

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 04.04.2019

Delivered on : 11.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.7735 of 2006

A.Kumaravel

Father & Guardian to K.Anand Babu

Minor aged about 10 years

No.27, Kumaran Nagar,

Sholinganallur,

Chennai.

... Petitioner

Vs.

1.Tamil Nadu Electricity Board,

Rep. by its Chairman,

No.800, Anna Salai,

Chennai-600 002.

2.The Superintending Engineer,

Chennai Electricity Distribution Circle,

South K.K.Nagar,

Chennai-600 078.

3.The Assistant Engineer,

Tamil Nadu Electricity Board,

Sholinganallur,

Chennai -600 119.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the Respondents to pay a sum of Rs.25 Lakhs as compensation for the injury sustained to petitioner's son on account of electrocution.

For Petitioner : M/s.D.Nellaiappan

For Respondents : Mr.S.K.Rameshwar
Standing Counsel (TNEB)

O R D E R

This Writ Petition is filed for a Writ of Mndamus to direct the Respondents to pay a sum of Rs.25 lakhs as compensation for the injury sustained by the Petitioner's son on account of electrocution.

2.The case of the Petitioner is that his minor son, K. Anand Babu, was playing in the Petitioner's house on 23.07.2005 and at about 12 noon, went to the ground situated behind the Petitioner's house in order to urinate. An electrical wire/line was hanging at ground level and the said wire came in contact with Anand Babu's hand. As a result, he was electrocuted and his right hand was badly damaged. People in the vicinity found the Petitioner's son on the ground and informed his parents. On reaching the spot, the parents found him in an unconscious state and took him to the Sri Kanchi Kamakotti Shankara Hospital for treatment. The Doctors who attended to him informed the Petitioner that his son had suffered second-degree burns. Accordingly, he was treated there as an inpatient between 23.07.2005 and 25.07.2005 and a sum of about Rs.10,000/- was spent on treatment during the above period.

3.In view of the fact that the Petitioner was not in a position to incur further expenses at a private hospital, the Petitioner admitted his son in the Government Stanley Hospital. However, the injury was so extensive that Doctors advised that he should undergo surgery. Thereafter, it was informed by the Doctors that his right arm was required to be amputated up to the fore arm. Based on medical advice, his right hand was amputated up to the forearm on 25.07.2005. After amputation, the Petitioner's son stayed in hospital as an inpatient until 28.09.2005. After discharge, the Petitioner's son continued to receive treatment once a week and thereafter once in 15 days. According to the Petitioner, the Petitioner's son still suffers from pain on account of the said amputation and he is unable to use his right hand. He is also unable to bend his arm.

4.The Petitioner also states that his son was in the fifth standard when the accident occurred and that he was a hard-working and top ranking student. The Petitioner also states that the electrocution is a consequence of the rash and negligent conduct of the Respondents and that the Respondents should have ensured that the hanging wire was removed or, in the alternative, electricity supply should have been disconnected until the problem was fixed. Consequently, the Petitioner states that the Respondents are directly responsible for the mishap

which resulted in the unfortunate amputation of the forearm of the Petitioner's son.

5.The Petitioner further states that he sent a lawyer's notice dated 14.12.2005 to the Respondents and called upon the respondents to pay a sum of Rs.25 lakhs as compensation for the loss of his son's limb and for the expenses incurred in that regard.

6.By counter affidavit dated 20.06.2012, the Respondents state that they deny that the Petitioner's son was electrocuted on 23.07.2005 on account of coming into contact with an electrical wire that was hanging at ground level and that this resulted in the amputation of the forearm of the Petitioner's son. The Respondents further state that periodical maintenance is carried out but that the electrical wire could have been dislodged on account of strong winds and the effect thereof on branches of trees, which may have caused the dislodging of the wire.

7.The Respondents further state that the Writ Petition is not maintainable because liability is disputed and disputed questions of fact are involved. In this regard, the Respondents rely upon the judgments of the Hon'ble Supreme Court reported in AIR 1999 SC 3412 and AIR 2000 SC 1717 to the effect that a civil suit should be filed and that a Writ Petition is not maintainable in such facts and circumstances. It is further stated that the Respondents are not admitting the quantum of damages claimed and that the claim for compensation of Rs.25 lakhs is excessive.

8.At the hearing, the learned counsel for the Petitioner referred to the FIR dated 24.07.2005 and pointed out as to how the Petitioner had lodged a complaint with the police within a day of the accident. He also referred to the hospital bills and to the discharge summary issued by the Stanley Medical College Hospital, which shows that amputation of the right forearm was carried out. He also referred to pictures of the Petitioner's son, which show that his right forearm is amputated.

9.In order to substantiate his arguments, he also referred to a disability certificate dated 23.01.2006, which was issued by the Dean of the Government Stanley Hospital, Chennai, which records that permanent disability is 70%. In addition, the learned counsel for the Petitioner referred to a judgment of the Hon'ble Supreme Court in RAMAN Vs. UTTAR PRADESH BIJLI VITRAN NIGAM LIMITED, (2014) 15 SCC 1, which is a writ petition relating to the electrocution of a five year old boy by coming into direct contact with a naked electric wire lying open on the roof of his house. As a result of electrocution, the boy had to

undergo triple amputation by removing both his arms up to the armpit and the left leg up to the knee. In view of the nature of loss, a 100% permanent disability certificate was issued. On the said facts, the Hon'ble Supreme Court held that the High Court ought not to have applied the multiplier method for computing compensation. In this regard, the Hon'ble Supreme Court adverted to several other judgments of the Hon'ble Supreme Court wherein it was held that the general principle that should govern the assessment of damages in personal injury cases is that the court should award to the injured person a sum of money that would put such person in the same position as he/she would have been in if injuries were not sustained. Eventually, a sum of Rs.60 lakhs was awarded as compensation in that case by recording, inter alia, as follows:

"23.In view of the foregoing reasons, after considering rival legal contentions and noticing the 100% permanent disability suffered by the appellant in the electrocution accident on account of which he lost all amenities and became a dead wood throughout his life, and after adverting to the law laid down by this Court in a catena of cases in relation to the guiding principles to be followed to award just and reasonable compensation...."

10.The learned counsel for the Petitioner also relied upon the judgment of the Hon'ble Supreme Court in THE STATE OF HIMACHAL PRADESH Vs. NAVAL KUMAR, 2017 ACJ 701. This was a case in which an 8 year old boy was electrocuted by a high tension live wire and suffered grievous burns and injuries as a consequence. In that case, the mother of the boy filed a Writ Petition claiming a sum of Rs.50 lakhs as compensation. As a result of the accident, in that case, the boy lost both his arms and thereby suffered 100% permanent disability. On those facts, the High Court had awarded a sum of Rs.1,25,00,000/- as compensation. On appeal to the Supreme Court, the Hon'ble Supreme Court held that by taking into account the facts and circumstances of the case such as the Respondent's family background, his age, nature of permanent disability suffered, his performance in studies, the determination of monthly/yearly income, expenses incurred and all relevant factors, the affected victim is entitled to a lump-sum compensation of Rs.90 lakhs with interest thereon at 6% per annum.

11.On the basis of the aforesaid judgments, the learned counsel for the Petitioner also submitted a memorandum of calculation under various heads and requested that the principles and guidelines enunciated by the Hon'ble Supreme Court in the above cases may be followed in this case.

12. In response, the learned counsel for the Respondents contended that the amount claimed as compensation is excessive and that as per the board proceedings of the Respondents, in non-fatal accidents, the affected person is entitled to a maximum of Rs.1 lakh. In order to substantiate this submission, the learned counsel handed over a copy of a letter dated 26.04.2018 from the Superintending Engineer of the Respondents to the Standing Counsel and the enclosure thereto, namely, the Board Proceedings No.5 dated 29.04.2013, which states that for non-fatal accidents involving the loss of one limb the enhanced compensation is Rs.1 lakh. It was further submitted that the dislodging of the electrical wire/line was on account of strong wind, which is an Act of God, and therefore, the Respondents are not liable to pay compensation. The learned counsel for the Respondents also requested that the averments in Paragraphs 3,4 and 5 of the counter affidavit may be taken into consideration while deciding the case.

13. The affidavit, counter affidavit, documents on record and oral submissions were carefully considered.

14. The Petitioner avers that the electrocution occurred on 23.07.2005 at about 12 noon when the Petitioner's son went to the open ground behind his house in order to urinate. It is stated that an electrical wire/line was lying at ground level and that the Petitioner's son was electrocuted when his hand came in contact with the said electrical wire/line. In order to substantiate the averment, the Petitioner referred to the FIR. When the FIR is examined, it discloses that the Petitioner complained that the accident took place at about 12 noon on 23.07.2005 when his elder son, Anand Babu, aged 10 years, went to the ground behind the house in order to urinate and came in contact with an electrical wire/line that was dislodged and lying at ground level. It is further stated therein that his hand was badly damaged as a consequence and that he was unconscious upon being electrocuted. It further mentions that persons in the vicinity and his wife immediately took his son to the Shankara Hospital for treatment and that his right hand lost functionality as a consequence. Accordingly, the police were requested to take necessary action. It further shows that the complaint was registered as Crime No.682 of 2005. In effect, the said FIR fully corroborates the statements in the affidavit with regard to the date of occurrence of the accident and the injury sustained as a consequence. It is also relevant to state that the said FIR was lodged on the date immediately following the accident.

15. The hospital bills, including the dates thereof, the discharge summary issued by the Government Stanley Medical

College Hospital and the photos of the Petitioner's son also corroborate the date of accident and the consequences thereof, namely, the amputation of the right forearm of the Petitioner's son.

16. The counter affidavit of the Respondents, in this regard, contains a bare denial of the fact that the electrocution occurred as a result of an electrical wire/line hanging at ground level. In fact, said bare denial is contradicted by the immediately subsequent statement that the wire/line was dislodged due to strong winds and the impact thereof on the branches of trees and that this is an Act of God for which the Respondents cannot be held responsible. In addition, the Respondents state that the claim for compensation of Rs.25 lakhs is excessive.

17. From the facts set out above, it is clear that the averments of the Respondents with regard to the cause of the accident are both vague and contradictory. It is the settled legal position that an unsubstantiated denial is no denial. In effect, it seems to be the Respondents case that the dislodging of the electrical wire/line was on account of strong winds, which according to the Respondents is an Act of God, for which the Respondents cannot be held accountable. In this connection, it is relevant to point out that an Act of God or vis major is an example of a force majeure event and this defence should be established by a party relying upon the same through strong evidence that the accident was a result of something beyond the reasonable control of the party. Strong winds do not qualify as Acts of God because they are a regularly occurring natural phenomenon which the Respondents are expected to anticipate while laying electrical cables and wires/lines. Only events such as earthquakes, tsunamis, unprecedented floods, et cetera would so qualify. The meaning and scope of the expression "Act of God" or "Vis Major" was elucidated by the Hon'ble Supreme Court in VOHRA SADIKBHAI RAJAKBHAI AND OTHERS Vs. STATE OF GUJARAT AND OTHERS (2016) 12 SCC 1, at Paragraph 22, inter alia, as follows:

"....An act of God is that which is a direct, violent, sudden and irresistible act of nature as could not, by any amount of ability, have been foreseen, or if foreseen, could not by any amount of human care and skill have been resisted. Generally, those acts which are occasioned by the elementary forces of nature, unconnected with the agency of man or other cause will come under the category of acts of God. Examples are: storm, tempest, lightning, extraordinary fall of rain, extraordinary high tide, extraordinary

severe frost, or a tidal bore which sweeps a ship in mid-water. What is important here is that it is not necessary that it should be unique or that it should happen for the first time. It is enough that it is extraordinary and such as could not reasonably be anticipated...."

Therefore, it can be inferred from the facts and documents on record that the accident is directly attributable to the negligent maintenance of electrical wires/lines by the Respondents and that the defence of Act of God is untenable.

18. This leads to the question as to whether the Writ Petition is maintainable. Given the fact that the occurrence of the accident and the cause thereof are clearly established and not seriously disputed, it cannot be said that there are disputed questions of fact with regard to the occurrence of the accident and the cause thereof. Consequently, what remains to be considered is the quantum of compensation to be awarded to the Petitioner. In this regard, it is relevant to refer to the judgment of the Hon'ble Supreme Court in CHAIRMAN GRID CORPORATION LTD., (GRIDCO) AND OTHERS Vs. SUKAMANI DOSS, AIR 1999 SC 3412, which is cited by the Respondents in the counter affidavit, wherein, at paragraph 4, the Hon'ble Supreme Court adverts to the defence that the electrical line snapped due to the acts of unauthorised persons in spite of proper maintenance. Therefore, it was held that there are disputed questions of fact and that negligence should be proved in a civil suit. It is also relevant to refer to the judgment of the Hon'ble Supreme Court in TAMIL NADU ELECTRICITY BOARD Vs. SUMATHI, (2000) 4 SCC 543, wherein the Hon'ble Supreme Court held that the High Court erred in awarding compensation for electrocution by appointing an Arbitrator to determine the issue. The said judgment would be distinguishable on facts because it clearly involved disputed questions of fact and the decision of the Hon'ble Supreme Court turned on the reference of the dispute, without an agreement in that regard as between the parties, to Arbitration. The Hon'ble Supreme Court was of the view that the High Court cannot force the parties to resort to arbitration in the absence of an arbitration agreement as between them. In the instant case, by contrast, the basic facts are undisputed. Therefore, as held by the Supreme Court in the cases reported in (2014) 15 SCC 1 and 2017 ACJ 701 (cited supra), the Writ Petition is maintainable and the only issue that remains to be resolved is the basis for and quantum of compensation. At this juncture, it is relevant to state that the board proceedings of the Respondents (B.P.No.5 dated 29.04.2013) fixing the compensation of Rs.1 lakh, in such cases, is not binding on the Petitioner or on this Court.

19.As regards the basis for determining compensation, the judgments of the Hon'ble Supreme Court that were referred to by the learned counsel for the Petitioner were both in the context of 100% permanent disability. In particular, the judgment of the Hon'ble Supreme Court in (2014) 15 SCC (cited supra) is a case wherein both arms were amputated up to the armpit and one leg up to the knee. Consequently, there was 100% permanent disability of the whole body (paragraphs 14 and 15). Nevertheless, the said judgment discusses the case law on compensation for personal injury very extensively and eventually concludes that the correct standard is to award such sum as would put the injured person in the same position as such person would have been if injuries are not sustained. By applying the said standard, the Hon'ble Supreme Court held that compensation of Rs.60 lakhs was fair and just in the factual context of the injured person suffering 100% permanent disability, which was, on facts, 100% permanent functional disability of the whole body and justified deviation from the multiplier method.

20.In the instant case, the disability certificate dated 23.01.2006 certifies that the Petitioner's son has 70% permanent disability of the right arm. Consequently, it is necessary to consider the different heads under which compensation may be awarded, including whether compensation could be awarded for future loss of earnings. In this connection, it is relevant to refer to the judgment of the Hon'ble Supreme Court in RAJ KUMAR Vs. AJAY KUMAR AND ANOTHER (2011) 1 SCC 343 wherein the principles relating to assessment of compensation in non-fatal accidents and the method of ascertaining the extent of disability, including the difference between disability of a part of the body and disability of the whole body, are discussed in paragraphs 12, 19 and 20, which are set out below:

"12.Therefore, the Tribunal has to first decide whether there is any permanent disability and, if so, the extent of such permanent disability. This means that the Tribunal should consider and decide with reference to the evidence:

(i) whether the disablement is permanent or temporary;

(ii) if the disablement is permanent, whether it is permanent total disablement or permanent partial disablement;

(iii) if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is, the permanent disability suffered by the person.

If the Tribunal concludes that there is no permanent disability then there is no question of proceeding further and determining the loss of future earning capacity. But if the Tribunal concludes that there is permanent disability then it will proceed to ascertain its extent. After the Tribunal ascertains the actual extent of permanent disability of the claimant based on the medical evidence, it has to determine whether such permanent disability has affected or will affect his earning capacity.

19. We may now summarise the principles discussed above:

(i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.

(ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that the percentage of loss of earning capacity is the same as the percentage of permanent disability).

(iii) The doctor who treated an injured claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard to the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.

(iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors.

20. The assessment of loss of future earnings is explained below with reference to the following illustrations:

Illustration A.— The injured, a workman, was aged 30 years and earning Rs. 3000 per month at the time of accident. As per doctor's evidence, the permanent disability of the limb as a consequence of the injury was 60% and the consequential permanent disability to the person

was quantified at 30%. The loss of earning capacity is however assessed by the Tribunal as 15% on the basis of evidence, because the claimant is continued in employment, but in a lower grade. Calculation of compensation will be as follows:

- (a) Annual income before the accident :
Rs.36,000
- (b) Loss of future earning per annum
(15% of the prior annual income) :
Rs. 5,400
- (c) Multiplier applicable with reference
to age :
17
- (d) Loss of future earnings: (5400 x 17) :
Rs.91,800

Illustration B.— The injured was a driver aged 30 years, earning Rs. 3000 per month. His hand is amputated and his permanent disability is assessed at 60%. He was terminated from his job as he could no longer drive. His chances of getting any other employment was bleak and even if he got any job, the salary was likely to be a pittance. The Tribunal therefore assessed his loss of future earning capacity as 75%. Calculation of compensation will be as follows:

- (a) Annual income prior to the accident :
Rs.36,000
- (b) Loss of future earning per annum
(75% of the prior annual income) :
Rs.27,000
- (c) Multiplier applicable with reference
to age :
17
- (d) Loss of future earnings: (27,000 x 17) :
Rs.4,59,000

Illustration C— The injured was aged 25 years and a final year Engineering student. As a result of the accident, he was in coma for two months, his right hand was amputated and vision was affected. The permanent disablement was assessed as 70%. As the injured was

incapacitated to pursue his chosen career and as he required the assistance of a servant throughout his life, the loss of future earning capacity was also assessed as 70%. The calculation of compensation will be as follows:

- (a) Minimum annual income he would have got if had been employed as an engineer
: Rs.60,000
- (b) Loss of future earning per annum
(70% of the expected annual income :
Rs.42,000
- (c) Multiplier applicable (25 years)
: 18
- (d) Loss of future earnings: (42,000 x 18) :
Rs.7,56,000

Note.- The figures adopted in Illustrations (A) and (B) are hypothetical. The figures in Illustration (C) however are based on actuals taken from the decision in Arvind Kumar Mishra [(2010) 10 SCC 254 : (2010) 3 SCC (Cri) 1258 : (2010) 10 Scale 298] .]

21.The said principles and standards were formulated in the context of a motor accident claim; nonetheless, the said principles constitute a rational basis even on the facts of this case, wherein, it is evident from the disability certificate that the amputation of the right forearm caused 70% permanent disability of the right arm and not 70% permanent disability of the whole body. Nevertheless, in view of the fact that the amputation of the right forearm resulted in the loss of 70% functionality of the right arm on a permanent basis, it would certainly cause loss of future earnings. Given the fact that the boy was about 10 years old when the accident occurred, he was not earning at that point of time. On enquiry, the learned counsel for the Petitioner stated that he is currently about 23 years old, has completed a bachelor's degree in commerce and that he has learnt to write with his left hand but is unable to find a job. While one cannot measure the impact of a 70% permanent disability of the right forearm on the future earning capacity accurately, when viewed circumspectly, a reasonable measure would be about 40% impact on future earnings as a consequence. A conservative monthly salary of Rs.10,000/- may be assumed in the facts and circumstances, and the functional disability or estimated loss of earnings of 40% may be applied

thereto. As regards the appropriate multiplier for a person up to 15 years, the Hon'ble Supreme Court in SARLA VERMA Vs. DTC in (2009) 6 SCC 121 held, at paragraph 40, that the calculation in the Schedule to the Motor Vehicles Act, 1988, is on the basis of a multiplier of 20 and this view was affirmed and followed in the NATIONAL INSURANCE COMPANY LIMITED Vs. PRANAY SETHI in (2017) 16 SCC 680 by a Five Judge Bench of the Hon'ble Supreme Court. Accordingly, if the multiplier of 20 is used, the loss of future earnings would be $\text{Rs.}10,000 \times 12 \times 40 \div 100 \times 20 = \text{Rs.}9,60,000/-$. In addition, a sum of Rs.50,000/- should be awarded for pain and suffering, Rs.20,000/- towards expenditure incurred on treatment and future treatment and Rs.30,000/- towards loss of amenities. In the aggregate, the Petitioner's son would be entitled to receive a principal sum of Rs.10,60,000/- as just and reasonable compensation. Out of this amount, the amount awarded under all heads, excluding loss of future earnings, i.e. the sum of Rs.1 lakh would carry interest at 9% per annum from the date of filing of the Writ Petition until payment thereof. In view of the age of the Petitioner's son at the time of accident, the loss of future earnings component of compensation would not carry interest unless payment is not made within the time specified in this order. The overall aggregate principal compensation of Rs.10,60,000/- would carry interest at 9% per annum if the said amount is not paid within the stipulated time. In view of the fact that the Petitioner's son is now a major, the amount should be paid by the Respondents to the Petitioner's son.

22. Accordingly, the Respondents are directed to pay the aggregate principal sum of Rs.10,60,000/- to the petitioner's son, K.Anand Babu, with interest thereon as specified in the preceding paragraph. The Respondents shall pay the said sum within a period of six weeks from the date of receipt of a copy of the order. The Writ Petition is allowed on the above terms but there shall be no order as to costs.

सत्यमेव जयते

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1.The Chairman,
Tamil Nadu Electricity Board,
No.800, Anna Salai,
Chennai-600 002.

2.The Superintending Engineer,
Chennai Electricity Distribution Circle,
South K.K.Nagar,
Chennai-600 078.

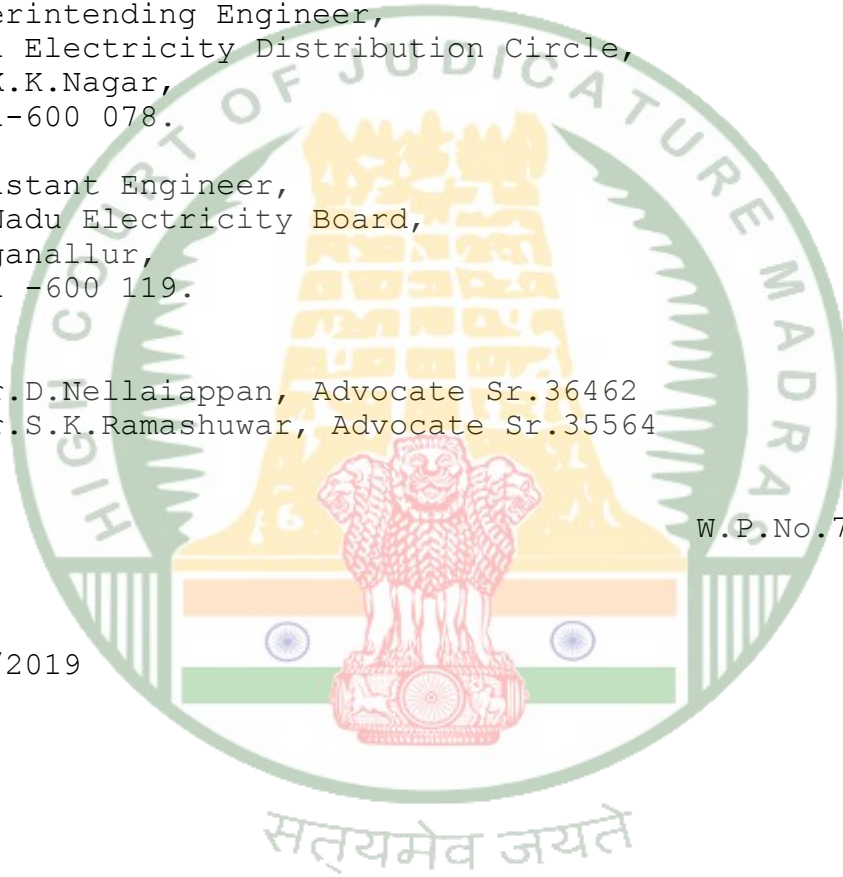
3.The Assistant Engineer,
Tamil Nadu Electricity Board,
Sholinganallur,
Chennai -600 119.

+1cc to Mr.D.Nellaiappan, Advocate Sr.36462

+1cc to Mr.S.K.Ramashuwar, Advocate Sr.35564

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