

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

The Hon'ble Justice Sabyasachi Bhattacharyya

W.P.A. No. 23672 of 2015

Kabita Mondal (Gayen)

Vs.

West Bengal State Electricity Distribution Co. Ltd. and others

With

W.P.A. No. 5382 of 2016

Kabita Mondal (Gayen)

Vs.

**The West Bengal State Distribution Company Limited Service
and others**

For the petitioner : Mr. Partha Sarathi Dev Barman,
Mr. Sourav Mallick,
Ms. Avipsa Sarkar

For the WBSEDCL
in both the matters : Mr. Sujit Sankar Koley

For the State
in W.P.A. No.23672 of 2015 : Mr. Wasim Ahmed,
Sk. Md. Masud

For the State
in W.P.A. No.5382 of 2016 : Mr. Pinaki Dhole,
Ms. Kakali Samajpati

Hearing concluded on : 15.03.2022

Judgment on : 22.03.2022

Sabyasachi Bhattacharyya, J:-

1. The petitioner's husband Ananda Mondal died of electrocution on May 1, 2015 when energized electricity wire drawn over a brick-built

government road fell over the said deceased. The petitioner made representations before the West Bengal State Electricity Distribution Company Limited (for short, “the WBSEDCL”) for compensation on the ground of such demise. However, the said distribution licensee sat tight over the matter, necessitating the present writ petition.

2. The short point involved in the matter is, what is the yardstick to be followed in granting compensation to the victim’s next of kin in cases of demise by electrocution?
3. Learned counsel for the petitioner submits that there is no specific provision in the Electricity Act, 2003 (for short, “the 2003 Act”) or any other statute on the question of compensation for electrocution. Hence, the standards applied in the Motor Vehicles Act, 1988 (for short, “the MV Act”), that is, the multiplier applied for calculating such compensation under Section 166 of the MV Act, as settled by the Supreme Court in various cases, ought to be applied in cases of electrocution death as well, since such provision is *pari materia* with the 2003 Act in the context.
4. Learned counsel argues that a co-ordinate Bench of this court, in an unreported judgment dated November 25, 2016 passed in *W.P. 34143 (W) of 2014 [Joyrita Maity (Biswas) vs. WBSEDCL & Ors.]*, had granted Rs. 5 lakh as compensation in a similar case. However, the quantum was decided on the particular facts of the case and not on the basis of any fixed standard or principle. In the present case, it is contended, the petitioner passed her Bachelor of Arts, Part – III Examinations in the year 2011 from the University of Calcutta. Hence she has

sufficient educational qualification for being considered for appointment in a job with the WBSEDCL, commensurate with her qualifications, on sympathetic grounds. Moreover, the petitioner claims compensation at a much higher amount than Rs. 5 lakh, as granted in the cited case, since more than five years have elapsed after passing of the order therein and keeping in view the comparatively young age of the petitioner and her husband, at the time of his demise.

5. The petitioner, it is submitted, is facing tremendous financial hardship since her husband was the only earning member of the family.
6. Learned counsel for the WBSEDCL, by citing an interim order dated November 16, 2016 passed by the same Bench in the same case, that is, *W.P. 34143 (W) of 2014*, learned counsel points out that it was recorded by the learned Single Judge that, despite the sympathy of the Bench being with the petitioner, the writ jurisdiction is not exercised on sentiments. The Chairman and Managing Director of the WBSEDCL, in his report filed earlier in the said matter, had expressed his predicament in not being able to offer to the petitioner employment in the absence of any law on that behalf. On November 25, 2016, the Bench clearly recorded that the writ court had absolutely no jurisdiction to make any direction on the company to offer employment.
7. By placing extracts of the minutes of the 69th meeting of Board of Directors of the WBSEDCL held on February 20, 2017, learned

counsel for the WBSEDCL argues that the amount of solatium, in the event of death caused by an accident involving the company's installations, was specifically enhanced from Rs. 2.5 lakh to Rs. 5 lakh, although previously in *Joyrita Maity (supra)*, by treating the case as 'exceptional', Rs. 5 lakh was awarded as compensation. It is submitted that the WBSEDCL is bound by its own decision dated February 20, 2017.

8. Learned counsel submits that the only provision in the 2003 Act regarding accidents is Section 161 of the said Act, read with the Intimation of Accidents (Form and Time of Service of Notice) Rules, 2005.
9. Next relying on *Chairman, Grid Corporation of Orissa Ltd. (GRIDCO) and Ors. Vs. Sukamani Das & Anr.*, reported at (1999) 7 SCC 298, learned counsel for the licensee argues that the Supreme Court clearly observed that questions regarding compensation could not be decided properly on the basis of affidavits only. It is the settled legal position that where disputed questions of facts are involved a petition under Article 226 of the Constitution is not a proper remedy and the petitioners should have been directed to approach the civil court for the remedy of compensation in tort within the ambit of Section 9 of the Code of Civil Procedure.
10. Next placing reliance on *HSEB & Ors. Vs. Ram Nath & Ors.* [(2004) 5 SCC 793], learned counsel contends that the Supreme Court considered *GRIDCO's Case (supra)* but refused to interfere with the compensation of Re. 1 lakh awarded by the High Court to the

petitioner since, in the opinion of the Supreme Court, no disputed question of fact was involved therein.

11. Thus, it is argued, the decision of the Board of Directors of the WBSEDCL in their 69th meeting, which fixes the upper limit of solatium payable in the event of death by electrocution at Rs. 5 lakh, is the only guiding principle in the field. As such, the WBSEDCL is willing to consider whether such amount can be handed over to the petitioner in the present case.
12. Upon hearing learned counsel for the parties, it is evident that, apart from the decision of the Board of Directors of WBSEDCL in its 69th meeting dated February 20, 2017, there is no other guideline in the relevant law for the grant of compensation for death by electrocution. Although the Board fixed Rs. 5 lakh as solatium payable in such cases, such quantum was fixed arbitrarily by the Board without disclosing the methodology applied to arrive at such conclusion. The learned Single Judge, while deciding *W.P. 34143 (W) of 2014*, had arrived at the quantum in the particular facts of the case; however, no uniform rule governing such compensation was laid down in the said judgment.
13. Unfortunately, even the 2003 Act does not contain any provision whatsoever regarding compensation for injury, death or damage of property due to electrocution. Section 161 of the said Act deals entirely with notice of accidents and inquiries and modalities in such respect.

14. The Intimation of Accidents (Form and Time of Service of Notice) Rules, 2005 merely frames rules regarding the form and time of service of notices of electrical accidents, but fails to reach further.
15. The option of relegating such matters of compensation to a civil court, considering the usually sorry plight of the victim's dependants, would involve much time and resources which the applicants in such matters mostly cannot afford to spend. Civil suits, by their implicit nature and statutory structure, require oral and documentary evidence to be led and considered in detail before final disposal.
16. Hence, it is desirable that the legislature considers the immediate introduction of specific provisions in the Electricity Act, 2003 itself, regarding payment of compensation to victims of injury, death or damage to property caused by electrocution or their next of kin and, if deemed fit, to also consider providing for a dedicated hierarchy of forums to decide such cases. Rules in that regard may also be formulated by the Central and/or State Electricity Regulatory Commissions for effective implementation of such provisions.
17. However, the generation, transmission and distribution companies (in this case, the WBSEDCL), as applicable in the particular facts of a case, cannot shirk their role and liability in such accidents, particularly since the commodity dealt with by them carries a huge implicit risk and hazard, roughly comparable to producers, manufacturers and transporters of highly combustible or explosive materials. Moreover, the compensation or solatium, by whatever

name called, payable to victims or their kin cannot be assessed arbitrarily by the companies/licensees.

- 18.** Since no guideline is provided in the extant law and rules/regulations, as placed before this court, the distribution licensees, for the time being, shall assess the compensation payable on a case to case basis, but on a uniform yardstick, by resorting to a multiplier akin to the provisions under the Motor Vehicles Act, 1988 and the Rules framed thereunder, which stand on a similar footing, in the absence of a better alternative.
- 19.** As far as the present case is concerned, although there is no scope to direct consideration of appointment of the petitioner on sympathetic grounds (since the victim was not an employee of the WBSEDCL), the liability of the WBSEDCL to pay compensation to the petitioner cannot be avoided.
- 20.** Hence, WPA 23672 of 2015 and the connected WPA 5382 of 2016 are disposed of by directing the WBSEDCL 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. Such consideration should be completed as expeditiously as possible, positively within May 31, 2022, if necessary after giving an opportunity of hearing to the petitioner and/or her designated agent. The quantum of compensation thus arrived at shall be disbursed to the petitioner positively by June 15, 2022.

21. However, it will be open to the petitioner, if dissatisfied with or aggrieved by such decision of the WBSEDCL, to challenge the same afresh under Article 226 of the Constitution of India.
22. There will be no order as to costs.
23. Urgent certified copies of this order shall be supplied to the parties applying for the same, upon due compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)