

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2019

CORAM

THE HONOURABLE Mr.JUSTICE M.DHANDAPANI

W.P.No.19149 of 2009 and
M.P.Nos.1 of 2009 and 1 of 2010

N.Ananda Kumar

... Petitioner

Vs

1. The Secretary,
Department of Municipal Administration
and Water Supply,
Fort St.George,
Chennai - 600 009.
2. The Commissioner,
Corporation of Chennai,
Ripon Buildings,
Chennai.
3. The Chairman,
Tamil Nadu Electricity Board,
Chennai - 600 002.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the respondents to pay compensation amounting to Rs.32,92,550/- to the petitioner for the loss incurred by him towards the medical expenses, loss of earning, disability suffered by the petitioner on account of accident, which occurred due to the respondents negligence and allow this writ petition.

For Petitioner : Mr.T.P.Prabhakaran
For Respondents : Ms.Karthika Ashok (for R1 & R2)
Mr.P.R.Dhilip Kumar (for R3)

O R D E R

This Writ Petition has been filed seeking a direction to the respondents 1 and 2 to pay a compensation of Rs.32,92,550/- (Rupees thirty two lakhs ninety two thousand five hundred and fifty only) to the petitioner.

2. The case of the petitioner is that the petitioner has completed a course of training at Mohammul Choradia Jain, ITC, Meenambakkam and passed the prescribed trade test in the trade of Refrigeration and conditioning mechanic. The petitioner has also completed the B.A.Public Administration in the University of Madras. The petitioner is a bachelor residing along with his mother, who is 46 years old and she fully depending on the petitioner.

3. On 27.03.2009, after finishing his job related work, the petitioner started walking to his residence at about 9.20 pm. When he crossed Kamaraj Salai near Vivekananda Illam and was walking along Dr.Besant Salai at about 9.30 pm, the second respondent employees were engaged in removing the old lamp post by welding it and were assisted by the employees of the 2nd respondent. While the petitioner was walking on the road, the lamp post started falling and hit him on his shoulder and head and thereby caused grievous injuries. Immediately after the accident, he was taken to Government General Hospital and admitted him as inpatient, thereafter admitted in MIOT hospitals as inpatient in which he got treatment for more than three months and he spent a sum of Rs.2,69,550/- towards his medical expenses. The Government General Hospital informed about the accident to the D5 Light House Police Station. The Marina Police enquired and registered a case in Crime No.290/2009. Thereafter, the petitioner made a representation to the second and third respondents for reasonable compensation due to the negligence on the part of the respondents. Against the inaction of the respondents, the present Writ Petition has been filed before this Court.

4. Mr.T.P.Prabhakaran, learned counsel appearing for the petitioner would submit that the negligence is on the part of the 2nd and 3rd respondents. In view of the said undisputed fact, the petitioner is entitled for fair compensation from the respondents. In support of his contention, the learned counsel relied upon the order of this Court in the writ proceedings, wherein this Court has awarded a sum of Rs.1,25,00,000/- and as against the said award, the Electricity Board has preferred an appeal before the Hon'ble Apex Court and the Hon'ble Apex Court has awarded a sum of Rs.90,00,000/- (Rupees ninety lakhs only) towards compensation, which was reported in 2017 (3) SCC 115 in the matter of State of Himachal Pradesh and others Vs. Naval Kumar @ Rohit Kumar. The relevant portion of the judgment reads as follows :-

"16. In our considered view, taking into consideration the facts and circumstances of the case such as the respondent's family background, his age (8 years), nature of permanent disability suffered by the

respondent, his performance in studies, the determination of monthly/yearly income made by the High Court, expenses incurred and all the relevant factors, which are usually taken into account in awarding compensation to the victim, the respondent is held entitled for a total lump sum compensation of Rs.90,00,000/- (Rupees ninety lakhs) together with interest payable @ 6% p.a. in place of Rs.1,25,00,000/- awarded by the High Court."

5. Hence, the learned counsel submits that it is clearly applicable to award proper compensation in favour of the petitioner and prayed for allowing this Writ Petition. In support of his contention, the learned counsel for the petitioner relied upon another order of this Court in W.P.No.16984 of 2011, dated 18.01.2018 wherein this Court awarded compensation by fixing liability on the part of the respondent Corporation.

6. Per contra, the Ms.Karthika Ashok, learned counsel appearing for the respondents 1 and 2 has filed a counter affidavit stating that on 27.03.2009, the contractor and his employees were removing the lamp post at the junction of Kamarajar Salai and Dr.Besant Road at about 9.30 pm with all precautions and warning to the public. Mr.Parthasarathy, Junior Engineer (Electrical), Ice House, was deputed with the work of cautioning the public and in-charge of the work. The Junior Engineer and his Subordinate were engaged to stop the public movement. Despite warning and caution not to pass through, some people managed to sneak in to enter the restricted area. The alleged accident had not been noted and after the petitioner's claim only, the Corporation noticed and knowledge with the incident on fall of lamp post. Therefore, the entire negligence is on the part of the petitioner alone. Accordingly, the learned counsel prayed for dismissal of the Writ Petition.

7. Mr.P.R.Dhilip kumar, the learned counsel for the third respondent/Electricity Board would submit that in fact, the Electricity Board Employees are no way connected to the accident said to have taken place on 27.03.2009. He would further submit that the accident stated to have occurred due to improper welding of the lamp post by welding which will be done only by the Corporation Officials and not by Electricity Board officials. Hence, the Writ Petition is not maintainable, therefore, the remedy is available to the petitioner is to approach the competent Civil Court and not before this Court under Art.226 of Constitution of India.

8. The issue involved in the present case is that whether the petitioner is entitled to claim compensation from the

Corporation under the Writ Proceedings. In the present case, though the earlier decision of Hon'ble Apex Court, the disputed question is to be decided only before the competent civil Court. However, in the present case, the undisputed fact is that on 27.03.2009, the petitioner suffered injury due to fallen of lamp post. However, we cannot fix the negligence on the part of petitioner. Though fixed the liability on the part of petitioner, who have not noticed about the falling of lamp post, however, equally, the Corporation is also liable, since no precautions were taken by them to stop the movement of persons while welding the lamp post.

9. Admittedly, the petitioner involved in the accident on 27.03.2009 wherein the second respondent employees were working in the process of welding lamp post near Kamaraj Salai near Vivekananda Illam. At that time, the petitioner crossed the the road along Dr.Besant Salai, the lamp post fallen down on the petitioner's head and shoulder thereby he sustained grievous injuries. For which, he had taken treatment in Government as well as private hospitals wherein they found a fracture in the bone of the petitioner. The treatment records were also produced before this Court. On a perusal of entire medical records, the petitioner clearly established that the accident took place on 27.03.2009. Now, this Court has to consider whether the negligence is on the part of the petitioner or respondents.

10. In the instant case, the learned counsel for the second respondent categorically stated that they are providing only service to the Chennai Corporation. The accident stated to have been occurred due to improper welding of the lamp post which will be done only by the Corporation officials and not by the Electricity Board officials. Hence I have no hesitation to fix the liability on the 2nd respondent Corporation and the 3rd respondent Electricity Board is no way connected with the alleged accident and hence there is no liability on the part of the Electricity Board. Further, the 2nd respondent Corporation has not produced any proof to show that the petitioner is responsible for the alleged accident. The 2nd respondent Corporation should carry out the repair work with well precautionary methods, since the general public are using the road. In the instant case, since the Corporation has failed to do so, the petitioner sustained grievous injuries and he had taken treatment for more than three months in Government General Hospital as well as private hospital. Hence, I am fixing liability on the part of the 2nd respondent Corporation.

11. In view of the above decision, the Writ Petition is maintainable against the 2nd respondent Corporation. Further, this Court as well as Hon'ble Apex Court awarded compensation in the Writ Proceedings in similar nature of this case. Hence, I

have no hesitation to award reasonable compensation to the petitioner and there is no quantified law for arriving quantum of compensation in the case of this nature. Hence, this Court is inclined to adopt the Motor Vehicle Compensation Act, Workmen Compensation Act and Fatal Accident Act and following the award passed by the Hon'ble Apex Court in the judgment in the case of Sarla Verma and others vs. Delhi Transport Corporation and another, reported in (2009) 6 SCC 121, this Court has arrived the just and fair compensation under the following heads :-

Loss of earning capacity	Rs.1,00,000/-
Disabilities	Rs. 80,000/-
Medical Treatments	Rs.2,70,000/-
Pain and suffering,	Rs. 40,000/-
Transport	Rs. 10,000/-
Total	Rs.5,00,000/-

12. In view of the above, this Court is of the view that the petitioner is entitled to a sum of Rs.5,00,000/- (Rupees five lakhs only) towards compensation and the 2nd respondent/Corporation is directed to pay the aforesaid compensation to the petitioner together with interest @ 6% per annum from the date of accident within a period of three months from the date of receipt of the copy of this order. Accordingly, this Writ Petition stands allowed. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary,
Department of Municipal Administration
and Water Supply,
Fort St.George,
Chennai - 600 009.

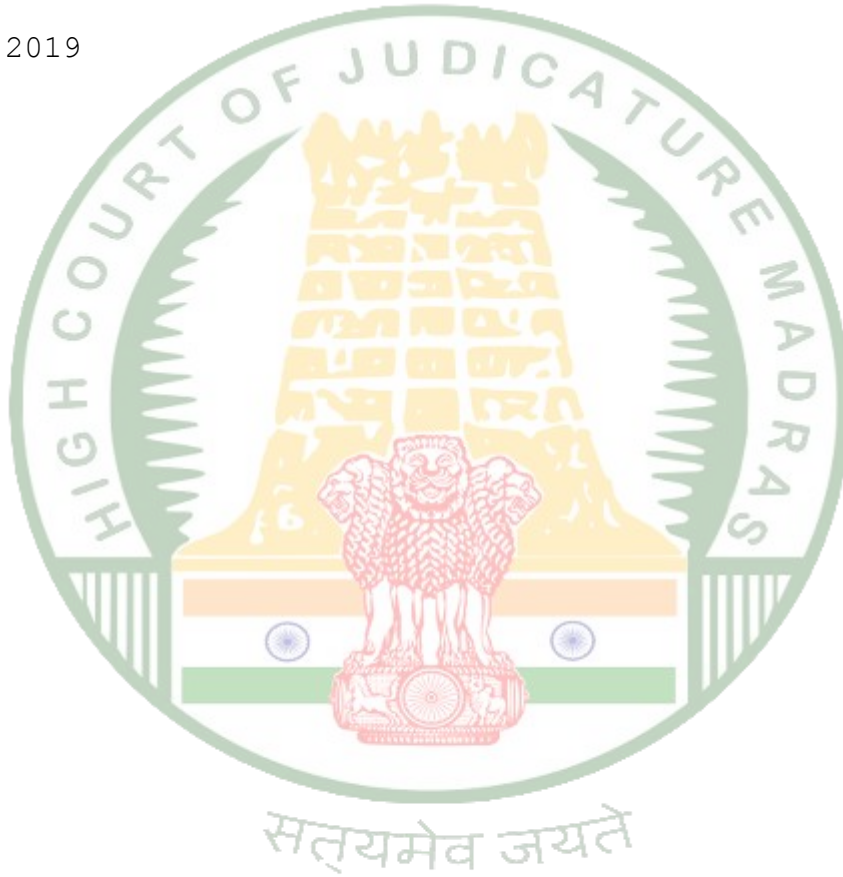
2. The Commissioner,
Corporation of Chennai,
Ripon Buildings,
Chennai.

3. The Chairman,
Tamil Nadu Electricity Board,
Chennai - 600 002.

+1 cc to Mr.T.P.Prabhakaran, Advocate, Sr.No. 56083
+1 cc to M/s.Karthikaa Ashok, Advocate, Sr.No. 56099
+1 cc to Mr.P.R.Dhilip Kumar, Advocate, Sr.No. 56200

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RK(CO)
CSL/11.07.2019



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