

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

**W.P.A. No.5087 of 2018
IA No: CAN 1 of 2018
(Old No: CAN 8493 of 2018)**

**Raju Sekh
Vs.
West Bengal State Electricity Distribution
Company Limited and others**

For the petitioner	:	Mr. Abhimunya Banerjee, Mr. Atanu Ghosh
For the WBSEDCL	:	Mr. Sumit Ray
Hearing concluded on	:	15.11.2022
Judgment on	:	22.11.2022

Sabyasachi Bhattacharyya, J:-

1. The son of the petitioner, namely Rajesh Sekh, was electrocuted on December 12, 2014. He was about eleven years old at that time. The interment took place in a local burial ground. Subsequently, the petitioner having lodged a complaint with the Falta Police Station on December 17, 2014, the body was exhumed and post-mortem was done, the report of which indicated that death was due to electrocution (ante-mortem nature).

2. The electrocution was by a supply line of the WBSEDC. The petitioner, thus, claims compensation from the West Bengal State Electricity Distribution Limited (WBSEDCL) Distribution Licensee, that is, the WBSEDCL.
3. Learned counsel for the petitioner submits that although the petitioner is entitled to compensation within the contemplation of the Electricity Act, 2003 (for short, “the 2003 Act”), no such compensation has been given as yet. It is submitted that the post-mortem report clearly indicated the cause of death to be electrocution.
4. Learned counsel places reliance on an unreported judgment of this Court in WPA No.23672 of 2015 [*Kabita Modal (Gayen) Vs. West Bengal State Electricity Distribution Co. Ltd. and others*], dated March 22, 2022. In the said judgment, it was held that the WBSEDCL was to decide the amount of compensation payable to the petitioner on the demise of her husband by electrocution, applying the multiplier and yardsticks as provided for death by accident under the Motor Vehicles Act, 1988 and the Rules framed thereunder.
5. Learned counsel also places reliance on the Regulations framed by the Electricity Regulatory Commissions of several States to indicate that the compensation payable on death, as per the said provisions, range between Rs.4.5 lakh to 6 lakh.
6. It is submitted that the WBSEDCL took no steps for the hooking of electricity which was the result of the loose wire dangling in a precarious position, causing the death of the petitioner’s son.

7. Learned counsel appearing for the petitioner also cites a judgment rendered by the West Bengal Human Rights Commission, wherein the Commission *suo moto* took cognizance of the death by electrocution and had directed compensation to be paid to the tune of Rs.5 lakh.
8. Learned counsel appearing for the WBSEDCL contends that a proper investigation was required to ascertain whether there was any negligence on the part of the WBSEDCL or the death of the petitioner's son was a murder or otherwise than electrocution. It is pointed out that the post-mortem report indicated electrocution as well as a cut mark on the forehead of the victim. Moreover, the first complaint of the victim's father had alleged that one Kalo Khan had sought to hush up the death and offered the petitioner Rs. Five thousand. According to the complaint, this indicated that the petitioner's son had died due to electrical hooking. It was also alleged that the petitioner was made to sign in a blank paper by the son of the said Kalo Khan.
9. Hence, the possibility of the death being caused by something other than electrocution cannot be ruled out and, as such, no negligence can be attributed to the WBSEDCL. As such, no liability ought to be cast on the WBSEDCL for payment of compensation in that regard, it is argued.
10. The relevant law, it is submitted, provides not for compensation but for intimation to the Electrical Inspector, which was duly done in the present case by the WBSEDCL.
11. Placing reliance on the comprehensive report filed by the WBSEDCL as per a previous direction of a learned Single Judge of this Court (since deceased), learned counsel for the WBSEDCL informs the court that the

latest compensation, as disclosed by a Circular issued by the WBSEDCL on March 17, 2017, fixed the amount of solatium at Rs.5 lakh in case of death.

12. Upon hearing learned counsel for the parties, it is evident that the relevant provisions in the 2003 Act in this context are Sections 53 and 161 of the said Act. Section 53 makes provisions relating to safety and electricity supply. Suitable measures are to be specified under the said provision for various purposes.
13. Clause (a) of Section 53 speaks of protecting the public from dangers arising, *inter alia*, from distribution of electricity or use of electricity supplied or installation, maintenance or use of any electric line or electrical plant.
14. Clause (b) provides for eliminating or reducing the risks of personal injury to any person or damage to property of any person or interference with the use of such property.
15. Clause (g) indicates specifying action to be taken in relation to any electric line or electrical plant or appliance under the control of a consumer for the purpose of eliminating or reducing the risks of personal injury or damage to the property or interference with its use.
16. Section 161 of the 2003 Act provides, under sub-section (1), that if any accident occurs in connection with, *inter alia*, the distribution of electricity in or in connection with any part of the electric lines or electrical plant of any person and the accident results or is likely to have resulted in loss of human or animal life, etc., such person shall give notice of the occurrence and of any loss or injury actually caused by the accident in the prescribed

form to the Electrical Inspector or other person or authority as the appropriate government directs.

- 17.** The WBSEDCL claims that it has complied with its duty under Section 161(1) by giving the notice of the accident to the Electrical Inspector.
- 18.** Sub-section (2) of Section 161 stipulates that the appropriate government may, if it thinks fit, require an Electrical Inspector or other person appointed by it to enquire and report as to the cause of any accident affecting the safety of public, etc.
- 19.** However, in the present case, the accident did not, in terms, affect “the safety of public”, as it was personal in nature inasmuch as the petitioner’s son met his demise. Whether the precarious hanging of the wire-in-question could have affected public safety is not on record. As such, the said provision cannot be applied here. In any event, no such enquiry was directed by the appropriate government, that is, the State Government in the present case.
- 20.** Insofar as the post-mortem report, annexed to the writ petition, is concerned, it is clearly revealed from the same that there was one oblique electrical wound of entry 6 inches x 0.4 inches across the forehead and another electrical wound of exit 1 inch x ½ inch placed obliquely over the left big toe.
- 21.** The nature of injury, thus, clearly fixed the cause of death to electrocution beyond all reasonable doubts. Moreover, it was clearly indicated in the post-mortem report that there was no other injury except those as noted above, detected even after careful dissection and examination with the help of hand magnifying lens.

22. Hence, there cannot be any doubt as regards the sole cause of demise of the petitioner's son being electrocution. Since the distribution line which was the cause of such electrocution was maintained and owned by the WBSEDCL, the WBSEDCL, in any event, cannot avoid liability thereof.
23. In the cited judgment of the Human Rights Commission, several judgments of the Supreme Court were also quoted.
24. In *Parvati Devi Vs. Commissioner of Police, Delhi* reported at (2000) 2 SCC 222, the Supreme Court had held that once it is established that the death occurred on account of electrocution while walking on the road, necessarily the authorities concerned must be held to be negligent.
25. In the case of the *M.P. Electricity Board Vs. Shail Kumari and others* reported at (2002) 2 SCC 162, where a live wire got snapped and fell on the public road, causing injury or death, it was held by the Supreme Court that the commission of alleged mischief by siphoning such energy to his private property by an individual, causing death by electrocution, was not a valid defence on the part of the distribution licensee.
26. In both the above cases, the Supreme Court adopted the principle of "strict liability" in view of the nature and hazards involved in the apparatus and lines of a distribution licensee.
27. In the Single Bench judgment of *Kabita Mondal (Gayen)* (supra), it was observed that the Board of Directors of WBSEDCL, in its 69th meeting dated February 20, 2017, had fixed Rs.5 lakh as solatium, but such quantum was held to be fixed arbitrarily by the Board without disclosing methodology applied to arrive at such conclusion. (In fact, the same Circular has been produced in connection with the present case as well.)

- 28.** In such context and in view of the dearth of any provision for compensation in the 2003 Act and the relevant Rules, compensation was held to be payable, applying the multiplier and yardsticks given under the Motor Vehicles Act, 1988 and the Rules framed thereunder.
- 29.** The WBSEDCL has sought to set up a defence to the effect that the investigation was not sufficient to reveal whether the death was by electrocution or happened prior to the same due to some act of the persons who were there at the relevant juncture. Such suspicion is sought to be cast on the strength of the initial complaint of the petitioner, which indicated probable involvement of one Kalo Khan and his son.
- 30.** However, the post-mortem report, a copy of which is Annexure P-2 at page 16 of the writ petition, leaves no manner of doubt as to the cause of such death. It is clearly specified there that there were two injuries on the body of the deceased victim. Both the said injuries were “electrical wounds” as per the coroner, that is, the Medical Officer, Diamond Harbour District Hospital.
- 31.** At the footnote of the post-mortem report, it was specifically written that death was due to the effects of electrocution as noted thereinabove – ante-mortem in nature. Nothing is produced to rebut such specific finding in the post-mortem report to dispel the presumption of death by electrocution.
- 32.** As has consistently been held by the Supreme Court in the decisions discussed above, also considered by the West Bengal Human Rights Commission, irrespective of negligence, strict liability has to be fixed on the distribution companies and licensees inasmuch as the nature of the work done by them is inherently hazardous and involves serious risks of fire and

electrocution as well as potentially massive damage to persons and property.

- 33.** There is no scope of deviating from such ratio in the present case as well.
- 34.** In any event, neither the Electrical Inspector nor the committee formed by the authorities reported any variation from the post-mortem version of death by electrocution.
- 35.** Admittedly, the supply line-in-question belonged to the WBSEDCL. As such, the WBSEDCL cannot avoid liability for compensation.
- 36.** Although the Electricity Act, 2003 does not clearly provide for any compensation being payable, several States, despite such drawback in the said statute, have formulated the procedure and rates at which such compensation is payable to victims of injury or death by electrocution.
- 37.** Unfortunately, there is no such regulation framed by the West Bengal Electricity Regulatory Commission, nor has any change, in that regard, found its place in the Electricity Act, 2003.
- 38.** The said statute is inadequate to the extent that it provides for mere intimation of accidental death and injury but does not provide for any compensation being payable, the quantum of such compensation or the procedure for ascertaining the amount of such compensation, apart from cases in which public safety in general is disturbed.
- 39.** The law is well-settled that, even in Tort, if not in statutes, the remedy of compensation is available to a victim or her/his family in the event of an accidental death like electrocution. That, coupled with the strict liability principle formulated by the Supreme Court in the above mentioned cases, clearly indicates that, in the present case, the WBSEDCL was liable for

payment of adequate compensation to the petitioner, the father of the victim.

40. Going by the principle as discussed in *Kavita Mondal (Gayen) (supra)*, in view of inadequacy in the statute and regulations, there is no other option but to fix the rate of compensation as per the touchstone of the Motor Vehicles Act, 1988. The yardsticks and multipliers applicable for compensation to the family of victims of accidental death have to be borrowed for the purpose of calculating the compensation payable to the present petitioner. Such calculation, of course, has to be done on a case-to-case basis.
41. However, there is no doubt in the present case as to the liability of the WBSEDCL to pay adequate compensation to the petitioner as the father of the victim child.
42. Hence, W.P.A. No.5087 of 2018, along with IA No: CAN 1 of 2018 (Old No: CAN 8493 of 2018), is allowed, thereby directing the WBSEDCL to ascertain the amount of compensation payable to the petitioner on the demise of his eleven year old son, Rajesh, applying the multiplier and tests for payment of compensation in accidental death cases under the Motor Vehicles Act, 1988 and the extant Rules and/or Regulations framed thereunder. The WBSEDCL shall complete such assessment expeditiously, in view of the long time which has elapsed in the meantime, and come to a conclusion upon application of the necessary yardsticks positively within December 31, 2022. The compensation assessed shall be disbursed to the petitioner latest by January 15, 2023.
43. There will be no order as to costs.

- 44.** Urgent certified copies, if applied for, be issued by the department on compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)