

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 15006 OF 2015

Ranjit Sahoo

....

Petitioner

Mr. Satyabrata Mohanty, Advocate

-versus-

***Chairman-cum-CMD, GRIDCO and
others***

....

Opp. Parties

Mr. Anindya Kumar Mishra, Advocate
(For Opp. Party No.1)

Mr. Lalatendu Mishra, Advocate
(For Opp. Party Nos.2 and 3)

**CORAM:
JUSTICE K.R. MOHAPATRA**

**ORDER
12.12.2022**

Order No.

- 20.
1. This matter is taken up through hybrid mode.
 2. The Petitioner in this writ petition prays for a direction to award exemplary compensation for the injury sustained by his minor sons due to electrocution.
 3. It is submitted by Mr. Mohanty, learned counsel for the Petitioner that sons of the Petitioner, namely, Sidhanta Sahoo aged about eight years and Srikanta Sahoo, aged about seven years on the date of occurrence i.e. on 10th June, 2013, while going to the school came in contact with sagging live 11 KV conductor, for which they suffered serious bodily injuries. Hearing the hulla, the people nearby gathered and rescued the children. They were immediately shifted to Talcher PHC and subsequently they were referred to SCB Medical College and Hospital, Cuttack in view of the seriousness of injuries. The injuries were so serious that the doctor at SCB Medical College

and Hospital advised amputation of limb of one of the sons of the Petitioner to save his life. Accordingly, the right hand of the Sidhanta Sahoo was amputated and Srikanta Sahoo sustained severe injury on his left leg. The medical reports in support of the injuries sustained by both the children including certificate showing amputation of right hand of Sidhanta Sahoo are also annexed to the writ petition under Annexure-2 series. The documents at Annexure-1 and 2 series clearly disclose the grievous nature of injuries sustained by the minor children of the Petitioner due to electrical shock. The incident so occurred was published in news paper of the locality(Annexure-3 series). An F.I.R. (Annexure-3 series) was also lodged by the Petitioner on 16th June, 2013 at the Parjang Police Station alleging negligence on the part of the Opposite Parties. In spite of best endeavour on the part of the Petitioner, no compensation for the negligence of the Opposite Parties and injuries sustained by the sons of the Petitioner was paid. Hence, this writ petition has been filed.

4. In support of his case, Mr. Mohanty, learned counsel for the Petitioner relied upon the case of ***Munni Devi –v- Govt. of Nct and another***, reported in ***2021 SCC OnLine Del 46*** in which Delhi High Court discussing the law settled by Hon'ble Supreme Court held as under:

“32. Reference may also be had to the other judgment of the Supreme Court relied upon by the respondents i.e. SDO, Grid Corporation of Orissa Ltd. vs. Timudu Oram(supra). There were a bunch of appeals in the said case. As per the facts of the first case, some villagers had illegally taken power supply without the knowledge of the GRIDCO authorities by use of a hook from the L-I point to their houses by means of an uninsulated GI wire. The GI wire got disconnected and fell on the ground. The father of the respondent and other family

members got electrocuted. The fact of illegal hooking and death due to electrocution was admitted. In the counter- affidavit, the GRIDCO had taken a plea that the deaths occurred due to the negligence of the deceased themselves and the electric live wire belonging and maintained by the GRIDCO had not snapped and therefore, the GRIDCO was not liable to pay any compensation. The two other matters were heard along with the above noted matter. The Supreme Court concluded as follows:-

"9. In the present case, the appellants had disputed the negligence attributed to it and no finding has been recorded by the High Court that GRIDCO was in any way negligent in the performance of its duty. The present case is squarely covered by the decision of this Court in *Chairman, Grid Corpn. of Orissa Ltd. (GRIDCO) [(1999) 7 SCC 298]*. The High Court has also erred in awarding compensation in Civil Appeal No. 4552 of 2005 [*@ SLP (C) No. 9788 of 1998*]. The subsequent suit or writ petition would not be maintainable in view of the dismissal of the suit. The writ petition was filed after a lapse of 10 years. No reasons have been given for such an inordinate delay. The High Court erred in entertaining the writ petition after a lapse of 10 years. In such a case, awarding of compensation in exercise of its jurisdiction under Article 226 of the Constitution cannot be justified.

33. Hence, the Supreme Court set aside the order of the High Court holding that no finding has been recorded by the High Court that GRIDCO was in any way negligent in the performance of its duty.

34. Clearly, in the above two judgments the relief was denied to the family of the victim as there was no finding recorded in the impugned orders holding the electricity company negligent. The aforesaid two judgments would have no application to the facts of this case where as noted above the negligence of respondent No. 1 is clear from the facts on record. As this court has come to the conclusion that the death of the deceased took place due to the negligence of respondent No. 1, the said respondent is liable to pay necessary compensation.

35. In the given facts, I also look at another judgment of the Supreme Court in the case of *Madhya Pradesh Electricity Board v. Shail Kumari & Anr.*, AIR 2002 SC 551. The facts of that case are akin to the facts of this case. That was a case where the deceased was riding on a bicycle in the night and returning from his factory. There had been rain and the road was partially inundated with water. The cyclist did not notice

the live wire on the road and hence he rode the vehicle over the wire which twitched and snatched him and he was instantaneously electrocuted. The main defence raised by the defendant was that the wire in question had been used by somebody to siphon energy for his own use and said act was done clandestinely behind the back of the Electricity Board. The line got unfastened from the hook and it fell on the road over which the cycle driven by the deceased slid resulting in the instantaneous electrocution."

5. He also placed reliance on **Madhya Pradesh Electricity Board –v- Shail Kumari and others**, reported in AIR 2002 SC 551, which has been considered in **Munni Devi** (Supra). He also relied upon the decision of this Court in **Gandra Tiga Alias Oram and others –v- State of Orissa and others**, reported in 2015 (Supp.-II) OLR 255 in which this Court relying upon the aforesaid case law has awarded compensation in favour of the victims. He, therefore, submits that the compensation should be awarded in favour of the minor sons of the Petitioner for sustaining serious injury on their corps due to electrocution.

6. Mr. A. Mishra, learned counsel appearing for the GRIDCO-Opposite Party No.1 submits that the allegation in the writ petition has been made against Opposite Party Nos.2 and 3. Thus, they are the main contestants in the writ petition. However, the incident as alleged has never been reported to the Opposite Party No.1 at any point of time.

7. Mr. L. Mishra, learned counsel appearing for the Opposite Party Nos.2 and 3 (TPCODL) makes his submission referring to the counter affidavit filed by them. It is submitted that on the fateful day, there has been no such incident as the 11 KV line, which is drawn by the side of the Rengali Left Canal. It never passes inside the village, as alleged. There was no

snapping of conductor at the relevant period, as alleged. Thus, the question of coming in contact with the live conductor does not arise at all.

8. It is further submitted by Mr. Mishra, learned counsel that had there been any snapping of 11 KV line, there would have tripped at the Sub-Station. As no such incident has ever been noticed or recorded, allegation of the Petitioner is nothing but, falsehood. It is also submitted that at no point of time, the Opposite Parties were ever informed by the Petitioner about the incident. Thus, the allegation of negligence on the part of Opposite Party Nos.2 and 3 does not arise at all. As such, they are not liable to pay the compensation. In support of his submission, Mr. Mishra, learned counsel relied upon the decision of **Chairman, GRID Corporation of Orissa Ltd. (GRIDCO) and others –v- Sukamani Das (Smt) and another**, reported in 1999 SCC Online SC 900, wherein at Paragraphs-6,7 and 8, which is held as under:

“6. In our opinion, the High Court committed an error in entertaining the writ petitions even though they were not fit cases for exercising power under Article 226 of the Constitution. The High Court went wrong in proceeding on the basis that as the deaths had taken place because of electrocution as a result of the deceased coming into contact with snapped live wires of the electric transmission lines of the appellants, that “admittedly/prima facie amounted to negligence on the part of the appellants”. The High Court failed to appreciate that all these cases were actions in tort and negligence was required to be established firstly by the claimants. The mere fact that the wire of the electric transmission line belonging to Appellant 1 had snapped and the deceased had come in contact with it and had died was not by itself sufficient for awarding compensation. It also required to be examined whether the wire had snapped as a result of any negligence of the appellants and under which circumstances the

deceased had come in contact with the wire. In view of the specific defences raised by the appellants in each of these cases they deserved an opportunity to prove that proper care and precautions were taken in maintaining the transmission lines and yet the wires had snapped because of circumstances beyond their control or unauthorised intervention of third parties or that the deceased had not died in the manner stated by the petitioners. These questions could not have been 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. The High Court has not and could not have held that the disputes in these cases were raised for the sake of raising them and that there was no substance therein. The High Court should have directed the writ petitioners to approach the civil court as it was done in OJC No. 5229 of 1995.

7. Reliance placed by the learned counsel for the respondents on the decision of this Court in Shakuntala Devi v. Delhi Electric Supply Undertaking [(1995) 2 SCC 369] is really of no avail to the respondents. Even while entertaining a writ petition under Article 32 of the Constitution, in view of the peculiar facts of that case, this Court observed in clear terms (at SCC p. 370, para 5) that “the question of negligence of officials of Respondent 1 can be properly examined in a suit where correct facts can be established”. In that case, Respondent 1 was directed to make payment of a reasonable amount ex gratia in exercise of the power under Article 142 of the Constitution and that too because Respondent 1 had agreed to that course being adopted. The power which is available to this Court under Article 142 is not available to the High Courts, as observed by this Court in Sanchalakshri v. Vijayakumar Raghuvirprasad Mehta [(1998) 8 SCC 245 : JT (1998) 8 SC 55] .

8. As the High Court did not exercise its power under Article 226 of the Constitution without properly appreciating the nature of its jurisdiction, the impugned judgments deserve to be set aside. However, in view of the fair stand taken by the appellants that these appeals have been filed as test cases only and in view of the long lapse of time they will not recover the amounts already paid to the respondents, we do not think it necessary to

set aside the impugned judgments because that may again expose the appellants to actions in civil courts by the persons claiming to be the heirs and legal representatives of the deceased. With the observations made above, we dismiss all these appeals.”

9. He also relied upon the decision of this Court in the case of **Mamata Moharana –v- Chief Executive Officer and others**, in W.P(C) No. 29338 of 2019, in which it is held as under:

“Thus the above disputed question of fact stands to be answered in order to consider the prayer as has been advanced in this writ application and that to by providing opportunity to the parties to lead evidence under their command. Said exercise is however not permitted to be undertaken in exercise of extra ordinary writ jurisdiction.

In that view of the matter, this Court is not inclined to entertain this writ application.

Liberty is however given to the Petitioner to approach the appropriate forum by carrying duly constituted proceeding as provided in law for redressal of her grievances and consideration of the prayers as have been advanced in accordance with law.”

As there is no material on record to come to a conclusion that such an incident had, in fact, occurred on the fateful day, a writ petition under Article 226 for awarding compensation is not maintainable. Hence, he prays for dismissal of the writ petition.

10. This Court before delving into the matter is conscious of the fact that the two minor children have suffered serious injuries due to electrocution, one of whom, namely, Sidhanta Sahoo had to lose his right hand. They were at their tender age. Due to the incident, they must have suffered pain and their academic carrier must have been influenced due to such incident. However, the same is not sufficient to entertain an application

under Article 226 for grant of compensation. The main ingredient that has to be satisfied by the Petitioner seeking compensation due to electrocution is negligence on the part of supplier of electricity. In the instant case, the incident itself is disputed. There is no material on record to come to a conclusion that in fact such an incident had occurred on the fateful day.

11. Mr. Mohanty, learned counsel for the Petitioner, in course of argument referred to the F.I.R. allegedly lodged by the Petitioner on 16th June, 2013 before Inspector-in-charge, Parjang Police Station. But, on instruction, he submits that the F.I.R. was not registered and no step for alleging inaction of the police has yet been taken by the Petitioner. Had the F.I.R. been registered and investigation conducted, it might have thrown some light on the veracity of the allegation made by the Petitioner. Only because the sons of the Petitioner suffered injuries due to electrocution, it cannot be attributed to the Opposite Parties, more particularly, Opposite Party Nos.2 and 3, unless a *prima facie* case of negligence of their part is made out. The probability of such incident cannot be ruled out at the residence of the Petitioner itself. Thus, the doctrine of strict liability cannot be resorted to in this writ application.

12. The case law cited by Mr. Mohanty, learned counsel for the Petitioner relate to happening of the incident due to pilferage of the electricity. In all those case law, incident occurred has been admitted and the issue was whether the distribution company can be held to be negligent due to pilferage of electricity. Such a contingency does not arise at all in the case at hand. Thus, the ratio decided in the case law relied upon by the

Petitioner has no application to the case at hand. The case law relied upon by Mr. Mishra, learned counsel for the Opposite Party Nos.2 and 3 applies to this case as in absence of proof of negligence on the part of the distribution company, the Opposite Parties cannot be held liable to pay the compensation. It is, however, open to the sufferer to approach the common law forum, in which the disputed questions can be adjudicated by receiving evidence to that effect.

13. In view of the above, this Court having sympathy for the injuries sustained by the two minor children is not in a position to award compensation as prayed for.

14. Accordingly, the writ petition being devoid of any merit stands dismissed.

15. Dismissal the writ petition shall not preclude the Petitioner to work out the remedy as may be available to him under the law.

Urgent certified copy of this order be granted on proper application.

(K.R. Mohapatra)
Judge

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