

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.11.2019

CORAM:

THE HON'BLE MR. JUSTICE T.RAJA

W.P.No.31794 of 2017

- 1.N.Lalitha
- 2.Suganya
- 3.Jayashree
- 4.Sampoornammal

.. Petitioners

Vs

- 1.Tamil Nadu Electricity Board,
Rep. By its Chairman,
Anna Salai, Chennai - 2.
- 2.The Superintendent Engineer,
Tamil Nadu Electricity Board,
Chennai, North,
No.144, Anna Salai, Chennai - 2.
- 3.The Executive Engineer,
Operation & Maintenance, North,
Ponneri, 33/11 KV Ponneri SS Campus,
Venbakkam, Ponneri - 601 204.
- 4.The Divisional Engineer,
Tamil Nadu Electricity Board,
Ponneri, Ponneri Taluk - 601 204.
- 5.The Assistant Executive Engineer,
Tamil Nadu Electricity Board,
Operation & Maintenance, North,
Ponneri, 33/11 KV Ponneri SS Campus,
Venbakkam, Ponneri - 601 204.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking a writ of mandamus to direct the respondents to pay just and fair compensation along with interest at 12% per annum from the date of accident dated 12.12.2014 to till the date of payment for the death of the first petitioner's husband who died due to electrocution.

For petitioner : Mr.R.Venkatesulu
For Respondents : Mr.P.R.Dhilipkumar,
Standing Counsel

ORDER

The first petitioner is the wife and the petitioners 2 to 4 are the daughters of the deceased-T.M.Nagarajan. They have filed this writ petition seeking for issuance of a writ of mandamus to direct the respondents to pay just and fair compensation along with interest at 12% per annum from the date of accident dated 12.12.2014 to till the date of payment for the death of the first petitioner's husband who died on 12.12.2014 due to electrocution.

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

3. It is averred in the affidavit filed in support of the writ petition that on 12.12.2014, while the first petitioner's husband was returning to home after completing his agricultural work, he came in contact with the livewire lying on the agricultural land, as a result, he was electrocuted and died on the spot on 12.12.2014. It is also further averred that in view of improper maintenance of livewire, the death had occurred and although many residents have informed to the respondents to undertake maintenance frequently during rainy season, they had never turned back. Therefore, it is pleaded, in view of such negligence on the part of the respondents Electricity Board, the deceased-T.M.Nagarajan died on the spot due to electrocution leaving behind his wife and three daughters as orphans. It is also further stated that had the respondents Board properly maintained the livewires, the ill-fated accident would have been averted. Hence, a direction may be given to the respondents to pay the just compensation.

4. From the above said facts and circumstances of the case and also on perusal of the First Information Report dated 12.12.2014 and Postmortem Certificate dated 12.12.2014, it is clear that the death had occurred due to the electrocution and resultant negligence on the part of the Electricity Board as they had failed to maintain the livewire properly and 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. This Court in a umpteen number of decisions has held that 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 first petitioner's husband was aged about 45 years as could be seen from the Postmortem Certificate dated 12.12.2014 issued by the Medical Officer, Government Hospital, Ponneri, Thiruvallur District. Therefore, since the deceased was an agricultural worker, 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:-
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

	X	Cost of Inflation Index for the year 2013-2014
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Cost of Inflation Index for the year 2007-2008

Therefore, Income of the deceased is

	6500 x 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 25% of the established income should be added where the deceased was between the age of 40 to 50 years. In the case on hand, it is not in dispute that the deceased was aged about 45 years at the time of his death. Therefore, if 25% is added from the monthly income fixed at Rs.11,000/- i.e. Rs.2,750/- towards future prospects, the total monthly income of the deceased works out to Rs.13,750/- (11000 + 2750).

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 14 and as the number of dependant family members of the deceased is 4 at the time of death, after deducting $1/4^{\text{th}}$ of his income (13750-3435) towards personal expenses, this Court hereby awards a sum of Rs.17,32,920/- (10315x14x12) 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.18,57,920/- as total compensation. The respondents/Electricity Board are hereby directed to pay the said amount as compensation to the petitioners, 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

/True Copy/

Sub Assistant Registrar

To

- 1.The Chairman,
Tamil Nadu Electricity Board,
Anna Salai, Chennai - 2.
- 2.The Superintendent Engineer,
Tamil Nadu Electricity Board,
Chennai, North,
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Venbakkam, Ponneri - 601 204.

+1 cc to M/s.R.Venkatesulu, Advocate Sr.No. 94863

+1 cc to Mr.P.R.Dhilipkumar, Advocate Sr.No.94153

AKM/28.01.2020/5P-8C /

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