

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.07.2019

CORAM

THE HONOURABLE Mr.JUSTICE M.DHANDAPANI

W.P. 679 of 2009

Hariharasudhan

... Petitioner

-Vs-

1. The Superintending Engineer,
Chennai Electricity Distribution
Region (South),
T.N.E.B., 110 KV SS Complex,
Anna Salai, K.K.Nagar,
Chennai-600 078.

2. The Assistant Executive Engineer,
Tamil Nadu Electricity Board,
No.5, Varshanam Nagar,
Medavakkam, Chennai-601 302.

3. S. Desigan,
S/o.Sundaravaradhachari,
No.254/6D, GST Road,
Chrompet, Chennai-600 044.

4. De-Chellappan,
S/o. Desigan,
No.254/6D, GST Road,
Chrompet, Chennai-600 044.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the respondents 1 and 2 to pay a compensation of Rs.10,00,000/- (Rupees ten lakhs only) to the minor daughter of the petitioner by name Srinidhi.

For Petitioner : Mr.A.G.Rajan

For Respondents: Mr.S.K.Rameshuwar,
No.1 & 2 for TNEB

For Respondent
Nos.3 & 4 : Mr.V.Ramesh

O R D E R

This Writ Petition has been filed seeking a direction to direct the respondents 1 and 2 to pay a compensation of Rs.10,00,000/- (Rupees ten lakhs) to the minor daughter of the petitioner by name ***H.Shrinidhi** .

2. The case of the petitioner is that the petitioner is the father of Selvi. ***H.Shrinidhi**, who is aged about 6 years was playing along with other children at the terrace of the house on 03.12.2006 and the petitioner and other persons are busily attending the family rituals viz., grandfather's thithi. While being so, the petitioner's second daughter viz., Sandhiya, who was also playing with Selvi. ***H.Shrinidhi** came down screaming and informed them that ***H.Shrinidhi** was electrocuted while playing. Immediately, the petitioner and other persons rushed to the terrace and came to know that while playing near the parapet wall of the terrace, her flock of hair accidentally touched the high tension live wire passing close to the parapet wall and as a result, current passed through. Due to the electric shock, the petitioner daughter's right hand and leg extensively got charred. Immediately thereafter, they rushed to the nearby B.S.Hospital for first aid and they have taken her to Appollo Hospital, Chennai for further treatment. To their great shock, her right hand was amputated in order to save her life. In these process, the petitioner has spent a sum of Rs.6,00,000/- towards medical expenditure and thereafter, they made a representation to the 2nd respondent claiming compensation of Rs.10 lakhs holding that due to the negligence on the part of the 1st and 2nd respondents Electricity Board, the petitioner is entitled for fair compensation. Apart from that, the petitioner has also made a complaint before the Chittlapakkam Police Station and the same has been registered in Crime No.3014/2006 for offence under Sec.338 of I.P.C. Thereafter, on 14.12.2006, the petitioner has intimated the accident to the Additional Divisional Engineer, Chittalapakkam and thereafter, he has sent a legal notice on 11.07.2007, but they did not send any reply. Against the inaction of the respondents 1 and 2, the present Writ Petition has been filed by the petitioner.

3. Mr.A.G.Rajan, learned counsel appearing for the petitioner would submit that the present case is due to electrocution, the petitioner's daughter suffered severe injuries and her right hand was amputated. In view of the said undisputed fact, the petitioner is entitled for fair compensation from the respondent Electricity Board. However, the very same issue was dealt with by Hon'ble Writ Court in the writ proceedings, wherein the Writ 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."

Hence, it is clearly applicable to award proper compensation in favour of the petitioner and prayed for allowing this Writ Petition.

4. Per contra, the learned standing counsel appearing for the respondent Electricity Board has filed a counter affidavit stating that the Writ Petition is not maintainable, since the Electricity Board has disputed the liability and also disputed the question of facts are involved, and therefore, the remedy is available to the petitioner to approach the competent civil court and not before this Court under Art.226 of Constitution of India. The learned counsel would further submit that the accident was occurred not due to the negligence on the part of respondent Electricity Board and it is purely on the part of the petitioner's daughter, who was playing nearby parapet wall and while the said Srinidhi with other friends was playing in the open terrace fell on the iron pipe put up to tie the wire to dry the clothes and consequently the said iron pipe fell down and touch the electric live wire and hence, the electric current passed through the right hand through the iron pipe and the injury had happened only due to the negligence on the petitioner's daughter. Accordingly, he prayed for dismissal of the Writ Petition.

5. The issue involved in the present case is that whether the petitioner is entitled to claim compensation from the Electricity Board 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 the petitioner's daughter, who is aged about 6 years

old, suffered injury due to the electrocution on the live wire passing nearby the parapet wall and the settled law is child may do wrong, however, we cannot fix the negligence on the part of child. Though fixed the liability on the part of parents, who have not taken care of the daughter, however, equally, the Electricity Board is also liable to fix the line little away from the parapet wall. In the instant case, the Electricity Board without considering the distance of the high tension line passing very close to the parapet wall. Hence, this Court has no hesitation to arrive a conclusion that due to the negligence of the Electricity Board, fixing the live wire nearby parapet wall, whereby, the petitioner's daughter suffered injury due to the electrocution. Further, the very same issue was dealt with by this Court in an unreported judgment in W.P.No.6270 of 2015 and the relevant portion of the judgment reads as follows:-

"7. Learned counsel for the petitioner also added that the concept of strict liability in the context of snap electrocution came up for consideration before the Hon'ble Supreme Court in the case of Madhya Pradesh Electricity Board vs. Shail Kumari [2002 (2) SCC 162], wherein this Court has granted compensation arriving at a finding that the live wire got snapped and fell on the public road, which was partially inundated and the deceased rode over the wire, which twitched and snatched him resulting in his instantaneous electrocution. The Supreme Court in the said case, indicated the theory of foreseeable risk in the following paragraphs :-

"7. It is an admitted fact that the responsibility to supply electric energy in the particular locality was statutorily conferred on the Board. If the energy so transmitted caused injury or death of a human being, who gets unknowingly trapped into it the primary liability to compensate the sufferer is that of the supplier of the electric energy. So long as the voltage of electricity transmitted through the wires is potentially of dangerous dimension the managers of its supply have the added duty to take all safety measures to prevent escape of such energy or to see that the wire snapped would not remain live on the road as users of such road would be under peril. It is no defence on the part of the management of the Board that somebody committed mischief by siphoning such energy to his private property and that the electrocution was from such diverted line. It is the lookout of the managers of the supply system to prevent such pilferage by installing necessary devices. At any rate, if any live wire got snapped and fell on the public road, the electric current thereon should automatically have been disrupted. Authorities manning such dangerous

commodities have extra duty to chalk out measures to prevent such mishaps.

8. Even assuming that all such measures have been adopted, a person undertaking an activity involving hazardous or risky exposure to human life is liable under law of torts to compensate for the injury suffered by any other person, irrespective of any negligence or carelessness on the part of the managers of such undertakings. The basis of such liability is the foreseeable risk inherent in the very nature of such activity. The liability case on such person is known, in law, as "strict liability". It differs from the liability which arises on account of the negligence or fault in this way i.e., the concept of negligence comprehends that the foreseeable harm could be avoided by taking reasonable precautions. If the defendant did all that which could be done for avoiding the harm, he cannot be held liable when the action is based on any negligence attributed. But, such consideration is not relevant in cases of strict liability where the defendant is held liable irrespective of whether he could have avoided the particular harm by taking precautions."

12. Taking into consideration the burn injuries sustained by the petitioner's son and in view of the judgment rendered by this Court in the case of R.Pareetha Beevi and others Vs. The Chairman, TNEB & others, 2014 Writ L.R. 739, wherein this Court has awarded compensation to the victim's legal representatives on account of loss of life due to electrocution, this Court directs the 1st respondent to consider the case of the petitioner in providing suitable employment to the petitioner's son and see to it that he is not exposed to excess sun light and unsuited working environment."

6. In view of the above decision, the Writ Petition is maintainable against the 1st and 2nd respondents Electricity Board. Further, this Court as well as Hon'ble Apex Court awarded compensation in the Writ Proceedings. 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.3,25,000/-
Medical expenses	Rs.5,75,000/-
Loss of companionship, life amenities/pleasures and happiness	Rs.50,000/-
Pain and suffering, mental distress, trauma and discomfort and inconvenience	Rs.50,000/-
Total	Rs.10,00,000/-

7. In view of the above, this Court is of the view that the petitioner's ***daughter viz., "H.Shrinidhi"** is entitled to a compensation totally, a sum of Rs.10,00,000/- (Rupees ten lakhs only) towards compensation for the loss of amputation on the right hand and other expenses and the 1st and 2nd respondents Electricity Board are directed to pay the aforesaid compensation to the petitioner's ***daughter viz., "H.Shrinidhi"** together with interest @ 6% per annum from the date of filing the Writ Petition 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.

rpp

Sd/-

Assistant Registrar(Insp.cell)

Dated : 10/07/2019

***Amended as per order of the Court dated 17/07/2019**

Sd/-

Assistant Registrar(VI)

Dated : 22/07/2019

//True Copy//

Sub Assistant Registrar

To

1. The Superintending Engineer, Chennai Electricity Distribution Region (South), T.N.E.B., 110 KV SS Complex, Anna Salai, K.K.Nagar, Chennai-600 078.

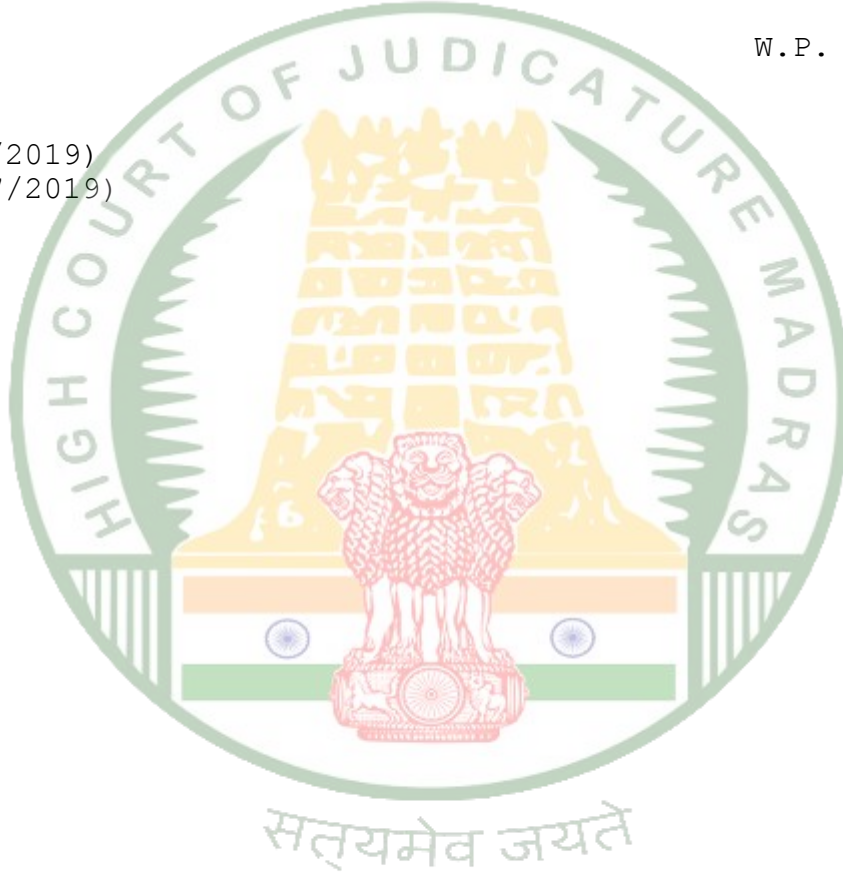
To be substituted the order already dispatched on 12/07/2019

2. The Assistant Executive Engineer,
Tamil Nadu Electricity Board,
No.5, Varshanam Nagar,
Medavakkam,
Chennai-601 302.

+2cc to Mr.A.G.Rajan, Advocate, SR.No.55522 & ***62187**
+1cc to Mr.T.Thiyagarajan, Advocate, SR.No.55520
+1cc to Mr.S.K.Ramesh Kumar Advocate, SR.No.55277

W.P. 679 of 2009

SJ(CO)
Kak(10/07/2019)
GMY (23/07/2019)



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