



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.01.2021

CORAM

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

AND

THE HONOURABLE MRS. JUSTICE S.KANNAMMAL

W.A. (MD) No.519 of 2012

and

M.P. (MD) Nos.1 to 3 of 2012

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- 1.The Chairman
Tamil Nadu Electricity Board
Anna Salai, Chennai
- 2.The Superintending Engineer
Tamil Nadu Electricity Board
Sivagangai, Sivagangai District
- 3.The Executive Engineer
Tamil Nadu Electricity Board
Manamadurai, Sivagangai .. Appellants/Respondents 2 to 4

Vs.

- 1.Mrs.Chinnammal .. 1st Respondent/Writ Petitioner
- 2.The Secretary
Ministry of Electricity
Secretariat,
Chennai. .. 2nd respondent/1st respondent

PRAYER : Writ Appeal filed under Clause 15 of the Letters Patent, against the order dated 30.3.2012 passed in W.P.(MD) No.5448 of 2011.

Prayer in WP(MD). 5448/ 2011 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ or order or direction particularly writ of mandamus to direct the respondents to pay Rs.10,00,000/- as a compensation for the petitioner due to the death of petitioner s son within a time frame fixed by this Honourable Court.

For Appellants	: Mrs.S.Srimathy
For R1	: Mr.R.Ramasamy
For R2	: No Appearance

**ORDER**

Challenge in this writ appeal is to the order of the writ Court dated 30.3.2012 made in W.P.(MD) No.5448 of 2011, by which, the writ court directed the appellants herein/Electricity Board to pay a compensation Rs.3,62,000/- along with cost to the first respondent for the death of her son.

2. The case of the first respondent/writ petitioner is that she is the mother of one Kasinathan. She has two other children apart from Kasinathan. On 23.06.2010, around 11.00 a.m, the said Kasinathan, while he was spreading his wet clothes on the pole which is situated on the left side of his house, he was electrocuted suddenly. He was taken to Government Rajaji Hospital, Madurai and ultimately, he died on the same day.

3. According to the first respondent/writ petitioner, the incident was solely happened due to the negligence on the part of the officials of the Tamil Nadu Electricity Board and the officials failed to maintain the supply line in good condition and hence, the first respondent/writ petitioner wanted the Tamil Nadu Electricity Board, to pay compensation for the death of her son. Therefore, she has filed W.P.(MD) No.5448 of 2011, for a direction to the appellants herein to pay a sum of Rs.10,00,000/- as compensation towards the death of her son.

4. The claim was contested by the appellants herein/respondents by filing a counter stating that the incident had occurred solely due to the negligence on the part of the son of the writ petitioner and that the Board is responsible up to the main wire and it is the responsibility of the private individual to take the wire from the pole to the house. The private individual ought to have maintained the service wire properly by engaging private electrician. The negligence on the part of the deceased alone contributed for the incident in question and therefore, the Board is not liable to pay compensation.

5. Upon hearing the parties and after perusing the records available before it, the writ court, considering the provisions of the Electricity Act, 2003, and the decision of the Hon'ble Supreme Court, at paragraph Nos.15 and 17, 21 to 23 held as under:

" 15. Section 43(2) very clearly provides that it is the duty of the distribution licensee to provide electricity by taking the electric line. In the face of such an express provision, the Electricity Board cannot be heard to say that it is for the owner or occupier of the premises to maintain the electric line. Therefore, I am not inclined to accept the defence taken by the Electricity Board in the subject case.



17. The concept of strict liability in the context of snap electrocution came up for consideration before the Supreme Court in **M.P. Electricity Board v. Shail Kumari** [2002(2) SCC 162], the Supreme Court interpreted the rule of strict liability and directed the Electricity Board to pay compensation to the dependents of the deceased, after arriving at a finding that the live wire got snapped and fell on the public road which was partially inundated and the deceased rode over the wire, which twitched and snatched him resulting in his instantaneous electrocution. The Supreme Court indicated the theory of foreseeable risk in the following words:

7. 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 lookout 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



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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."

21. The deceased was aged about 27 years as on the date on which he was electrocuted. He was an agriculturist. He was also working as a Mason. The income of the deceased has to be taken as Rs.4,500/- per month. The annual income would be a sum of Rs.54,000/-. The annual income so arrived shall be reduced by one third in consideration of the expenses, which the victim would have incurred towards himself had he been alive. Therefore, the available surplus income would come to Rs.36,000/-. In case the multiplier is taken as '15', the total compensation which would come to a sum of Rs.5,40,000/-.

22. Since the deceased was also at fault on account of his negligent act in placing wet clothes on a service line, necessarily, a percentage should be deducted on account of his contributory negligence. I am of the view that one third of the amount should be deducted towards the contribution of the deceased to the incident. Accordingly, the total compensation is arrived at Rs.3,60,000/-. The petitioner is entitled to a sum of Rs.2,000/- towards the funeral expenses.

23. The Tamil Nadu Electricity Board is directed to pay a sum of Rs.3,62,000/- [Rupees three lakhs and sixty two thousand only] to the petitioner with interest at 6% from 28 April, 2011. The petitioner is also entitled to cost estimated at Rs.5,000/-. The payment shall be made, within a period of two months from the date of receipt of production of a copy of this order."

6. Aggrieved by the same, the instant writ appeal has been filed.

7. Heard Mrs.S.Srimathy, learned standing counsel for the Electricity Board and Mr.R.Ramasamy, learned counsel for the first respondent and perused the materials available on record.



8. Though it was argued by the learned counsel for the appellants 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. The materials available on record clearly indicates that the deceased died on account of electrocution and therefore, necessarily, the Board should compensate the dependents of the deceased.

9. It is not in dispute that the deceased was 27 years old on the date of accident and he was working as a Mason, besides an agriculturist and was earning a sum of Rs.10,000/- per month.

10. The writ court, by following the decision in **Sri Ramachandrappa vs. Manager, Royal Sundaram Alliance Insurance Company** reported in **AIR 2011 SC 2951**, has fixed notional income of the deceased at Rs.4,500/- per month, applied multiplier '15' and determined the compensation at Rs.5,40,000/-. The learned Single Judge has also further held that, since the deceased was also at fault on account of his negligent act in spreading wet clothes on a wire line, deducted one third amount and determined the compensation at Rs.3,60,000/- and awarded a sum of Rs.2,000/- towards funeral expenses and directed the Electricity Board to pay a sum of Rs.3,62,000/- as compensation to the first respondent/writ petitioner, towards the death of her son along with interest and cost.

11. The learned single Judge, after elaborately considering the relevant provisions of the Electricity Act, 2003 and the decision of the Hon'ble Supreme Court, has awarded the compensation. Hence, we do not find any error or illegality in the order of the writ court, warranting interference by this court.

12. In the result, the writ appeal is dismissed confirming the order of the writ Court dated 30.03.2012 made in W.P.(MD)No.5448 of 2011. The appellants herein/Electricity Board is directed to disburse the amount, if not already disbursed, within a period of six weeks from the date of receipt of a copy of this judgment. No costs. Consequently, the connected miscellaneous petitions are closed.

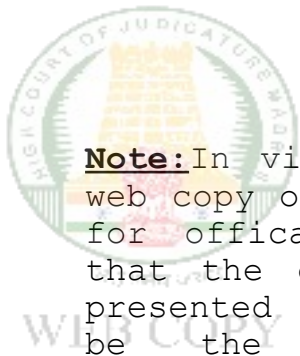
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Assistant Registrar (crl side)

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Sub Assistant Registrar(CS)



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