whether the fourth respondent is liable to pay the compensation.

11.The respondents 2 and 3 contended that the Writ Petition filed by the petitioner is not maintainable and the proper remedy available to the petitioner is only by way of an appeal as contemplated under the Workmen's Compensation Act. This Court admitted the Writ Petition on 24.12.2003 and granted interim stay and subsequently made interim stay absolute. The Writ Petition is pending before this Court for 16 years. This Court by the order dated 29.04.2019 had given reasons for deciding the Writ Petition on merits instead of remanding the matter to the first respondent to decide the issue afresh after giving opportunity to the fourth respondent and directed the fourth respondent to file detailed counter affidavit raising their objections. In view of the said order passed by this Court, I proceed to pass orders in the Writ Petition on merits.

12.Further the facts of this case are not disputed and the issue can be decided in the Writ Petition.

13.It is an admitted fact that High Power Tension wire snapped due to the heavy rain and storm and the High Power Tension wire fell into the field of the petitioner. The son of the respondents 2 and 3 Viz.,R.Mahendran came in contact with High Power Tension wire and died due to electrocution. It is

well settled that Electricity Board must install and maintain the high power tension wire properly and they cannot take shelter under the caption 'Act of God' and deny their liability to pay the compensation to the victim of electrocution. In the present case, the high power tension wire passed over the field of the petitioner. The previous day to the accident, there was heavy rain and strong wind. In such circumstances, the fourth respondent ought to have switched off the electricity and verified whether there was any damage to the electric poles and snapping of wire, especially when High Power Tension wire passes through agricultural field. The fourth respondent failed to discharge their duty and was negligent in maintaining the high power tension wire. In view of the same, the fourth respondent is liable to pay the compensation to the respondents 2 and 3. By the Board Proceedings in (Per.) (F.B) TANGEDCO Proceedings No.5 (Administrative Branch) dated 29.04.2013, the fourth respondent has enhanced the compensation payable for the death due to electrocution to Rs.2,00,000/-. The first respondent has awarded a sum of Rs.2,25,000/- as compensation to the respondents 2 and 3 together with interest at the rate of 12% per annum. The compensation awarded by the first respondent is just compensation. Considering the negligence on the part of the fourth respondent, the fourth respondent is directed to pay the amount awarded by the first respondent i.e., Rs.2,25,000/- as compensation to the respondents 2 and 3.

14. In the result, the order of the first respondent directing the petitioner to pay the compensation is set aside and the fourth respondent is directed to pay the compensation to the respondents 2 and 3, within a period of eight weeks from the date of receipt of a copy of this order. The compensation awarded by the first respondent together with interest works out to Rs.9,45,000/-, as on today. The fourth respondent is directed to pay the said amount within a period of eight weeks from the date of receipt of a copy of this order. If the fourth respondent fails to pay the said amount within the time limit fixed by this Court, the same will carry interest at the rate of 9% per annum, till payment in full.

15. With the above modification, the Writ Petition is disposed of. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Deputy Commissioner of Labour II,
DMS Compound,
Chennai - 600 005.

2.The Chairman,
Tamilnadu Electricity Board,
No.800, Anna Salai,
Chennai - 600 002.

+1 cc to M/s.T.N.Sugesh, Advocate Sr.No. 68910

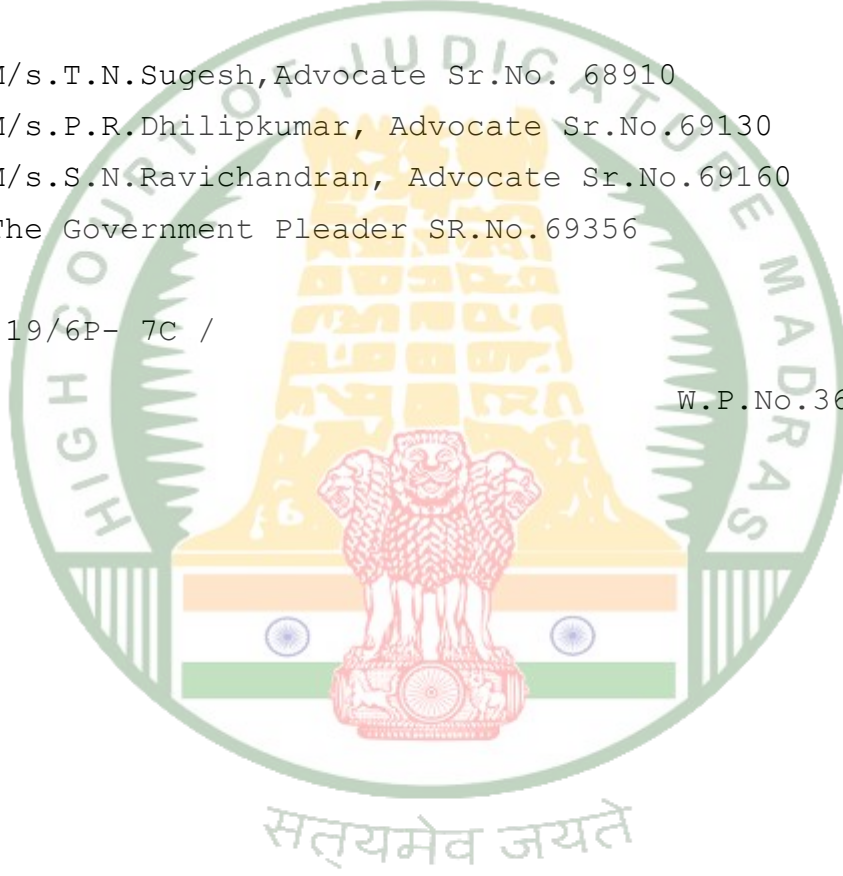
+1 cc to M/s.P.R.Dhilipkumar, Advocate Sr.No.69130

+1 cc to M/s.S.N.Ravichandran, Advocate Sr.No.69160

+1 cc to The Government Pleader SR.No.69356

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