IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-9469-2017 (O&M)
Date of Decision: 22.05.2019

Sudha & others --Petitioners

Versus

State of Punjab & others --Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Aakash Dalal, Advocate for the petitioners.

Ms. Sunint Kaur, A.A.G., Punjab.

Ms. G.K. Mann, Advocate for respondents no.2 & 3.

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TEJINDER SINGH DHINDSA.J (Oral)

Instant writ petition has been filed seeking a Mandamus directing the respondent-Punjab State Power Corporation Ltd. to pay compensation to the tune of Rs.30 lakh on account of death of Ashok Kumar on 27.7.2016.

Petitioners herein are the widow, son and daughter respectively of Ashok Kumar (since deceased).

It has been averred in the petition that on 26.7.2016 at about 6 P.M Ashok Kumar (since deceased) was going on his motorcycle bearing registration no. PB-03-N-9100 and proceeding towards Dana Mandi, Bathinda and when he reached near the wall of St. Joseph School, all of a sudden an electric pole erected by the side of the road fell upon him and as a result of which he received multiple injuries. Ashok Kumar was removed to the hospital being run by Dr. Jagmal but succumbed to the injuries suffered at 4 A.M on the following day i.e. 27.7.2016. DDR No.20 dated 27.7.2016 was registered on the statement of Nirmal Gupta i.e. sister of the deceased. Copy of the DDR stands annexed as Annexure P-5. A Post Mortem

Examination of the dead body of Ashok Kumar was also got conducted and the report has been appended as Annexure P-3 along with the writ petition. It has further been pleaded that various attempts were made to impress upon the respondent Corporation to compensate the family members but having not evoked any response the writ petition has been filed.

Upon notice having been issued, a joint written statement on behalf of the respondents has been filed by the Additional Superintending Engineer, D.S. Division, P.S.P.C.L, Bathinda.

In the reply it has been stated that the death of Ashok Kumar that took place on 27.7.2016 was on account of a natural calamity as there was a windstorm and a tree had fallen on the electric wires and which in turn led to the electric pole also coming down. It has been stated that there was no negligence on the part of the respondent Corporation and the occurrence was a simple accident and for which there is no provision for grant of compensation.

Counsel for the petitioners has vehemently argued that the incident happened due to negligence on the part of the respondent Corporation. It is contended that the Corporation had not taken due care with regard to fixation/erection of the electric pole. The mere fact that falling of a tree upon the wires has led to the uprooting of an electric pole reflects upon the callous attitude and negligence on the part of the concerned officials of the Corporation. It was further submitted that Ashok Kumar (deceased) was 49 years of age at the time of his death and was running a *Kiryana Shop*. Counsel contends that the monthly income of the deceased was Rs.15,000/- and sometimes even more. Petitioner no.1 is a housewife and petitioners no.2 and 3 i.e. the son and daughter were pursuing their studies and as such, all three petitioners were completely dependent upon Ashok Kumar (deceased). Counsel has urged that the untimely and tragic death of Ashok Kumar is on account of negligence on the part of the respondent Corporation which is an instrumentality of the State and was under a bounden duty to properly look after the installation of electric pole and it is on account of grave neglect on its part that the life of a citizen has been lost.

Per contra, counsel representing the respondent-Corporation has opposed the prayer made in the petition by adverting to the averments made in the written statement and by contending that death of Ashok Kumar on account of injuries suffered in the occurrence that took place on 26.7.2016 on account of falling down of the electric pole was an Act of God.

Counsel for the parties have been heard at length and pleadings on record have been perused.

A Division Bench of this Court in the case of **Paramjit Kaur & others Vs. State of Punjab & others, 2008 (4) RCR (Civil) 772** has held that in case of death due to electrocution, a writ petition claiming compensation would be maintainable and the claimants cannot be relegated to the civil Court. It was further held that the compensation amount has to be assessed as per the principles laid down in the Motor Vehicles Act, 1988. The Apex Court in **M.P. Electricity Board Vs. Shail Kumari, 2002 (1) RCR (Criminal) 443** held that the Electricity Board is liable to pay compensation even in cases where there was no negligence on its part. The relevant extract of the judgment reads as follows:-

"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 causes 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 look out 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 cast 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."

Adverting to the facts of the present case, the respondent Corporation is not denying the incident whereby the electric pole had fallen on Ashok Kumar deceased on 26.7.2016 while he was proceeding on a motorcycle and that the death had occurred on account of grievous injuries suffered as a result thereof. A stand has however been taken that on account of a windstorm, a big tree fell on the electric wires and consequently the electric pole also fell down and as such, there is no negligence on the part of the respondent Corporation but rather it was an Act of God and a natural calamity and beyond the control of the officials of the Corporation.

This Court, during the course of hearing, put a specific query to the counsel representing the respondent Corporation as to whether any fact finding inquiry had been conducted into the incident and whether any findings had been recorded with regard to periodic inspections having been carried out as regards erection/affixation of the electric pole. Counsel has responded in the negative. What clearly emerges is that the stand taken in the written statement is only to oppose the prayer for grant of compensation.

As per respondent Corporation, a tree having fallen on the electric wires on account of high velocity winds has in turn led to the electric pole coming down upon Ashok Kumar while he was proceeding on a motorcycle. Suffice it to observe that it was bounden duty of the respondent Corporation to have conducted periodic inspections of all the electric poles installed by it on the sides of the road and to take all such necessary precautionary measures to prevent such like incidents. It was not beyond comprehension of the Corporation that a tree or any such other object may under adverse weather conditions fall upon the electric wires or any of the installations in the nature of electric poles/transformers etc. The erection/installation, as such, of the electricity poles etc. has to be of the requisite strength so as to withstand such eventualities. Mere falling of a tree on the electricity wires cannot be accepted as a valid reason for a street side electric pole to come crashing down. This Court would have no hesitation in holding that the incident that led to the falling of the electric pole on Ashok Kumar deceased was on account of sheer negligence attributable solely to the respondent Corporation. The Corporation itself does not deny that the death of Ashok Kumar occurred on account of injuries that he had suffered in such incident. The respondent Corporation, as such, is liable to pay the compensation to the dependents of the deceased.

As per dictum laid down by a Division Bench in ***Paramjit Kaur's*** case (supra) the compensation amount would require to be assessed as per principles laid down for awarding compensation under the Motor Vehicle Act, 1988.

The petitioners have stated the age of the deceased to be 49 years on the date of his death. However, in the Post Mortem Report issued by the Civil Hospital, Bathinda at Annexure P-4, the age of the deceased has been reflected as 52 years approximately. This Court would accept the age of the deceased, as such, to be 52 years for purposes of quantifying the compensation amount. The petitioners have claimed that the deceased was earning Rs.15,000/- per month while running a Kiryana shop. However, no material/documents have been appended along with the writ petition and placed on record to substantiate such plea. Be that as it may, death of Ashok Kumar took place on 27.7.2016. He was maintaining a family consisting of his wife and two children, who were pursuing their education. In para 3 of the writ petition there are categoric averments that daughter of the deceased was pursing a Doctorate Degree at Panjab University, Chandigarh and the son was a student of Bachelor of Science in Computer Science, Statistics and Mathematics. Needless to observe that the deceased was paying for the education of his children. Under such circumstances, it would be safe and reasonable to accept the version of the petitioners as regards monthly income of the deceased to be Rs.15,000/-. Notional income of the deceased, as such, is assessed as Rs.15,000/- per month. As per guidelines furnished by the Apex Court in ***National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017(4) R.C.R (Civil), 1009*** and taking the age of the deceased to be 52 years on the date of his death, a 10% addition in income is granted towards future prospects. $1/3^{rd}$ deduction would be made from the income towards personal and living expenses of the deceased. Keeping in view the age of the deceased a multiplier of 11 would be applied by following the dictum of the Apex Court in ***Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another, 2009(3) RCR (Civil), 77.***

Accordingly, the compensation amount payable by the respondent Corporation is assessed as follows:-

Sr. No.	Head	Calculation
1.	Notional income per month	Rs.15,000/-
2.	10% increase in income towards future prospects	Rs.15000+1500=Rs.16,500/-
3.	1/3rd deduction towards personal and living expenses	16,500÷33%=Rs.5445/- 16,500-5445=11,055/-
4.	Compensation after applying multiplier of 11	11,055x12=1,32,660/- (annual income) 1,32,660x11=14,59,260/-
5.	Total	Rs.14,59,260/-

The compensation amount so determined shall be payable to the petitioners within a period of two months from the date of receipt of a certified copy of this judgement.

The compensation amount would be apportioned as follows:-

(i) 50% i.e. Rs.7,29,630/- in favour of petitioner no.1 being widow of the deceased.

(ii) Balance amount of 50% i.e. Rs.7,29,630/- be released in equal shares i.e. Rs.3,64,815/- each in favour of petitioners no.2 and 3 i.e. son and daughter of the deceased.

Writ petition is allowed in the aforesaid terms.

(TEJINDER SINGH DHINDSA)
JUDGE

22.05.2019
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Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No