

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

CRIMINAL WRIT PETITION NO. 1592 OF 2015

1. Parigabai w/o Ashok Kakde,
Age: 52 years, Occu: agriculture,
R/o. Dahegaon (Bor), Tq. Vaijapur,
Dist. Aurangabad.
2. Dattu s/o Ashok Kakde,
Age: 30 years, Occu: agriculture,
R/o. As above.
3. Gokul s/o Ashok Kakde,
Age: 28 years, Occu: agriculture,
R/o. As above.

... PETITIONERS

VERSUS

1. The State of Maharashtra
through the Collector Aurangabad.
2. The Executive Engineer,
Maharashtra State Electricity
Distribution Co. Aurangabad.
3. The Deputy Engineer
Maharashtra State Electricity
Distribution Co. Ltd. Vaijapur.
4. Chief Electric Inspector /
Electric Inspector,
Aurangabad.

[Amendment carried out as
per Court order dated 13/12/16.]

... RESPONDENTS

...
Mr. A. B. Gaikwad, Advocate for Petitioners.
Mr. A. V. Deshmukh, APP for Respondent No.1.
Mr. A. M. Gaikwad, Advocate for Respondent Nos.2 & 3.

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WITH
CRIMINAL APPLICATION NO. 497 OF 2017
IN
CRIMINAL WRIT PETITION NO. 1592 OF 2015

1. Parigabai w/o Ashok Kakde,
Age: 52 years, Occu: agriculture,
R/o. Dahegaon (Bor), Tq. Vaijapur,
Dist. Aurangabad.
2. Dattu s/o Ashok Kakde,
Age: 30 years, Occu: agriculture,
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Mr. A. V. Deshmukh, APP for Respondent No.1.
Mr. A. M. Gaikwad, Advocate for Respondent Nos.2 & 3.

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CORAM : T. V. NALAWADE &
B. U. DEBADWAR, JJ.

DATE : 22nd January, 2021.

JUDGMENT: (Per T. V. Nalawade, J.)

. The petition is filed for relief of compensation of rupees ten lakh in respect of death of one Ashok Kakde, who died due to electrocution.

2 Both the sides are heard.

3 Petitioner No.1 is the widow of deceased Ashok and Petitioner Nos.2 and 3 are sons of deceased Ashok. The incident took place on 31st July, 2014 in land Gat No.12 owned by Ashok. It is contended that on that day, there was rain and the deceased was working in the field. It is contended that he had gone for starting electric motor and at that time Petitioner No.1 was present in the house, which is situated in the same land. It is contended that supply of electricity was taken from a pole situated near the well for electric pump. It is contended that when Petitioner No.1 heard hue and cry of the deceased, she came out and she saw that the deceased was

lying near the well. It is contended that the deceased was shifted to Government Hospital, Vaijapur, but the doctor declared that he was already dead.

4 It is the contentions of the Petitioners that during inquiry made under Section 174 of the Code of Criminal Procedure, statements were recorded, *inquest* was prepared and postmortem was conducted and it became clear that the death took place due to cardio respiratory arrest due to electric shock. It is contended that the incident took place due to fault of Respondent Nos.2 and 3, Maharashtra State Electricity Distribution Company, Aurangabad as proper steps were not taken in respect of one tension wire of aforesaid pole and due to that there was power leakage. The said electric pole was at the distance of hardly 10 to 15 feet from the well and so it is contended that compensation needs to be given by Respondent Nos.2 and 3.

5 Respondent Nos.2 and 3 have filed reply. They admitted that the death took place due to shock due to electricity, but they have denied that there was negligence on the part of Respondent Nos.2 and 3 and due to that the incident took place. It is contended that for Gat No.12 electricity connection was given in favour of Bhausaheb

Kakde, brother of deceased and the deceased had taken illegal connection from said kitkat to his agricultural pump. It is contended that the deceased was engaged in taking supply of electricity from the pole illegally and during that activity, the incident might have happened. It is contended that the Electrical Inspector carried out investigation and his report is also to that effect. They have prayed for dismissal of the petition.

6 Respondent No.4, Electrical Inspector has filed reply and Respondent No.4 has supported the contentions made by Respondent Nos.2 and 3.

7 It is not disputed that Ashok died due to cardio respiratory arrest due to electric shock. The *postmortem* report in that regard is available, which is not disputed. The *postmortem* report shows that in column No.17, there is mention that there were surface wounds like abrasions at left index finger and the left heel. The *inquest* report is also not disputed and in the *inquest* report dated 31st July, 2014, *Panch* witnesses gave opinion that the death took place before 18:50 hours on 31st July, 2014 due to electric shock. The spot *Panchanama* was prepared on 1st August, 2014. In the reply, this document is not disputed and it shows that one cement electric pole was fixed in the

field and from that pole there were four wires and out of the four wires, three green wires were taken upto the kitkat board and from the kitkat board there was a black wire upto the starter box. One cable wire was taken from the pole upto the house of Karhari Kakde. There were two tension wires fixed to the pole. To one tension wire, there was a stay insulator, but to other tension wire, there was no stay insulator. Around the electric pole, there was *Binni* grass. The spot *Panchanama* shows that the well was situated at the distance of 75 feet from the pole and only one electric motor was fixed on the well.

8 The submissions made and the record show that the police had formed opinion that it was fault of Respondent Nos.2 and 3 as there was no stay insulator to one tension wire. However, the Electrical Inspector gave opinion that there was possibility that the deceased had tried to handle the kitkat and during that handling he had come in contact with open, live cable coming out of kitkat and he had sustained electric shock. This report is dated 4th January, 2017. It can be said that this report cannot be accepted as expert opinion as the incident had taken place on 31st July, 2014. It appears that some statements were shown to be recorded by the Electrical Inspector during inquiry in the year 2017 and on those statements signatures of the relative of deceased including the son of deceased, were

obtained. On that basis, submission was made for Respondent Nos.2 and 3 that the report given by the Electrical Inspector can be accepted.

9 As against the aforesaid record created by the Electrical Inspector, there is a record of spot *Panchanama* made by the Chief Judicial Magistrate, Aurangabad on the basis of direction given by this Court in the present proceeding on 3rd May, 2017. The report of the learned Chief Judicial Magistrate shows that the land where the pole was fixed, was belonging to joint family of deceased and his brother. He formed opinion that on that day there was no fault with the wires coming out of starter. He formed opinion that on the day of incident, as there was no stay insulator to one tension wire, the current must have gone to the land on that day as there was rain. He considered the other record like spot *Panchanama* and he noticed that the record created immediately after the incident shows that the deceased was present near the tension wire as he was cutting the *Binni* grass.

10 Thus, on one hand, the record, which was immediately created and the information given by the relative of the deceased show that there was fault like not keeping stay insulator on one tension wire, and on the other hand, there is an opinion of the

Electrical Inspector obtained in the year 2017. The aforesaid circumstances show that the electric connection was taken for the well and there was no illegality in it. Even in the report of the Electrical Inspector there is no mention that there was some illegality noticed by him. Due to all these circumstances, there is clear probability that the incident took place due to fault of Respondent Nos.2 and 3.

11 The learned counsel for Respondent Nos.2 and 3 drew the attention of this Court to the provisions of the Electricity Act, 2003. He produced on record Administrative Circular No.533 dated 9th March, 2016. He submitted that when there is opinion of the Electrical Inspector of aforesaid nature, due weight needs to be given to the opinion.

12 On the other hand, the learned counsel for Petitioners placed reliance on the following cases:

- a) *AIR 2017 Supreme Court 718*, (*State of Himachal Pradesh and others Vs. Naval Kumar alias Rohit Kumar*) ;
- b) *2002 AIR (SC) 551*, (*M.P.Electricity Board Vs. Shail Kumari*) ; and

- c) **Writ Petition No.3212 of 2016**, (*Laxmibai Vs. Maharashtra State Electricity Distribution Co. Ltd. and Ors.*) decided by the Aurangabad Bench of this Court on 29th January, 2020.

13 In the case decided by this Court of *Laxmibai* cited (*supra*), this Court has considered the contentions in respect of the provisions of the Electricity Act and the Administrative Circular. In the present matter, no financial aid was given even when fatal accident took place. The submissions made by the learned counsel for Respondent Nos.2 and 3 show that the amount of atleast rupees four lakh can be given. This Court holds that, for the reasons already given, the opinion of the Electrical Inspector cannot be used. Thus, the compensation needs to be given to the Petitioners, who are dependents of the deceased.

14 As per the *postmortem* report, the age of the deceased was 50 years. This Court is expected to give the compensation as remedy available under Article 226 of the Constitution of India, public law remedy. This Court has power to grant reasonable compensation and it is independent of the proceeding, which can be filed in Civil Court under the law of torts. In the present case also, this Court holds

that it is a case of strict liability due to the negligence of Respondent Nos.2 and 3. In the year 2014, even the Tribunal appointed under the Motor Vehicles Act could have presumed monthly income of such person as Rs.4,000/-. In view of the age of the deceased, 11 can be adopted as multiplier. If Rs.1,000/- is deducted towards personal expenses of the deceased, loss of dependency comes to Rs.3,000/-. Thus, the total amount of loss of dependency comes to Rs.3,96,000/- i.e. $(3000 \times 12 \times 11 = 396000)$. Petitioner No.1 is widow of the deceased and she can get some amount as there is loss of consortium and that amount can be Rs.50,000/- and for funeral expenses the amount of Rs.25,000/- can be given. This Court holds that the *lump-sum* amount of Rs.4,00,000/- can be given in this case in respect of the death of Ashok Kakde. In the result, the following order is passed:

ORDER

- I. The criminal writ petition is allowed as against Respondent Nos.2 and 3.
- II. Respondent Nos.2 and 3 are hereby directed to pay compensation of Rs.4,00,000/- (Rupees Four Lakh Only) in respect of the death of Ashok Kakde. The amount is to be deposited in this Court within 45 days from today.

- III. If the amount is not deposited within 45 days, the amount shall carry interest at the rate of 8% per annum.
- IV. After depositing of the amount, affidavit is to be filed by the Petitioners regarding parents of the deceased and only after that order of disbursement will be made.
- V. Rule is made absolute in the aforesaid terms.
- VI. Other connected applications are disposed of.

[B. U. DEBADWAR, J.]

[T. V. NALAWADE, J.]

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