

AFR IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P. (C) No.7704 of 2007

In the matter of an application under Articles 226 & 227 of the Constitution of India.

Bhagaban Rout & Anr. Petitioners

Versus

Executive Engineer,CESCO, Salipur Opposite Party

For Petitioners ... Mr. A.A.Khan, Adv.
Mr.R.Pati, Adv.

For Opposite Parties ... Mr. D.Ray, Adv.

JUDGMENT

PRESENT:

THE HONOURABLE JUSTICE BISWANATH RATH

Date of Hearing and Judgment: 01.11.2022

Biswanath Rath, J. This Writ Petition involves the following prayer:-

“It is therefore, humbly pray that this Hon’ble Court may graciously be pleased to admit the writ application and after hearing both the sides allow the same and direct the Opp. Party to pay a compensation of Rs.5 lakhs to the petitioners within a stipulated time by issuing appropriate writ;

And any other order/orders as deem fit and proper be passed;

And for this act of kindness, the petitioners shall as in duty bound, ever pray.”

2. Short background involving the case is the parents of the deceased involving herein claims while their son returning to their house after cultivating their agricultural land on 13.08.2006 at about 5.00 P.M. accidentally came in contact with the electric charge wire in a hanging stage from the Electric Poll in damaged condition, as a result of which son of the Petitioners coming in contact with live wire fell down on the ground. On being shifted to S.C.B, Medical College and Hospital for treatment. S.C.B, Medical College and Hospital on examination of body declared that the son of the Petitioners was dead on the arrival of the body in the hospital itself. It is on the premises of premature death of deceased caused due to negligence of CESCO authority and the financial loss as well as loss on mental agony at the end of the parents coupled with loss of love and affection, requests were made to the competent authority for making necessary payment towards compensation. For the department remain silent, this Writ Petition came to be filed with prayer for direction for appropriate compensation. Pleading and submission also discloses there has been lodging of F.I.R. registered as P.S.U.D. Case No.10 of 2006 in Jagatpur P.S. appearing at Annexure-1.

3. Learned counsel for the Petitioners in the above background of matter taking this Court to the inquest report as well as post mortem report under Annexures-2 & 3 for the finding therein deceased dying due to electrical shock claims a sum of Rs.5,00,000/- as compensation for loss on account of life, love and affection and other incidental expenditures. Taking this Court to the observations in Annexures-1 to 3 learned counsel for the Petitioners contended that the Petitioners have proved the case and for the loss due to negligence by CESCO department which should be directed to pay the required compensation.

4. Mr. Ray, learned counsel for the sole Opposite Party taking this Court to the counter plea as well as disclosures through Annexure-(A) contended there has been communication by the Assistant Manager (Electrical) to the I.I.C, Jagatpur Police Station intimating therein that there is reporting by the Camp line man to the establishment informing that Rabindra Rout, the deceased was stealing energy by means of hook after cutting the AB cable on 13.08.2006 evening. In the process cutting of AB cable electrocuted the poll and there involves a fatal accident resulting death of the deceased. It appears, the department wanted an inquiry and appropriate action involving the complaint. While not disputing the observations in the inquest report for intimation of the department to the police already involved therein, Mr.Ray, learned

counsel for the Department to support his case takes help of a decision in *T.Bimala vrs. Cuttack Municipal Corporation, Cuttack* and others reported in *2012 (Supp.-II) OLR 256*.

Mr.Ray, learned counsel appearing for the Department in the above background contended for the settled position of law no inference can be done against the department merely because of existence of a final form or the inputs in the inquest report or the post mortem report. Mr.Ray, learned counsel also objected the entertainability of the Writ Petition on the premises that investigation, if any, by police authority came in form of final report and did not involve the department. Preparation of such final report cannot bind the department. Further police also did not show any interest on their attempt for lodging an F.I.R.

5. Considering the rival contentions of the Parties, this Court finds, undisputedly there is death of the son of the parents appearing as the Petitioner Nos. 1 & 2 on 13.08.2006. It is clear from the inquest report as well as the post mortem report, the death of the deceased caused due to electrocution, final form also supports the case of the Petitioners no doubt the case could not be further investigated for there is no ascertainment of involvement of any person however all the documents such as inquest report, post mortem report as well as the final form are

all in one direction undisputedly suggesting there is death of the deceased on account of electrocution coming in contact of line wire undisputedly belonging to the CESCO. There should not be also any dispute that the wire or the poll came in contact with the body of the deceased. It is at this stage coming to consider the stand of the department, the Opposite Parties, this Court finds, the Opposite Parties contest herein simply on the basis of disclosures vide document at Annexure-A which reads as follows:-

To

The Officer-In-Charge,
Jagatpur Police Station,
Jagatpur

Sub:- FIR regarding fatal accident at the time of energy theft by cutting AB cable at Dhia Sahi under Bohugram Electrical Section on dt.13.8.06 evening.

Sir,

It is reported by the Camp line man that Sri Rabindra Kumar Rout, son of Sri Bhagyadhar Rout of Village-Dhia Sahi (Barabodia) was stealing energy by means of hook after cutting the AB cable on dt.13.08.06 evening at about 7 P.M. and electrocuted to fatal accident.

Hence, you are requested to kindly investigate the matter and report your findings for further action at this end.”

Yours Faithfully,

Illegible,
Sd/- 14.08.06
Asst. Manager (Elect),
Electrical Section, Bahugram.
(SEAL)

Permanent Address
Sri Bhagyarathi Samal,
S/o. Sri Prana Krushna Samal,
Vill.- Hatasisua,
P.S.- Tangi, Dist- Cuttack

It appears through Annexure-A department sought for a F.I.R. on the fatal accident in an attempt of theft of energy by cutting the AB cable by the deceased. Unfortunately copy of report of complainant line man is not coming to see the light of the day. For the allegation involved that there involved a theft by cutting AB cable at Dhia Sahi under Bohugram Electrical Section on dated 13.08.2006, this Court here draws the inference, in the event department has already requested the Jagatpur Police Station drawing an F.I.R. on the allegation involved therein, there should have been chasing such aspects. The counter or the additional counter affidavit did not contain any further information as to the development on the request of the department through Annexure-A. In the event the police authority on such issues remained silent since there was availability of further legal processes, such processes ought to have been followed. Pleading through the counter affidavit as well as the additional counter affidavit nowhere establishes following of any further legal recourses by the department. Further in the event the Assistant Manager (Electrical) Section Bohugram had already come to notice the incident and reported on 14.08.2006 only hardly a day after the incident taking place regarding thereto involving an attempt by cutting of AB cable, there is no material brought on record at least

involving a departmental inquiry to have its findings on such action and/ or seizure of any wire and/or any material utilized for the purpose or sketch of the area of operation, if any, at least establishing there was an attempt of stealing energy by means of hooking and by cutting AB line. If there was any cutting in the AB cable there would have been also a report at least suggesting such cutting. For there is no development after such F.I.R and the materials completely absent establishing any sort of inquiry by the department, this Court finds, Annexure-A a simply creation of the department to block the claim of the parents of the deceased.

6. Coming to the argument of counsel for the department questioning the maintainability of the Petition for there involvement of disputed question of fact, this Court first of all finds, the F.I.R, inquest report, post mortem report and final form all supports the case of the Petitioner so far their claim on the death of their son on electrocution, whereas the department even though attempted to lodge an FIR on allegation of attempt for stealing energy against the deceased there is neither any following up action for undertaking a legal exercise involving their allegation involves Annexure-A nor there is even any internal report produced either in counter or additional affidavit bringing in some material to at least making out a case involving a theft

attempt. This Court here finds, the case of the Petitioner rather gets support of a decision of the Hon'ble Apex Court in the case of ***Chairman, Grid Corporation of Orissa Ltd. (GRIDCO) and others vrs. Sukamani Das and another*** reported in ***AIR 1999 SC 3412***. This Court here also finds support of a decision of this Court on the entertainability of Writ Petition through judgment of this Court in the case of ***Executive Engineer, Central Electricity Supply Utility Ltd., Cuttack Electrical Division, Jobra, Cuttack vrs. Hema Sethy*** reported in ***2011 (II) OLR- 708***.

Through ***AIR 2001 SC 485*** vide paragraph-12 therein, the Hon'ble Apex Court came to hold as follows:-

12. Even if there is no negligence on the part of the driver or owner of the motor vehicle, but accident happens while the vehicle was in use, should not the owner be made liable for damages to the person who suffered on account of such accident? This question depends upon how far the Rule in *Rylands v. Fletcher* (1861-73 All ER (Reprint)1) (supra) can apply in motor accident cases. The said Rule is summarized by Blackburn J. thus:

The true rule of law is that the person who, for his own purposes, brings on his land, and collects and keeps there anything likely to do mischief if it escapes, must keep it at his peril, and, if he does not do so, he is prima facie answerable for all the damage which is the natural consequence of its escape. He can excuse himself by showing that the escape was owing to the plaintiff's default, or, perhaps, or the act of God; but, as nothing of this sort exists here, it is unnecessary to inquire what excuse would be sufficient."

This decision also supports the case of the Petitioner here.

7. At this stage taking into consideration the decision taken support by the opponent, this Court finds the claim of the Petitioner though

based on a reporting in the inquest report as well as F.I.R. and further final form observations involving the F.I.R. at the instance of the parties in loss but however there is no material establishing the case contrary to the existence in all these records. Further in spite of involvement of such serious issue, department failed in undertaking the minimum an enquiry at least coming to a finding by its own people that there is in fact, an attempt for stealing energy by cutting AB cable.

8. It is in the above background, this Court finds, there is no disputed fact involved herein. In the circumstance this Court finds, the Petitioners for the undisputed loss of their son at the age of twenty four years observes, there is great loss to the parents not only on account of death of their son but there is also loss of mental agony as well as love and affection and Petitioners deserved appropriate compensation.

9. Since the matter involves compensation involving death on account of electrocution, Electricity Act since does not provide such relief, this Court drawing analogy from the Motor Vehicles Act, 1988 for Schedule II therein prescribing manner of determination of compensation in case one unable to throw light on income aspect and such party is in unskilled category, schedule II meant for compensation for third party in fatal accident/ injury case at Clause-6 prescribes Rs.15,000/- per annum for non-earning persons and same schedule also

prescribes seventeen multipliers in case deceased above twenty years but does not exceed 25 years.

This Court here takes into account a decision of the Hon'ble Apex Court in the case of ***Kishan Gopal and another vrs. Lala and others*** reported in ***(2014) 1 SCC 244***, again in the case of ***Lata Wadhwa vrs. State of Bihar*** reported in ***(2001) 8 SCC 197*** where Hon'ble Apex Court not finding any material to establish income factor has relied on Notional Income factor through second Schedule to Section 163-A of Motor Vehicle Act has come to take the Notional Income factor in the minimum to be Rs.15,000/- per annum. This principle is even also taken into account in the case of ***R.K.Malik and another vrs. Kiran Pal and others*** reported in ***(2009) 14 SCC 1***. Scope on Notional Income also has been further enlarged by the Hon'ble Apex Court through involving a case under Motor Vehicle Act in the case of ***Kirti and another vrs. Oriental Insurance Company Limited*** reported in ***(2021) 2 SCC 166*** through para-17 therein observed as follows:-

17. There are two distinct categories of situations wherein the court usually determines notional income of a victim. The first category of cases relates to those wherein the victim was employed, but the claimants are not able to prove her actual income, before the Court. In such a situation, the court “guesses” the income of the victim on the basis of the evidence on record, like the

quality of life being led by the victim and her family, the general earning of an individual employed in that field, the qualifications of the victim, and other considerations.”

10. This court finds, the Petitioners deserve to get appropriate compensation. Here taking into account the loss of fifteen years in the meantime and without getting into further loss of time, this Court here finds the Petitioners claim the income of the deceased @ Rs.3,000/- per month and the age of the deceased at the time of death hardly twenty four years however while the parents claim their son is a cultivator, there is absolutely no material to establish the income of the deceased. Taking into account the decision of Hon'ble Apex Court to apply notional income further in the year @ 15,000/- per annum taking into account 1/3rd for his personal use and keeping in view the age of the deceased at twenty four years of a age below twenty-five years and also the age of the parents at the relevant point of time they are entitled to get the compensation at the above rate multiplied by at least seventeen years which comes to 10,000 * 17 years= 1,70,000/-. For there is already loss of sixteen years in the meantime and no amount even paid as exgratia, the Petitioners should also get the interest minimum @ 5% all through on the compensation determined by this Court.

11. Payment as directed hereinabove including interest be released in favour of the Petitioner No.1 at least within a period of three weeks of the judgment. Failure of releasing of amount within three weeks, the Petitioners will be entitled to get interest @ 7% on the entitlement all through till the payment is paid.

12. The Writ Petition succeeds. No costs

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BISWANATH RATH, J.

*Orissa High Court, Cuttack.
Dated the 1st November, 2022/Swarna, Junior Stenographer*

