



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 17.10.2019	Pronounced on: 24.10.2019
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Coram::

The Honourable Dr.Justice G.Jayachandran

Writ Petition No.17750 of 2019
& W.M.P.No.17163 of 2019

1. S.Ruckmani,
W/o.Sethumadhavan.

2. Ms.B.SathyaNeka,
D/o.Late S.Balasubramanian. ... Petitioners

Both are residing at
No.3, Inbarajapuram, 1st Street, Choolaimedu,
Chennai - 600 094.

/versus/

1. Tamil Nadu Electricity Board Limited,
NPKKR Maligai,
No.144, Anna Salai, Chennai - 600 002.
Rep by its Chairman and Managing Director.

2. Tamil Nadu Generation and Distribution Corporation
Limited (TANGEDCO),
10th Floor, NPKRR Maligai,
No.144, Anna Salai, Chennai - 600 002.
Rep. by its Chairman and Managing Director.

3. Superintending Engineer,
TANGEDCO,
K.N.Colony Post,
Salem - 636 014.

4. The Assistant Executive Engineer,
Swarnapuri TNEB, Convent Road,
Swarnapuri, Salem - 636 004. Respondents

Prayer: Writ Petition is filed under Article 226 of the
Constitution of India, to issue Writ of Mandamus, directing the
respondents and anyone under their authority to pay the
petitioners compensation of Rs.75,00,000/- together with
interest at 18% p.a.

For Petitioners: Mr.M.Vidya

For Respondents:Mr.S.K.Rameshwar,
Standing Counsel

O R D E R

Heard the Learned Counsel for the Petitioner and the Learned Standing Counsel for the Respondents.

2. The petitioners herein have joined together to file this Writ Petition seeking Mandamus directing the respondents to pay compensation of Rs.75,00,000/- together with interest at the rate of 18% p.a, for the death of Mr.Balasubramanian due to electrocution. The 1st petitioner is the mother of said Balasubramanian and the 2nd petitioner is his daughter.

3. The case of the petitioners are that, Mr.Balasubramanian while cleaning his house to perform the funeral rites of his wife on 07.10.2013, he was electrocuted in the following manner:- He was shifting the steel rods to the terrace via., the staircase outside his house. In the process of shifting, the steel rod came in contact with the open high tension wire running alongside the house. Due to electrocution, he died on the spot. Alleging negligence on the part of Electricity Board seeking compensation of Rs.80,00,000/-, these petitioners earlier filed W.P.No.40171 of 2015. This Court, after hearing the respondents has passed the following order.

7. The factual scenario in the instant case appears to be not in a serious dispute. The death occurred due to electrocution. The electrocution was due to the fact that the steel rod carried by the deceased came in contact with a live High Tension wire. The high tension wire passes near the petitioner's house and it is stated by the respondents that there is a clear 8 feet distance between the compound wall/stairway and the wire. The respondent pleads that no negligence can be attributed to them, since the wires are at a safe distance. However, it has to be noted that there is no allegation that the house is an unauthorised construction or there is any deviation from the approved plan. When the High Tension wire is

passing through a densely populated area, the Board ought to have taken protective measure to avoid any untoward incident. In fact, the petitioner's case is that in respect of the low tension wires which are drawn for providing electricity supply to the houses protective plastic casing has been provided. There is no explanation in the counter as to why such protection could not have been extended to the high tension lines especially when it is admitted that the lines are passing above a corporation road.

9. This Court can take judicial notice of the fact that in cases where death occurred due to electrocution, the respondents by paying an exgratia amount to the family of the deceased. However, it is not known as to why such payment was not made to the petitioners.

10. Hence, for all the above reasons, this Court is of the view that the petitioners should be entitled to a reasonable amount of compensation which shall be an adhoc amount and as an interim relief. This Court is not in a position to compute the exact amount of compensation that has to be awarded, in the absence of any details forthcoming from the petitioners. There is nothing on record to show as to how the petitioners claim Rs.80,00,000/- as compensation. Therefore, taking into consideration the hard facts of the case and the manner in which the death has occurred, it is a fit case where compensation of Rs.5,00,000/- should be awarded to the petitioners.

It is made clear that this is an adhoc compensation granted by the Court leaving it open to the petitioners to move the competent forum for further compensation.

11. In the result, the Writ Petition is partly allowed and the respondents are directed to pay a sum of Rs.5,00,000/- to the petitioners as adhoc compensation for the death of the first petitioner's son and the second petitioner's father. Out of Rs.5,00,000/- a sum

of Rs.50,000/- shall be paid to the first petitioner and Rs.4,50,000/- to the second petitioner, and the payment shall be released in their names by way of Demand Draft within a period of four weeks from the date of receipt of a copy of this order. The petitioners shall accept the compensation without prejudice to their rights to approach the competent forum for further compensation, if so advised. In the event of any such claim being made, this amount directed to be paid by this Court shall be deducted from the amount that may be determined by the competent forum. No costs. Consequently, connected Miscellaneous Petition is closed.

4. Since certain observations made in this order were not in consonance to the facts and law, the respondents filed Review Application No.49 of 2016 before this Court to review the order passed in W.P.No.40171 of 2015 dated 28.01.2016. On hearing the Review Petition, this Court passed the following order on 13.06.2016.

6. This Court has clearly pointed out in para No.7 that, it has not given any positive direction that protective plastic casing should be provided to the high tension line, this Court only opined that there was no explanation as to why the high tension line should also not be a protective casing especially, when it is passing through the Corporation Road. However, since the relevant Regulation do not provide for the same, this Court is, hereby, making it clear that the observation made in para No.7 of the order dated 28.01.2016 passed in W.P.No.40171 of 2015, should not be treated as direction, or finding against the applicant/Board, and it is only the observation made, so as to mould the relief in favour of the writ petitioners, and the said observations cannot be taken advantage by the respondents/writ petitioners, in the event of approaching appropriate forum for further compensation.

5. Instead of approaching the appropriate forum, as observed by this Court in the earlier Writ Petition No.40171 of 2015, the petitioners have preferred the present Writ Petition with break of details computing the compensation.

6. The Learned Counsel appearing for the petitioners would submit that, in the earlier Writ Petition, this Court granted only adhoc compensation of Rs.5,00,000/- as interim relief for the death of Balasubramanian and observed that in the absence of any details forthcoming from the petitioners to show how the petitioners claim Rs.80,00,000/- as compensation, they were directed to move competent forum for further compensation. Therefore, in this Writ Petition, she has furnished the details for seeking Rs.80,00,000/- as compensation and therefore, this Court has to consider the prayer and grant relief.

7. The Writ Petition is opposed by the respondents on the ground of maintainability. It is contended by the learned Counsel for the respondents that, there is no negligence on the part of the respondents in maintaining the electrical line. It has been periodically maintained. The deceased Balasubramanian who carried electrical rod to terrace of his house negligently contacted with the high tension wire and got electrocution. When there is no negligence on the part of the respondents in maintaining the electrical line and admittedly the electrocution was due to contact of a lengthy iron rods carried by the deceased, the accident has occurred, the respondents need not pay any compensation.

8. Further, it is specifically contended by the respondents that, quantum of compensation claim has to be arrived on the basis of material facts pleaded and proved. The examination of witnesses and documents are necessary to prove the claim as well as negligence. In case of factual disputes, the Writ Petition is not maintainable. This Court has already directed the petitioners to approach the competent forum while disposing the W.P.No.40171 of 2015, on 28.01.2016. While so, the present petition, after lapse of more than three years, from the date of death filed under Article 226 of the Constitution is not maintainable.

9. The petitioners herein have computed the compensation for the death of Balasubramanian due to electrocution under the following heads:

- a. Loss of career opportunity.
- b. Loss of Income from deceased.
- c. Loss of love and affection & pain and suffering.
- d. Loss of Estate.

e. Funeral expense.

10. After defraying Rs.5,00,000/- paid as interim compensation, Rs.75,00,000/- is sought as compensation.

11. For the preliminary question whether this Writ Petition is maintainable in view of disputed facts, the Learned Counsel appearing for the petitioners would rely upon the judgment of Hon'ble Supreme Court rendered in Raman Vs. Uttar Haryana Bijli Vitran Nigam Limited reported in (2014) 15 SCC 1 and submitted that, the death of Balasubramanian occurred due to electrocution and same is not denied by the respondents. The failure of the respondents to insulate the high tension wire has been pointed out by this Court in the earlier Writ Petition itself. When the negligence of the respondents has been accepted, awarding compensation following the principles adopted under the Motor Vehicles Act and Workmen Compensation Act are permissible and followed by the Courts in catena of judgments.

12. According to the Learned Counsel for the petitioners, the facts admitted by the respondents are sufficient to entertain the Writ Petition seeking compensation. This Court, earlier while dealing with the facts of the case in W.P.No.40171 of 2015 has held that by exercising the power under Article 226 of the Constitution of India, compensation can be awarded for the death Balasubramanian who died due to the negligence of the Authorities. The counsel submitted that this point is no longer res integra. When this Court has held that the petitioners are entitled to a reasonable amount of compensation and adhoc interim relief of Rs.5,00,000/- was already awarded. The Court expressed its difficulty in computing the exact amount of compensation to be awarded in the absence of details forthcoming from the petitioners. Since, there is nothing on record to show as to how the petitioners claim Rs.80,00,000/- as compensation, the earlier Writ Petition was disposed of by awarding Rs.5,00,000/- as interim compensation and left open to the petitioners to move the competent forum for further compensation. Hence, with details of computation of compensation, the present Writ Petition is filed.

13. While analysing the above submission of the petitioner, this Court find that the Hon'ble Supreme Court has reversed the judgment of the Hon'ble High Court of Orissa

awarding compensation for the electrocution under Article 226 of the constitution of India in Chairman, Grid Corporation of Orissa Vs. Sukamani Das and another reported in AIR 1999 SC 3412. In this judgment, the Apex Court has recorded its opinion in the following words.

"In our opinion, the High Court committed an error in entertaining the writ petitions even though they were not fit cases for exercising power under Article 226 of the Constitution. The High Court went wrong in proceeding on the basis that as the deaths had taken place because of electrocution as a result of the deceased coming into contact with snapped live wires of the electric transmission lines of the appellants, that "admittedly prima facie amounted to negligence on the part of the appellants". The High Court failed to appreciate that all these cases were actions in tort and negligence was required to be established firstly by the claimants. Mere fact that the wire of the electric transmission line belonging to the appellant No. 1 had snapped and the deceased had come into contact with it and had died was not by itself sufficient for awarding compensation. It also required to be examined whether the wire had snapped as a result of any negligence of the appellants and under which circumstances the deceased had come into contact with the wire. In view of the specific defences raised by the appellants in each of these cases they deserved an opportunity to prove that proper care and precautions were taken in maintaining the transmission lines and yet the wires had snapped because of circumstances beyond their control or unauthorised intervention of third parties or that the deceased had not died in the manner stated by the petitioner. These questions could not have been decided properly on the basis of affidavits only. It is the settled legal position that where disputed questions of facts are involved a petition under Article 226 of the Constitution is not a proper remedy. The High Court has not and

could not have held that the disputes in these cases were raised for the sake of raising them and that there was no substance therein. The High Court should have directed the writ petitioners to approach the Civil Court as it was done in OJC No. 5229 of 1995."

14. In the above case, the Court was asked to examine as to whether the wire had snapped due to negligence on the part of the Electricity Board and that caused the death, when the victim come in contact with the wire. In view of the defence raised and the denial of the petitioners that, they have taken proper care and precaution to maintain the transmission line. The Hon'ble Supreme Court has held that such disputed question of facts could not be decided in exercise of power under 226 of the Constitution.

15. Similarly, in a subsequent judgments of the Hon'ble Supreme Court in W.B State Electricity Board And Others Vs. Sachin Banerjee reported in 1999 (9) SCC 21, it observed that:-

"The only grievance of the petitioners relates to an observation in the impugned judgment that two victims had died because of the negligence of the petitioner State Electricity Board. Looking to the fact that the two victims were electrocuted because of an illegal hooking for the purpose of theft of electricity, the petitioners cannot be held guilty of negligence although they may have stated that there is a need for conducting dehooking raids more frequently"

16. Later, M.P. Electricity Board Vs. Shail Kumar and others reported in 2002 (2) SCC 162, the Hon'ble Supreme Court took a view that the Electricity Board could be fastened with the liability in a case, in which the live wire got snapped and fell on the public road, which was partially inundated with rain water. When the victim stepped out got electrocuted.

17. In H.S.E.B and Others Vs. Ram Nath and others reported in 2004 (5) SCC 793, the Hon'ble Supreme Court has observed that, when disputed question of facts were involved,

the Writ Petition could not be the proper remedy. In this case the averment in the petition against the Electricity Board was that they failed to maintain the electrical wires properly and has let to loose. The drooping of the wire was not controverted by the Board. Hence, the Hon'ble Supreme Court held that because the supplier of electricity did not controvert the facts alleged by the respondents, no disputed question of facts is involved.

18. The Hon'ble Supreme Court in S.D.O Grid Corporation of Orissa Ltd Vs. Timudu Oram reported in 2005 AIR SCW 3715 referring the judgments cited above has reiterated the legal position that, when negligence attributed to the Board is disputed, compensation under Article 226 of constitution cannot be granted.

19. In Raman Vs. Uttar Haryana Bijli Vitran Nigam Limited reported in (2014) 15 SCC 1 cited by the petitioners counsel surprisingly none of the earlier judgments of the Supreme Court mentioned above were considered. The Hon'ble Supreme Court in this case has only discussed about how the computation of compensation to be made probably, there was no other facts disputed in this case.

20. Recently, the Hon'ble Justice Mr.SenthilKumar Ramamoorthy, of this Court in W.P.No.7735 of 2006 vide order dated 11.04.2019, has referred judgments reported in AIR 1999 SC 3412 and AIR 2000 SC 1717 as well as Raman Vs. Uttar Harayana Bijli Vitran Nigam Limited and few other judgments and awarded compensation. This was because the Learned Judge found that the son of the petitioner, when went to the open ground behind his house, in order to urinate, got contacted with a live electric wire lying on the ground level and died due to electrocution.

21. Before the High Court of Jammu and Kashmir when three different Writ Petitions were filed for compensation for the death and injury caused due to electrocution, the question regarding maintainability of the Writ Petitions was considered by the Division Bench in Joginder Singh Vs. State of Jammu & Kashmir and others judgement dated 24.03.2011 reported in 2011 (1) JKJ 722. In this case, the Hon'ble Jammu & Kashmir High Court has held that power under Article 226 of the Constitution, though discretionary, has to follow well recognized norms and should not be used in each and every case where action

complained of is not related to a fundamental rights. This power is also not to be exercised where the petitioner has alternate remedy under ordinary law of the land. It can also be said that extra-ordinary Writ Jurisdiction cannot be exercised when the civil right of the parties are involved and the facts are disputed. However, all these well recognized norms would not be attracted in a case of strict liability.

22. The march of law in this aspect at present, had reached the stage that, if a human life is exposed to a risk due to or on account of negligence or fault of the injured, paying compensation becomes a disputed facts and same has to be decided in the Civil Court or other appropriate forum. In case of strict liability, a person undertaking an activity of hazardous nature will be liable to compensate for the injury irrespective of any negligence or carelessness on the part of the victim.

23. Insofar as application of strict liability is concerned, a person undertaking an activity involving hazards or risky exposure to the human life, is liable under the 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 liability case on such person is known, in law as "strict liability" where the defendant is held liable irrespective of whether he could have avoided the particular harm by taking 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. The doctrine of strict liability has its origin in English common law which it was propounded in the celebrated case of Rylands V. Fletcher (1868) 3 HL 330. Blackburn, J., the author of the said rule had observed thus in the said decision: The true rule of law is that the person who, for his own purposes, brings on his land, and collects and keeps there anything likely to do mischief if it escapes, must keep it at his peril, and, if he does not do so, he is prima facie answerable for all the damage which is the natural consequence of its escape.

24. In M.C.Metha Vs. Union of India reported in 1987 (1) SCC 395, while explaining strict liability the Hon'ble Supreme Court has held as below:-

"Where an enterprise is engaged in a hazardous or inherently dangerous activity and harm results to anyone on account of an accident in the operation of such hazardous or inherently dangerous activity resulting, for example, in escape of toxic gas the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident and such liability is not subject to any of the exceptions which operate vis-a-vis the tortious principle of strict liability under the rule in *Rylands v. Fletcher* (supra). We would also like to point out that the measure of compensation in the kind of cases referred to in the preceding paragraph must be co-related to the magnitude and capacity of the enterprise because such compensation must have a deferent effect. The larger and more prosperous the enterprise, the greater must be the amount of compensation payable by it for the harm caused on account of an accident in the carrying on of the hazardous or inherently dangerous activity by the enterprise."

25. In this case, Balasubramanian died due to electrocution while carrying iron rod from ground floor to the terrace via Staircase outside his house. The iron rod had contacted the live electrical wire passing near his house. The First Information Report given by the 1st petitioner reveals that Balasubramanian was carrying 15 feet length iron rod to the terrace of his house and same got contacted with the electrical wire.

26. In the counter filed by the respondents, in the earlier Writ Petition, it is specifically stated that, there was 8 feet distance between the compound wall/stairway and the wire. Certain observation made in this regard, in paragraph No.7 of the judgment was also been later clarified in the Review Petition. This Court, in the said judgment pointing out this facts has already held that, whether the distance of 8 feet was sufficient protection or the Board has to adopt other safety measures is a question where there is a dispute.

27. Going by the line of judgments, in cases where the

wires were loose or snapped and the electrocution occurred, the Courts have held that the Board is liable to pay compensation and Writ Petition under Article 226 is maintainable. In all other cases, the Courts have held that it is a disputed facts to be decided by the Civil Court. In this case, Balasubramanian got electrocuted on contacting electrical wire while carrying 15 feet length iron rod. He has contacted electrical wire 8 feet away from his building, these facts are disputed question of facts and therefore, computation of compensation under Article 226 of Constitution is not sustainable.

28. For the above said reasons, the Writ Petition is dismissed. It is open for the petitioners to work out the remedy before the competent forum as directed by this Court in the earlier W.P.No.40171 of 2015 dated 28.01.2016. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

bsm

To,

1. Tamil Nadu Electricity Board Limited,
NPKRR Maligai,
No.144, Anna Salai, Chennai - 600 002.
Rep by its Chairman and Managing Director.
2. Tamil Nadu Generation and Distribution Corporation
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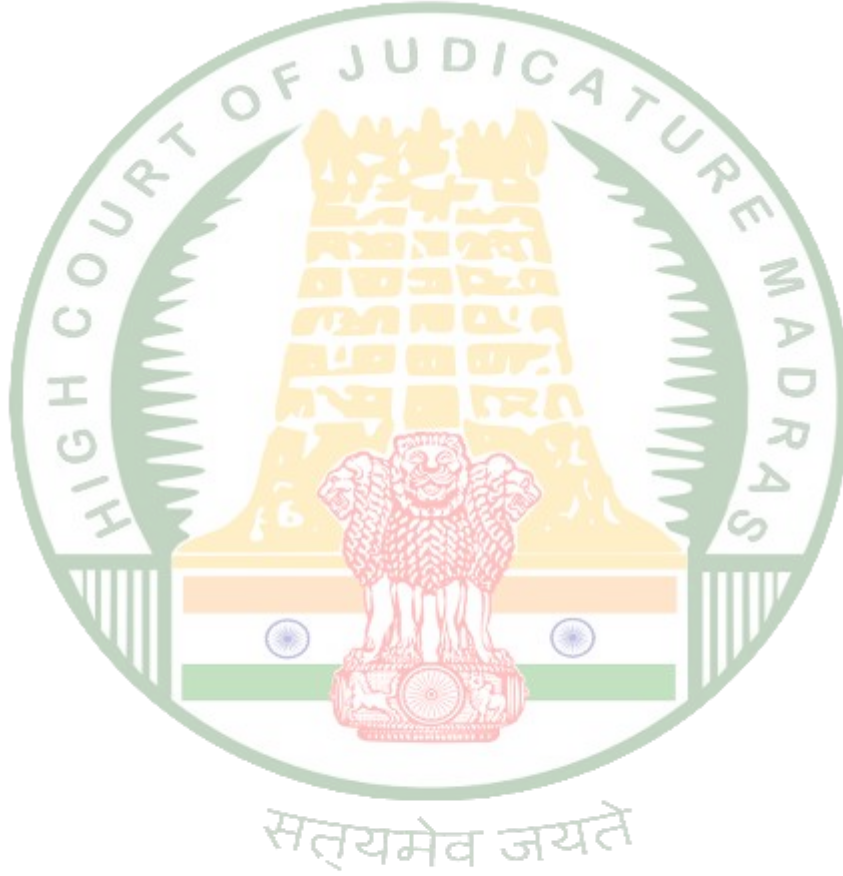
4. The Assistant Executive Engineer,
Swarnapuri TNEB, Convent Road,
Swarnapuri, Salem - 636 004.

+1cc to Mr.S.K.Raameshuwar, Advocate sr.89457

+1cc to M/s.M.Vidya, Advocate sr.89583

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