

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 12121 OF 2021

Minati Prusty

....

Petitioner

Mr. Soubhagya Chandra Dev Dash, Advocate

-versus-

TPCODL and others

....

Opp. Parties

Mr. Bibudhendra Dash, Advocate
(For TPCODL)

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

03.08.2022

Order No.

7. 1. This matter is taken up through hybrid mode.
2. Petitioner in this writ petition seeks to assail the order dated 7th February, 2020 (Annexure-5) passed by Chief Executive Officer, Central Electricity Supply Utility of Odisha (CESU) (at present taken over by TPCODL)-Opposite Party No.2, whereby claim of the Petitioner to get compensation for death of her husband due to electrocution has been rejected.
3. Mr. Dash, learned counsel for the Petitioner submits that husband of the Petitioner, namely, late Kabi Prasad Prusty was serving as Lineman-C under the erstwhile CESU. On the ill-fated day, i.e., on 18th May, 2017, while operating electric motor from the internal house wiring system, he succumbed to death due to electrocution. Postmortem report also disclosed that husband of the Petitioner died due to electrocution. Thus, the Petitioner applied for compensation enclosing required documents. CESU had floated a special Scheme called “*Compensation to the Legal Heirs of the Deceased Employee (in*

Case of Death) or Self for Permanent Disablement”. The said Scheme was in force at the relevant time. Due to inaction on the part of the Opposite Parties, Petitioner approached this Court in W.P.(C) No.20234 of 2019, which was disposed of on 29th October, 2019 with the following order:

“2. 20.10.2019- None appears on behalf of the parties at the time of call.

However on perusal of the pleadings as well as the grounds made in this Writ Petition, it appears, on the selfsame issue the petitioner has already submitted representations before the Chief Executive Officer, CESU, IDCO Tower, Janapath, Bhubaneswar-opposite party no.2 vide Annexure-5. For the pendency of representation at the instance of the petitioner before the opposite party no.2, this Writ Petition is not entertainable. According, this Writ Petition stands disposed of with a direction to the opposite party no.2 to consider the representation vide Annexure-5 in accordance with law and take a lawful decision thereon as appropriate within a period of one & half months from the date of communication of a certified copy of this order along with a copy of the writ petition by the petitioner and also giving opportunity of hearing to the petitioner.

The result of such decision shall be communicated to the petitioner forthwith.

Issue urgent certified copy on proper application.”

4. Accordingly, the Petitioner produced the certified copy of the order along with copy of the writ petition before the Chief Executive Officer, CESU-Opposite Party No.2 for consideration of her claim for compensation. The said claim was rejected on the following grounds:

“7. The undersigned has also gone through the CESU Scheme dt. 13.04.2017 which has been enclosed as Annexure-3 to the writ petition. The said Scheme is intended to provide compensation with respect to the death/permanent disablement of an employee of CESU (both Executive and Non-Executive), which is caused due to electrical accident in course of and out of employment. The present accident and claim of compensation by you is not qualifying the above requirements

of the CESU Scheme dt. 13.04.2017 for providing compensation.

8. *Therefore you are not entitled for compensation as has been prayed for in the writ petition. Admittedly, there is delay in making the application. Even if the delay is condoned as has been prayed for before the undersigned for consideration of the application on its merits, still then for the aforesaid reasons, you are not entitled to get the compensation from CESU under the above Scheme (Annexure-3 to the writ petition).*

9. *Hence, in compliance to the direction dated 29.10.2019 of the Hon'ble High Court, your representation under Annexure-5 to the writ petition being devoid of any merit, is rejected."*

5. Mr. Dash, learned counsel for the Petitioner further submits that the impugned order is not sustainable in the eyes of law as Petitioner's husband while operating the motor as per instruction of the higher authority, got electrocuted and succumbed to the same, which occurred in course of and arising out of employment. Thus, the Petitioner is entitled to get compensation under the Scheme floated by CESU (Annexure-2), which was effective from 1st April, 2017 to 31st March, 2018. The death of the husband of the Petitioner occurred on 18th May, 2017. Hence, rejection of the petition for compensation filed by the Petitioner is not lawful. The Petitioner is entitled to get compensation under the Scheme.

6. TPCODL refuted the averments made in the writ petition by filing counter affidavit. It is submitted by Mr. Dash, learned counsel for the TPCODL that operating motor is not the job of a Lineman-C. He also produces a copy of the order dated 30th June, 1971 showing specification of job of a Lineman-C, which reads as under:

“Construction, maintenance and operation of over-head lines, Sub-Station equipments, changing and filtering of transformer switch oils, maintenance of lighting system, attending to complaint, supply replace fuses, patrolling of lines, climbing of poles and towers, attends to street, lamp replacement giving service connection single and three phase, wiring and all other works incidental thereto maintaining records relating to works and such other works as directed.”

The aforesaid job specification does not include operation of a motor by Lineman-C. The deceased succumbed to death due to electrocution while operating a motor at his residence. Thus, it cannot be said that husband of the Petitioner died in course of and arising out of employment. He, therefore, submits that the Chief Executive Officer, CESU (now TPCODL)-Opposite Party No.2 has committed no error in passing the impugned order.

7. Mr. Dash, learned counsel for the Opposite Parties, further submits that the Scheme specifically stipulates that it is meant for death or permanent disablement of an employee occurred in course of and arising out of employment, which is clear from the following Clause of the Scheme:

“In case it is established that the victim has not followed safety norms for which accident has occurred, in that case claim will be settled if incident has occurred inadvertently.”

Thus, it clearly stipulates that the claim for compensation due to death or permanent disablement of an employee, occurred in course of or arising out of employment, can only be considered under the Scheme. He, therefore, prays for dismissal of the writ petition.

8. Upon hearing learned counsel for the parties and on perusal of the materials placed before this Court including the impugned order and the Scheme under Annexure-2, this Court

finds that husband of the Petitioner was an employee under the erstwhile CESU (now taken over by TPCODL) and died due to electrocution on 18th May, 2017. It is also not in dispute that the Scheme under Annexure-2 was floated for compensation for death or permanent disablement of an employee. Thus, the question arises whether the Scheme at Annexure-2 is applicable to the case of the husband of the Petitioner to justify her claim for compensation. It is apparent from the Scheme that it was effective from 1st April, 2017 to 31st March, 2018. Since the husband of the Petitioner died on 18th May, 2017, the claim of the Petitioner can be considered under the said Scheme. It is, however, submitted by Mr. Dash, learned counsel for TPCODL that the Scheme is applicable to the legal heirs of an employee who died due to electrocution in course of or arising out of employment.

9. On a close reading of the Scheme, it does not disclose that there is any specific clause confining its application only to the employee, who died due to electrocution '*in course of or arising out of employment*'. The said Clause is conspicuously absent in the Scheme itself. Interpreting the Clause as aforesaid, Mr. Dash, learned counsel for the Opposite Parties, however, submits that close reading of the same clearly stipulates that claim for compensation due to death or permanent disablement of an employee, occurred in course of or arising out of employment, can only be considered under the Scheme. He stressed upon the Clause '*Safety Measure*' and submits that it only refers to performance of duty of an employee. '*Safety measure*' is also taken at the time of repairing or maintaining electrical equipment

at home. By inserting the said Clause, the Scheme cannot be confined only to the employee, who died or suffered permanent disablement in course of and arising out of employment, in absence of any such expressed restriction in the Scheme itself.

10. When the Scheme was meant for benevolent purpose and was meant for financial help to the legal heirs of the deceased or himself, if suffered permanent disablement due to an electrical accident, a restrictive interpretation is impermissible in law in absence of a specific clause to that effect. Thus, the Scheme cannot be confined to an employee, who died or suffered permanent disablement in course of and arising out of employment only. It is also applicable to any kind of electrical accident suffered by an employee.

11. In view of the above, this Court is of the considered opinion that the Petitioner is entitled to get compensation under the Scheme (Annexure-2) for death of her husband due to electrocution. Accordingly, the compensation as due shall be paid to the Petitioner by TPCODL as expeditiously as possible preferably within a period of one month from the date of production of certified copy of this order.

12. With the aforesaid observation and direction, this writ petition is disposed of.

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

(K.R. Mohapatra)
Judge