

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2019

CORAM

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

W.P. 9413 of 2013

C.Munuswamy

... Petitioner

Versus

1. The State of Tamil Nadu,
by its Secretary,
Tamil Nadu Electricity Department,
Fort St. George,
Chennai-600 009.

2. The Chairman,
Tamil Nadu Electricity Board,
Anna Salai, Chennai-600 002.

3. The District Collector,
Kancheepuram District,
Kancheepuram.

4. The Tahsildar,
Tambaram,
Chennai-600 045.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the respondents to pay an adequate and just compensation for the death of the petitioner's son M.Dileepan, caused by the negligence of the 2nd respondent man.

For Petitioner : Mr.T.Kalaimani

For Respondents : Mr.K.K.Ramesh,
Government Advocate for R1

Mr.S.K.Rameshuwar
Standing Counsel for R2

O R D E R

This Writ Petition has been filed seeking compensation for the death of petitioner's son due to electrocution.

2. The grievance of the petitioner is that, the petitioner's son by name Dilip, who was 20 years old at the time of his death due to electrocution. On 06.12.2012, at about 7.30 a.m. when he was going through the land belonging to Sri Ranganathar Perumal Koil to answer nature call, he was hit by a low lying high tension (H.T.) electric line crossing over the land. The HT line was lying very low in that area, and many times, several animals were killed by electrocution in that place. Thereafter, the petitioner has made a complaint before the Shankar Nagar Police Station, and a criminal case was registered in Crime No.4243/2012 under Sec.174 CrI.P.C. According to the petitioner, the 2nd respondent did not maintain the electric line properly, and the heavy tension electric line was lying very low in that area. In spite of several complaints filed by the public to the respondents authority, no action has been taken to rectify electric line. Hence, the electrocution had occurred due to the negligence on the part of the respondents for not maintaining the electric line properly. Since the accident had taken place due to the negligence on the part of the 2nd respondent, the 2nd respondent is liable to pay suitable compensation.

3. According to the petitioner, the deceased was earning Rs.300/- daily, as a painter, and he was the sole bread-winner of the petitioner's family. Hence, the petitioner has made a representation to the respondents to pay fair compensation, but it was not considered. Hence, the present Writ Petition has been filed.

4. The 2nd respondent filed a counter affidavit stating that, on account of cyclone and heavy rain, there is sudden fall of HT line, for which, the respondents are not liable to pay compensation. On 06.12.2012, the deceased while crossing the HT Line, was hit by the heavy tension line, which fell low. He had been electrocuted, due to the heavy rain and cyclone, which is being an act of god, the 2nd respondent is not liable to pay compensation. The 2nd respondent has also denied the allegation that, the heavy tension line fell low, and despite the complaints given by the public, it was not rectified. He has also further stated that it is a disputed question of fact, the only remedy available to the petitioner is to file a civil suit. Hence, the petitioner cannot maintain a Writ Petition seeking for compensation.

5. Mr.T.Kalaimani, learned counsel appearing for the

petitioner would contend that, it is an admitted fact that the petitioner's son was electrocuted in a low lying heavy tension electric line. Under the Indian Electricity Rules, the respondents are bound to maintain the electric line properly. Only due to the negligence on the part of the respondents for not maintaining the electric line properly, the accident had taken place and the petitioner's son was electrocuted, the facts are not disputed by the respondents. It is also established that since the accident has been occurred only due to the negligence on the part of the respondents, the petitioner is entitled for compensation under public law remedy, and it is not open for the respondents to contend that, only a civil remedy is available to the petitioner.

6. Mr.K.K.Ramesh, learned Government Advocate appearing for the respondents submitted that, the accident had taken place on account of sudden fall of HT line, and not due to the negligence on the part of the respondents. On the date of accident, there was heavy rain and cyclone, due to which, the HT line was low lying. That apart, it is a disputed question of fact, the only remedy available to the petitioner is to approach the civil court to establish his claim seeking for compensation, and the petitioner cannot maintain this Writ Petition.

7. I have considered the submissions made by the learned counsel appearing for the petitioner as well as learned counsel appearing for the 1st respondent and perused the records carefully.

8. It is an admitted fact that the petitioner's son died due to electrocution. It is also an admitted fact that the accident had taken place due to low lying heavy tension electric line. Though the respondents contending that heavy tension line was low lying due to heavy rain and cyclone, absolutely, there is no material available on record to show that there was a cyclone and heavy rain on that day. In the above circumstances, I do not find any dispute regarding the nature of the accident.

9. Under Sec. 68 of the Electricity Act, the respondents are bound to maintain the electric line properly. That apart, Rule 91 of Indian Electricity Rules also requires that the 2nd respondent board is to provide safety devices for every overhead electric line. Therefore, the respondents cannot escape from their liability saying that, the accident has been taken place due to heavy rain and cyclone. In the above circumstances, I am of the considered view that the accident has been taken place only due to the negligence of the 2nd respondent Board. When the death has taken place due to the negligence of the 2nd respondent

Board, the right to life guaranteed under Art. 21 of Constitution of India has been clearly violated, and the 2nd respondent Board is liable to pay compensation. Further, the petitioner is also entitled to file a Writ Petition seeking compensation under public law liability. This Court in the case of [Mrs. Saroja V. The Government of Tamil Nadu and another] reported in 2014 Writ L.R. 316 , has held as follows :-

"8. It is a well settled principle of law declared by the Hon'ble Supreme Court that if the facts are not in dispute, the legal heirs of the victims of riot, custodial killing or death due to negligence on the part of the State authorities, can claim compensation in writ proceedings. The only impediment in entertaining writ petition is, there may be factual disputes such as the manner of death, whether there was negligence or not, age and income of the deceased, etc. In this case, there is no dispute with regard to the manner of death, age of the deceased and income of the deceased."

10. So far as the quantum of compensation is concerned, there is no codified law regarding the payment of compensation, and it is settled that the principles laid for the Motor Vehicles Claims Tribunal, alone has to be applied for deciding the quantum of compensation. The deceased was about 20 years old at the time of accident, and it is stated that, he was earning Rs.300/- per day, and due to the death of petitioner's son, the petitioner has lost his love and affection. In a similar circumstances, this Court in number of cases has awarded a sum of Rs.5 lakhs as compensation to the legal heirs. Further, this Court in a Writ Petition No.32348 of 2012, has granted a sum of Rs.5 lakhs as compensation to the claimant. In the said circumstances, I am of the considered view that awarding of Rs.5 lakhs as compensation will be a fair compensation to the petitioner.

11. In the result, this Writ Petition is allowed, and the 2nd respondent is directed to pay a sum of Rs.5 lakhs towards compensation to the petitioner within a period of twelve weeks from the date of receipt of copy of this order. In default, the respondents are directed to pay interest at the rate of 6% per annum from the date of filing Writ Petition i.e. from April 2013, till the payment of compensation. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

rpp

To

1. The Secretary,
State of Tamil Nadu,
Tamil Nadu Electricity Department,
Fort St. George,
Chennai-600 009.
2. The Chairman,
Tamil Nadu Electricity Board,
Anna Salai, Chennai-600 002.
3. The District Collector,
Kancheepuram District,
Kancheepuram.
4. The Tahsildar,
Tambaram,
Chennai-600 045.

+1cc to Mr.T.Kalaimani, Advocate SR.92596
+1cc to Mr.S.K.Rameshuwar, Advocate SR.92688
+1cc to the Government Pleader SR.93085

W.P. 9413 of 2013

CA(CO)
CB(13/12/2019)