

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.07.2020

PRONOUNCED ON : 03.08.2020

CORAM

THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA

W.P.No.28924 of 2011
(heard through VC)

1.Mr.Sounthirarajan (deceased)

2.Mrs.S.Kasthuri

2nd Petitioner is substituted as LR of the deceased first petitioner Mr.N.Sounthirarajan as per court order dt:26.9.2018 in WMP.27680/2018 in WP.28924/2011

...Petitioners

Vs

1. State Government of Tamil Nadu
Rep. by its Secretary
Energy Department
Fort St. George, Chennai

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

3. Chief Executive Engineer
Tamil Nadu Electricity Board
Athipattu Village
Thiruvellore (Dist).

4. The Chennai Corporation
Zone-VII, Ambattur, Chennai - 600 058
R4 impleaded as per order dated 3.2.2020
made in W.M.P. No.35256/2019 in W.P.
No.28924/2011

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Mandamus, directing the respondents to pay adequate compensation for the death of petitioner's daughter viz., Ms.S.Priya due to electrocution occurred on 14.6.2011.

For Petitioner : Mr.D.Kanagasundaram

For Respondents : Mr.V.Shanmugasundar, Spl. GP for R1
Mr.P.R.Dhilip Kumar, for R2 and R3
Mrs.B.Manimekalai for R4

* * *

O R D E R

The petitioner has sought for a Writ of Mandamus, directing the respondents to pay adequate compensation for the death of his daughter namely, S.Priya due to electrocution which was occurred on 14.6.2011.

2. The petition was originally filed by Mr.Sounthirarajan. Pending writ petition, the said Sounthirarajan died. His wife/mother of the victim, S.Kasthuri, has filed a Substitute Petition in W.M.P. No.27680 of 2018 in W.P. No.28924 of 2011 and the same was ordered on 26.9.2018 and Mrs.S.Kasthuri was substituted in the place of Mr.Sounthirarajan.

3. The petitioner is the mother of one Priya, who died of electrocution on 14.6.2011, while playing in front of their house situate at No.61, Chelliamman Nagar, Chelliamman Koil Street, Athipattu. According to the petitioner, Tamil Nadu Electricity Board, namely the respondents 2 and 3, had dug the roads for performing rectification of poor supply of electricity in the locality, but the same was not covered after repair works for the purpose of safety. The daughter of the petitioner got electrocuted while playing, due to the negligence and carelessness of the officials of the respondents 2 and 3. A complaint was preferred before T-2 Ambattur Estate Police Station in Crime No.249/2011 on the same day. As the only daughter was lost by the petitioner due to the negligence act of the respondents, a representation was sent seeking compensation. As there was no response, the above writ petition has been filed.

4. Pending writ petition, on 03.02.2020, the Chennai Corporation was also added as a party to the proceeding and arrayed as the fourth respondent in the writ petition. The fourth respondent/Chennai Corporation, had filed counter affidavit, contending that Ambattur Municipality was merged with the Corporation of Chennai vide G.O. Ms. No.97 MA&WS Department dated 19.07.2011 during Chennai expansion project. Thus the Ambattur Municipality was taken over by Chennai Corporation on 30.11.2011. The alleged accident was occurred on 14.6.2011, which was due to electrocution before the merger of Ambattur Municipality with the Greater Chennai Corporation. According to the fourth respondent, the local bodies were maintaining the street lights and a line man for every division. Hence there was no negligence on their part.

5. The respondents 2 and 3, who are Electricity Board, have specifically stated that, on 13.6.2011, the Ambattur Township Contractors Officials, in the process of widening Chelliamman Koil Street Road, Chelliamman Nagar under the control of Ambattur Township even without getting the permission or intimation to the Tamil Nadu Electricity Board, had widened the above said Chelliamman Koil Street road and closed the said widened road by filling the sand superficially by JCB without noticing that an underground cable lead to petitioner's was already damaged. There was a sudden rain on 14.6.2011 and the filled up soil became wet and rain water was collected in the dug up area. It is specifically stated in the counter affidavit that there was an electric leakage due to the same, which fact was not brought to the knowledge of the respondent, either by the local resident or by anybody.

6. In paragraph 6 of the counter affidavit, it has been specifically stated that the deceased child, while passing through the said road, got electrocuted resulting in her death. It is admitted that the accident had happened only due to the sudden, unusual rain and stagnation of the rain water in the widened road area under which the electric cable was damaged. It was further stated that the sudden rain on 14.6.2011 was nothing but an act of God and therefore, this respondent cannot be found fault with and be levied of the liability to pay the compensation.

7. Heard the learned counsel for the respective parties and perused the materials available on record.

8. The admitted facts in the above case are that, the petitioner's daughter Priya, aged about 11 years, died of electrocution on 14.6.2011 at 5.00 p.m. The electrocution resulted in the death of petitioner's child, due to the damaged underground cable, which was not attended to by the Electricity department. Now the question that arises for consideration is, whether the Corporation, which had taken over the erstwhile Ambattur Municipality, is liable or the respondents 2 and 3 are liable to pay compensation for the loss of petitioner's daughter?

9. It is also admitted that there was rain, which had resulted in collection of water at the dug up area under which the naked electrical wire was damaged, which resulted in the death of the girl, the respondents 2 and 3 cannot be allowed take the refuge under the plea of act of God, as in the counter itself, it has been stated that the electrical leakage was not brought to the knowledge by any of the local resident or even by a passer-by, when it is the bounden duty of the Electricity Board to maintain the cables in proper condition. A tort is

committed when damage is caused by breach of a duty or care by the person concerned. Though widening of the road was done by the Ambattur Municipality or now the Chennai Corporation, the fact remains that the death was caused due to the leakage of electricity through the damaged cable. Therefore, it has been established that the respondents 2 and 3 are at fault in not taking necessary action in maintaining the cable. It is also the bounden duty of the third respondent to take a periodical check up and inspection to ensure that there is no wire or cable is damaged. Therefore, there is overwhelming evidence to show that the respondents 2 and 3 were at fault.

10. As the negligence is on the part of the respondents 2 and 3, the next question that arises for consideration is, what is the compensation payable to the petitioner?

11. Though it was argued by the learned counsel for the respondents 2 and 3 that payment of compensation cannot be awarded under Article 226 of the Constitution of India, in appropriate cases, where there are no factual disputes, compensation can be awarded under Article 226 of the Constitution of India. At the time of the accident, the deceased minor child was 11 years old and was studying in 5th standard. The petitioner has not specifically mentioned any amount as compensation. Having lost their only child, no amount of compensation would equate the loss of the child, however, the court is bound to bear in mind the settled principles for arriving at just compensation.

12. Considering the above facts, this court is of the view that a sum of Rs.2,00,000/- (Rupees two lakhs only) would be a just compensation to the petitioner, for the death of her daughter through electrocution. Accordingly, the respondents 2 and 3 are directed to pay a sum of Rs.2,00,000/- to the petitioner and the said amount may be paid within a period of eight weeks from the date of receipt of a copy of this order.

13. With the above direction, the writ petition is allowed. However, there shall be no order as to cost.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. State Government of Tamil Nadu
Rep. by its Secretary
Energy Department
Fort St. George, Chennai

2. The Chairman
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Anna Salai, Chennai

3. Chief Executive Engineer
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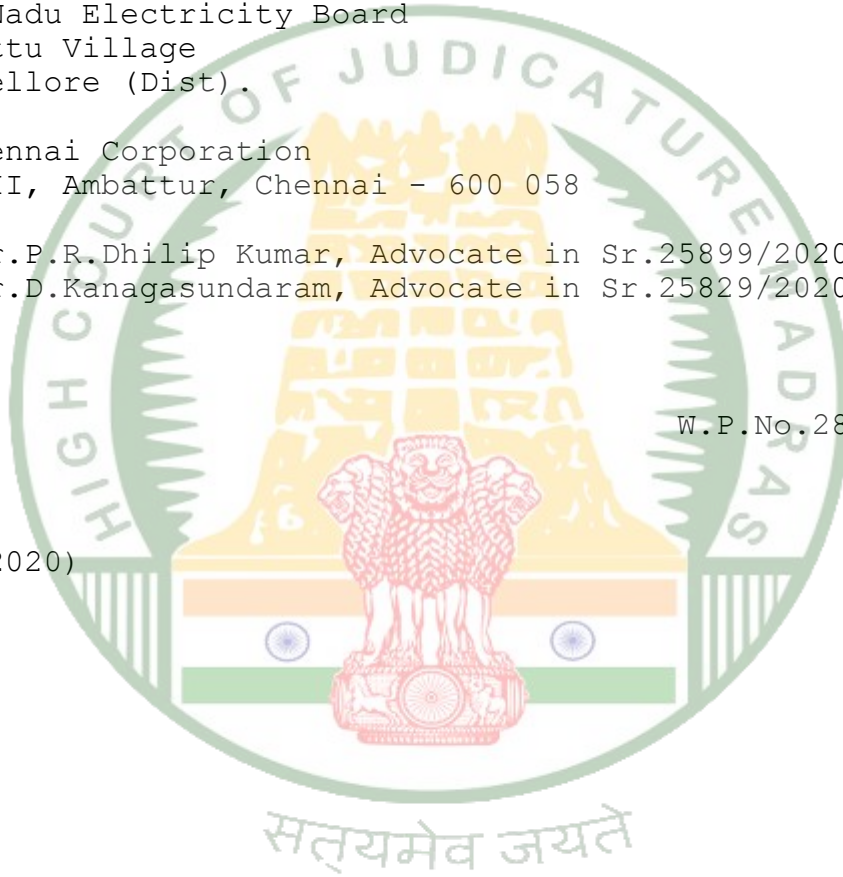
4. The Chennai Corporation
Zone-VII, Ambattur, Chennai - 600 058

+1cc to Mr.P.R.Dhilip Kumar, Advocate in Sr.25899/2020

+1cc to Mr.D.Kanagasundaram, Advocate in Sr.25829/2020

W.P.No.28924 of 2011

kk(co)
rv(18/09/2020)



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