IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.09.2019

CORAM:

THE HON'BLE MR.JUSTICE T.RAJA

W.P.No.26464 of 2016

V.R.Kabilan .. Petitioner

Vs

1. The Chairman-cum-Managing Director,
Tamil Nadu Generation and Distribution
Corporation Ltd. (TANGEDCO),
800, Anna Salai,
Chennai - 2.

2. The Superintendent Engineer,
Chengalpattu Electricity Distribution Circle,
Tamil Nadu Generation and Distribution
Corporation Ltd. (TANGEDCO),
Chengalpattu - 603 001. .. Respondents

Prayer:
Writ Petition filed under Article 226 of the Constitution of India seeking a writ of mandamus to consider the petitioner's representation dated 08.06.2016 thereby directing them to grant a compensation for a sum of Rs.10,00,000/- or above as may deem fit from the respondents due to the electrocution which caused the death of the petitioner's son Selva Krishnan, aged 22 years, on 28.04.2014.

For petitioner : Mr.S.Vediappan

For Respondents : Mr.S.K.Rameshwar,
standing counsel For TNEB

ORDER

The petitioner, whose son died on 28.04.2014 due to electrocution, has filed this writ petition seeking for issuance of a writ of mandamus to consider the petitioner's representation dated 08.06.2016 requesting the respondents/ TANGEDCO to award a compensation to the tune of Rs.10,00,000/- due to the death of his son, which had caused due to electrocution.

2. Heard the learned counsel appearing on either side and perused the materials available before this Court.

3. It is submitted by the learned counsel for the petitioner that the petitioner's son by name Selva Krishnan had completed the ITI course in Mechanic Refrigeration and Air Conditioning and Central Plant in June, 2011 and thereafter, he worked in a private concern and was earning a sum of Rs.10,000/- per month as AC Mechanic. Since he had enough experience, he had started self-employment in the name and style of 'V.R.K.Cool & Cool' and he was independently working with two helpers. Whileso, on 28.04.2014, when he had gone to attend the A.C. Repair work at Pudupakkam, Chennai, after completion of work, while he was moving the ladder in the work place, unfortunately, the ladder had touched 11KV live wire hanging at a low level and on account of the same, he died on the spot on 28.04.2014 due to electrocution. Immediately after the accident, a case was registered in Cr.No.357 of 2014 under Section 174 of the Criminal Procedure Code on the file of the E-8 Kelambakkam Police Station. It is further submitted that had the live wire been properly maintained, the ill-fated accident would have been averted and hence, the respondents may be directed to pay a compensation to the tune of Rs.10,00,000/- towards the death of his son.

4. From the above said facts and circumstances of the case and also on perusal of the First Information Report dated 28.04.2014 and Postmortem certificate dated 29.04.2014, it is clear that the death had occurred due to electrocution, as the respondent Board did not properly maintain the hanging of live wire at a low level, therefore, in my considered view, the Board cannot escape from the liability of paying compensation.

5. With regard to awarding of compensation, there is no codified law for arriving at quantum of compensation in cases of these type of cases. The enactments like the Motor Vehicles Act and the Workmen's Compensation Act, may be applied for arriving at a just compensation. In the case on hand, at the time of death, the petitioner's son was aged about 22 years as could be seen from the postmortem certificate issued by the Department of Forensic Medicine Chengalpattu Medical College on 29.04.2014. Therefore, since the deceased was doing self-employment, this Court, by following the recent judgment of the Hon'ble Division Bench of this Court in Andal and others Vs. Avinav Kannan and others [2019 (1) TN MAC 54 (DB)] is inclined to fix a sum of Rs.11,000/- per month towards notional income. For better appreciation, it is relevant to extract Paragraph No.14 of the said judgment, which is quoted below:-

"14. As per the above said index, the Cost of Inflation Index for the year 2007-2008 is 129 and for the year 2013-2014 will be 220. Now, we determine the Notional Income of the deceased in the manner stated below:-

$$\frac{\text{The Notional Income fixed by the Hon'ble Supreme Court of India for the Vegetable vendor i.e., Rs.6500/- during the year 2007-2008} \times \text{Cost of Inflation Index for the year 2013-2014}}{\text{Cost of Inflation Index for the year 2007-2008}}$$

Therefore, Income of the deceased is $\frac{6500 \times 220}{129}$ = Rs.11,085/-

The Notional Income of the deceased after applying Inflation Index, will be a sum of Rs.11,085/-. Hence, we re-fix the Notional Income of the deceased as Rs.11,000/- from Rs.6,500/-. Therefore, we hold that the Tribunal committed error in fixing the Notional Income of the deceased as stated above."

By following the aforesaid judgment, the notional income of the deceased is fixed at Rs.11,000/-. With regard to fixation of future prospects, it is relevant to take note of the judgment of the Hon'ble Apex Court in National Insurance Co. Ltd. Vs. Pranay Sethi and others [2017 (2) TN MAC 609 (SC)] and for better appreciation, relevant portion of paragraph No.61 is quoted below:

"61 (iii). While determining the income, an addition of 50% of actual salary to the income of the deceased towards Future Prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.

iv) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the

> deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component."

From the reading of the above said ratio, it is clear that in case the deceased was a self-employed person, an addition of 40% of the established income should be added where the deceased was below the age of 40 years. In the case on hand, it is not in dispute that the deceased was aged about 22 years at the time of his death and he was also doing self-employment. Therefore, if 40% is added from the monthly income fixed at Rs.11,000/- i.e. Rs.4,400/- towards future prospects, the total monthly income of the deceased works out to Rs.15,400/- (11000 + 4400).

6. Besides, by following the ratio laid down by the Hon'ble Apex Court in the case of Sarla Verma and others vs. Delhi Transport Corporation and another, reported in 2009 (6) SCC 121, this Court hereby fixes multiplier at 18 and as the deceased was a bachelor at the time of death, after deducting 50% of his income (15400-7700) towards personal expenses, this Court hereby awards a sum of Rs.16,63,200/-(7700x18x12) towards loss of dependency. Further, this Court also hereby awards various compensation under the following heads.

Loss of love and affection	-- Rs.50,000/-
Pain and sufferings	-- Rs.50,000/-
Funeral expenses	-- Rs.25,000/-

7. In total, this Court hereby awards a sum of Rs.17,88,200/- as total compensation. The respondents/ Electricity Board are hereby directed to pay the said amount as compensation to the petitioner, with interest at 8% per annum from the date of accident till the date of payment, within a period of six weeks from the date of receipt of a copy of this order.

8. In fine, the writ petition is disposed of in terms of the above said directions. No Costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Chairman-cum-Managing Director,
Tamil Nadu Generation and Distribution
Corporation Ltd. (TANGEDCO),
800, Anna Salai, Chennai – 2.

2. The Superintendent Engineer,
Chengalpattu Electricity Distribution Circle,
Tamil Nadu Generation and Distribution
Corporation Ltd. (TANGEDCO),
Chengalpattu – 603 001.

+1cc to Mr.S.Vediappan, Advocate, S.R.No.77496
+1cc to Mr.S.K.Rameshwar, Advocate, S.R.No.77520

W.P.No.26464 of 2016

NRJK(CO)
CS/31/10/2019