

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C). No.23231 of 2010

Nalini Prava Mohanty & others. ***Petitioners***
M/s. Bikash Jena, S.R. Pani, A.K. Das,
Advocates

-versus-

The Central Electricity Supply ***Opposite Parties***
Utility of Orissa (CESU) & others.
M/s. Bibudhendra Dash, P.K. Mohanty, J.P. Tripathy,
Advocates – For O.P. No.1.

CORAM:
JUSTICE S. PUJAHARI

ORDER
19.01.2022

Order
No.

10. **1.** This matter was directed to be listed on 10th of January, 2022 under the heading of “Delivery of Orders”. But, since this Court did not function on that date, this matter is listed today under the same heading.

2. This writ petition has been filed by the petitioners under Articles 226 and 227 of the Constitution of India, claiming to be the legal heirs of one Antaryami Mohanty and seeking compensation

on account of death of said Antaryami Mohanty by electrocution.

3. I have heard the learned counsel for the petitioners and learned counsel for the Opposite Parties.

4. It appears that on 13.05.2009 in the evening, the line man, namely, Kuma @ Digambar Bhuyan working under Opposite Party No.3 visited the house of the petitioners for fixing a new electric service wire from the electric pole to the house and after doing so, he left the said place keeping the old service wire in the courtyard of the house without disconnecting the other end of the same from the electric meter, and without intimating the family members regarding the same. In the early morning on 14.05.2009 when the deceased-Antaryami Mohanty came in contact with the old service wire kept in the courtyard, he got electrocuted. He was immediately shifted to the hospital nearby where the doctor declared him to be dead. The Opposite Party No.3 visited the spot soon after the incident and intimated the same to the

S.D.O. (Electrical) on 14.05.2009 vide Annexure-1 narrating the incident. After the obsequies were over, the matter was reported to police by the family members of the deceased giving rise to registration of Balikuda P.S. Case No.53 of 2009 corresponding to G.R. Case No.365 of 2009 in the court of S.D.J.M., Jagatsinghpur. After completion of investigation, police charge-sheeted the lineman under Section 304(A) of I.P.C. and cognizance was taken against him for the aforesaid offence accordingly.

5. It is the case of the petitioners that they lost Antaryami Mohanty, who was the sole bread earner of their family and as such, the Opposite Parties are liable to pay compensation to them, and hence, they have come in this writ petition claiming compensation of Rs.3 lakh.

However, the claim is contested by the Opposite Parties with the submissions that the death of the deceased being due to the negligence of his own they are not liable to pay any compensation. It is their further plea that the writ petition is not maintainable

in the eye of law on such disputed question of fact, and an alternative remedy is available in the common law forum.

6. There is no denial that in a disputed question of fact, this Court loath to entertain a writ petition particularly for compensation, on taking into consideration the income, dependency etc. But, notwithstanding the same, this Court in the cases of electrocution have entertained writ petitions when there was no dispute that the deceased died of electrocution and prima facie, the same was attributable to negligence of the electricity supply company, and granted compensation which has also not been interfered by the Apex Court. As it appears, in the present case, there is no denial to the fact that the deceased died of electrocution which reveals from the postmortem report, and police after investigation also found the death of the deceased to be on account of negligence of the lineman who admittedly is the employee of the electricity supply company. The Opposite Party No.3 also immediately after the

incident visited the spot and found the same to be due to the negligent act of the lineman concerned as revealed from the Annexure-1. This Court is not bereft of jurisdiction in such a situation to entertain a writ petition when there is disputed question of fact. However, it is not disputed that the Petitioners are the legal heirs of the deceased, as the record goes to show that Petitioner No.1 is the wife of the deceased, although no materials are produced to show that they are the legal heirs of the deceased. In such premises, the contention of the writ petitioners pertaining to the aforesaid ground is without any substance. Since the amount of compensation is with regard to the dependency, that too, without any evidence, this Court also cannot determine the same in this writ petition, but taking note of the facts and situation, and the amount of compensation claimed, this Court directs the Opposite Parties to pay compensation of Rs.2,00,000/- (Rupees two lakhs) to the petitioners with 6% interest from the date of filing of the writ petition within three months hence.

7. With the aforesaid order, this writ petition stands disposed of.

8. As restrictions due to resurgence of COVID-19 situation are continuing, learned counsel for the parties may utilize a printout copy of the order available in the High Court's website, at par with certified copy, subject to attestation by the concerned advocate, in the manner prescribed vide Court's Notice No.4587, dated 25th March, 2020 as modified by Court's Notice No.4798, dated 15th April, 2021 and Court's Office order circulated vide Memo Nos.514 & 515 dated 7th January, 2022.

(S.Pujahari)
Judge

MRS

