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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.04.2022

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THE HONOURABLE THIRU JUSTICE B.PUGALENDHI

W.P.No.5889 of 2020

K.Rajavelu

... Petitioner

Vs.

- 1.The Collector of Thiruvallur,
Thiruvallur - 602 001.
- 2.The Tahsildar of Ponneri,
Ponneri - 601 204.
- 3.The Revenue Divisional Officer of Ponneri,
Ponneri - 601 204.
- 4.The Village Administrative Officer,
Pandianallur First Panchayat Board,
Pandianallur,
Redhills,
Chennai - 52.
- 5.The Chairman,
Electricity Board Commission,
Annasalai,
Chennai - 600 002.
- 6.The Principal Secretary to Government,
Electrical Department,
St.George Fort,
Secretariat,
Chennai - 9.
- 7.The Under Secretary,
Ministry of State Electrical Department,
St.George Fort,
Secretariat.
Chennai - 9.
- 8.The Assistant Engineer,
Electricity Board,
Puzhal,
Chennai - 66.



9.The Assistant Engineer of Pandinallur,
Electricity Board, Kamaraj Street,
Redhills, Chennai - 52.

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10.The Assistant Commissioner of Police,
Puzhal Range,
Chennai - 66.

11.The Inspector of Police,
M4 Police Station,
Red Hills,
Chennai - 52.

12.The Dean,
Government Stanley Hospital,
Chennai - 600 001.

... Respondents

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus directing the respondents to dispose of the representation of the petitioner dated 07.12.2019.

For Petitioner : Mr.V.Nandagopalan

For Respondents : Mr.P.R.Dhilipkumar
Standing Counsel for RR.5, 8 & 9

ORDER

This writ petition is filed by the petitioner for a mandamus to dispose of his representation dated 07.12.2019.

2.According to the petitioner, on 26.11.2019, when his wife, along with his mother, were proceeding to the school to drop their two sons, a high voltage line cut-off and fell down on them. When his wife attempted to save the others, the line fell on her and she died. His elder son and his mother were also severely injured. In this regard, he has lodged a complaint before the Redhills Police Station on 26.11.2019 and the same was registered as against the Electricity Board officials of that area in Crime No.691 of 2019, for the offence under Section 304(A) IPC. In the meantime, the petitioner has made a representation to the officials on 07.12.2019 seeking compensation for his deceased wife, injured son, injured mother; and also a Government Job, on humanitarian grounds. Since there is no response, he has filed the instant writ petition.



3.Learned Counsel for the petitioner submitted that due to negligence and poor maintenance of electrical wires, the incident took place and therefore, prayed for appropriate orders. He has also relied upon the death report signed by the Inspector of Police, M4 - Redhills Police Station as well as by the Assistant Professor, Department of Forensic Medicine, Stanley Medical College, after completion of postmortem, which were enclosed in the typed-set of papers, wherein, the cause of death has been mentioned as due to fallen electrical wire.

4.Learned Standing Counsel for the Electricity Board submitted that the writ petition is not maintainable, since disputed questions of fact are involved. According to him, the remedy available to the petitioner is to approach the concerned civil Court. He further submitted that on 26.11.2019 at about 08.25 am, they received information about the fallen overhead LT line and immediately, the power supply was disconnected. An inspection to the accident site was made, wherein, it was found that the 'B' phase LT line was cut due to broken porcelain LT shackle insulator. This event of breakage of porcelain insulator is an 'Act of God' and the Board cannot be held liable, as per the exemption granted in tortious liability. In any event, he submitted that the Board, as per the guidelines, has awarded a sum of Rs.5,00,000/- as compensation to the petitioner, however, they have refused to receive the same.

5.This Court paid its anxious consideration to the rival submissions made and also perused the available materials.

6.In the decision reported in (2013) 2 MLJ 302 [Arulmeri v. Superintendent Engineer, TNEB], this Court has held that when the deceased was not at fault and the death had occurred due to fall of electric wire, there is no need for the dependent to go before the civil Court and that relief can be granted in writ proceedings. Here, in this case, the petitioner's wife died due to the fallen electric wire, as per the death report. Therefore, this Court is inclined to proceed with the matter, instead of directing the petitioner to approach the civil Court.

7.It is the contention of the Electricity Board that breakage of porcelain insulator in an Act of God and that they cannot be held liable for the same. However, they have come forward and offered a sum of Rs.5,00,000/- as ex-gratia payment on compassionate grounds.

8.The Hon'ble Supreme Court, in the decision in (2002) 2 SCC 162 [M.P.Electricity Board v. Shail Kumari and Others], has held as follows:-



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"7. It is an admitted fact that the responsibility to supply electric energy in the particular locality was statutorily conferred on the Board. If the energy so transmitted causes injury or death of a human being, who gets unknowingly trapped into it the primary liability to compensate the sufferer is that of the supplier of the electric energy. So long as the voltage of electricity transmitted through the wires is potentially of dangerous dimension the managers of its supply have the added duty to take all safety measures to prevent escape of such energy or to see that the wire snapped would not remain live on the road as users of such road would be under peril. It is no defence on the part of the management of the Board that somebody committed mischief by siphoning such energy to his private property and that the electrocution was from such diverted line. It is the look out of the managers of the supply system to prevent such pilferage by installing necessary devices. At any rate, if any live wire got snapped and fell on the public road the electric current thereon should automatically have been disrupted. Authorities manning such dangerous commodities have extra duty to chalk out measures to prevent such mishaps.

8. Even assuming that all such measures have been adopted, a person undertaking an activity involving hazardous or risky exposure to human life, is liable under law of torts to compensate for the injury suffered by any other person, irrespective of any negligence or carelessness on the part of the managers of such undertakings. The basis of such liability is the foreseeable risk inherent in the very nature of such activity. The liability cast on such person is known, in law, as "strict liability". It differs from the liability which arises on account of the negligence or fault in this way i.e. the concept of negligence comprehends that the foreseeable harm could be avoided by taking reasonable precautions. If the defendant did all that which could be done for avoiding the harm he cannot be held liable when the action is based on any negligence attributed. But such consideration is not relevant in cases of strict liability where the defendant is held liable irrespective of whether he could have avoided the particular harm by taking precautions."

9. In the decision reported in 1984 (97) L.W.42 [Nirmal Thirunavukkarasu and Others v. Tamil Nadu Electricity Board], it has been held as follows:-

"6. Overhead electric wires carrying heavy load of electric energy are highly dangerous and if any human



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being or animal comes into contact with the same, the consequences are fatal. Hence, great care and caution are expected of the Electricity Board in laying, installing and maintaining overhead wires and generally these wires do not snap and fall down. If therefore, such a thing happens, a prima facie inference can be drawn that there has been carelessness or negligence on the part of the Electricity Board in transmitting electric energy or in maintaining the transmission lines. The Electricity Board has also to take precaution against dangers of live wires snapping and falling down under unforeseen circumstances, by providing for automatic disconnection of supply of electric energy."

10.A learned Single Judge of this Court, in the decision reported in 2013 Writ L.R. 176 [K.Sampath @ Chidambaranathan v. Superintendent Engineer-I, Puducherry], which is a case of death by electrocution, after referring to a string of decisions, held the Electricity Board to be vicariously liable.

11.This Court in the decision reported in (2020) 6 CTC 363 [G.Sendhattikalaipandian v. Inspector of Police, Alangulam Police Station, Virudhunagar District and Another], has observed as follows:-

"10. As early as in the year 1986, the Constitution Bench of the Hon'ble Supreme Court in M.C.Mehta Vs. Union of India (1987) 1 SCC 395 held that we need not feel inhibited by technical considerations surrounding the rule in Rylands Vs. Fletcher (1868) L.R.3 H.L. 330 and that we have to evolve new principles and lay down new norms which would adequately deal with the new problems which arise in a highly industrialized economy. They therefore held that where an enterprise is engaged in a hazardous or inherently dangerous activity and harm results to anyone on account of an accident in the operation such hazardous or inherently dangerous activity resulting, for example, in escape of toxic gas the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident and such liability is not subject to any of the exceptions which operate vis-a- vis the tortious principle of strict liability under the rule in Rylands Vs. Fletcher."

12.In fact, in the decision in G.Sendhattikalaipandian's case (supra), a learned Single Judge of this Court, after posing a query 'Did not Justice V.R.Krishna Iyer treat letters as writ petitions?', directed the Registry to number a e-mail sent by G.Sendhattikalaipandian, the bereaved father of the victim who was electrocuted and died on the spot. After referring to a battery of decisions, the writ petition was allowed and the



Electricity Board was directed to pay the compensation, which was arrived by the Court by applying the formula adopted for computing damages in motor accident cases.

13. This Court has perused the representation of the petitioner dated 07.12.2019, wherein, among other things, the petitioner has sought for compensation for his deceased wife and injured son and mother. It is an admitted fact that the petitioner's wife died due to electrocution. The Electricity Board, in their counter affidavit, has not denied the same and in fact, they came forward to provide a sum of Rs.5,00,000/- as compensation, which was refused by the petitioner. Under such circumstances, this Court, though the prayer sought for in the writ petition is for a mandamus to dispose of the representation, in exercise of its extra-ordinary jurisdiction under Article 226 of the Constitution of India, considering the status of the petitioner and in the light of the decisions referred to supra, is inclined to award compensation by applying the formula adopted for computing damages in motor accident cases, instead of directing the authorities to dispose of the representation.

14. The deceased, R.Kaveri, wife of the petitioner, was aged about 35 years at the time of accident, as per the death report. She is a home-maker. She is survived by her husband and two sons.

15. The Hon'ble Supreme Court, in the decision reported in (2010) 9 SCC 218 [Arun Kumar Agrawal v. National Insurance Co. Ltd.,], while granting compensation for the death of a housewife due to a motor vehicle accident, has held as follows:-

"26. In India the courts have recognized that the contribution made by the wife to the house is invaluable and cannot be computed in terms of money. The gratuitous services rendered by the wife with true love and affection to the children and her husband and managing the household affairs cannot be equated with the services rendered by others. A wife/mother does not work by the clock. She is in the constant attendance of the family throughout the day and night unless she is employed and is required to attend the employer's work for particular hours. She takes care of all the requirements of the husband and children including cooking of food, washing of clothes, etc. She teaches small children and provides invaluable guidance to them for their future life. A housekeeper or maidservant can do the household work, such as cooking food, washing clothes and utensils, keeping the house clean, etc., but she can never be a substitute for a wife/mother who renders selfless service to her husband and children."



16.A learned Single Judge of this Court, in the decision reported in (2020) 2 TN MAC 389 [Bhuvaneswari v. Mani], while fixing the monthly income of a deceased home-maker as Rs.9000/-, has observed as follows:-

"16. Let us consider the importance of the Homemakers in a family. The value and importance of the Homemakers in a family had never been undermined by anybody, including the Courts. Performing the job of the Homemaker is a toughest one and the Homemakers are working without any time limits as they are working with love and affection, which can never be expected from an ordinary employee. Therefore, the job of Homemaker can never be compared with employee or employment and the importance and the values are also to be considered by the Courts, while assessing the compensation. The Homemakers are working from early morning till late night and one can experience the hard work being performed by the Homemakers in the houses. The responsibility, performance of job with dedication and with love and affection, involvement regarding the future welfare of the family as well as the members of the family and all can never be undermined and it is to be given due weightage in such cases, where the claimants are Homemakers. Visualising the situation wherein, the Homemakers, in a family, died, the family will become helpless and undoubtedly, the situation would be worsened. Thus, the importance, value as well as the materialistic factors are to be considered, while fixing the compensation as far as the Homemakers are concerned.

17. In Motor Accident Cases, the Tribunals are bound to consider the requirements of fairness. Fairness in granting compensation is of paramount importance. While assessing contributions of the Homemakers to the family, there should be no bias and the importance is to be realised. Fairness is an elusive concept. Ultimately it is grounded in social and moral values. These values or attitudes can be stated. But they cannot be justified or refuted by any objective process of logical reasoning. Moreover, they change from one generation to the next. Therefore, in the present context, there can be different views on the requirements of fairness in any particular case. Implicitly, the Courts must exercise their powers, so as to achieve an outcome which is fair between the parties. But an important aspect of fairness is that like cases should be treated alike.

18. Keeping in view the amount of fairness to be adopted in the cases of Homemakers, we cannot forget that the Homemakers are the Nation Builders. They are the



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sources for making the family happy and happy family alone can constitute a better society and better society can lead the Nation vibrantly. Thus, the Homemakers are not only contributing to their family, but they are contributing to the development of our Great Nation. It is realistic, if anyone of the earning member died in the family, there will be an impact. But if the Homemaker died, then the impact would be unmeasurable and the family will become scattered. It would be very difficult to cope up the family. Therefore, they are standing in a higher pedestal than that of the earning member in a family. Thus, mitigating factors, family status, income of the husband and other aspects are to be considered while fixing the compensation for Homemakers.

19. Considering the nature of grievous injuries sustained by the appellant/claimant, this Court has no hesitation in arriving at a conclusion that the permanent disability caused to the appellant/claimant would affect not only her family life, but also a great loss to the entire family. The family would suffer on account of the permanent disability sustained by the Homemakers. The family is losing her effective contribution to the family. Thus, a pragmatic approach is required to be adopted. However, the Tribunal has not taken these aspects in a right perspective. The Tribunal has adopted a mechanical approach by considering the proof for employment as well as the income. Such an approach in respect of beneficial legislation like [Motor Vehicles Act](#), is improper. The beneficial legislation is to be interpreted keeping in mind the purpose and object sought to be achieved under the Act. Once the fact of accident is established and the Insurance Policy Coverage is not disputed and negligence is decided, then the claimants are entitled for 'Just Compensation'."

17.A Full Bench of the Hon'ble Supreme Court, in the decision in (2021) 2 SCC 166 [Kirti v. Oriental Insurance Company], has held as follows:-

"26. Therefore, on the basis of the above, certain general observations can be made regarding the issue of calculation of notional income for homemakers and the grant of future prospects with respect to them, for the purposes of grant of compensation which can be summarized as follows:

a. Grant of compensation, on a pecuniary basis, with respect to a homemaker, is a settled proposition of law.

b. Taking into account the gendered nature of housework, with an overwhelming percentage of women being engaged in the same as compared to men, the fixing of notional income of a homemaker attains special



21. Apart from the petitioner / husband, the deceased is survived by her two sons. Both of them are minors and they have to grow without the love and affection, apart from the guidance, of their mother. Therefore, this Court fixes a sum of Rs.1,00,000/- each to the sons, for the loss of love and affection.

22. Accordingly, this Court fixes the compensation in respect of the deceased / R.Kaveri as follows:-

Loss of Dependency	-	Rs.16,12,800/-
Conventional Heads	-	Rs. 77,000/-
Loss of love and affection	-	Rs. 2,00,000/-

		Rs.18,89,800/-

23. With regard to the claim of compensation for the petitioner's injured elder son, R.Suryaprakash and mother, K.Padma, no medical records were produced before this Court. In the absence of such materials, this Court could not fix the compensation and therefore, grants liberty to the petitioner to approach the concerned forum for appropriate relief in respect of the injured son and mother, with necessary materials, in the manner known to law.

24. Accordingly,

a) The compensation for the death of the petitioner's wife, R.Kaveri, is fixed as Rs.18,89,800/- [Rupees Eighteen Lakh Eighty Nine Thousand and Eight Hundred only];

b) The deceased is survived by her husband / petitioner and two sons, who are minors. Therefore, the apportionment is fixed as 30:35:35, ie., the petitioner is entitled to 30% of the award amount and the sons are entitled to 35% each;

c) The Electricity Board / respondents 5, 8 & 9 shall deposit the compensation amount, with interest at the rate of 6% per annum from the date of institution of this writ petition till the date of deposit, before the Registry of this Court to the credit of this writ petition, within a period of twelve weeks from the date of receipt of a copy of this order;

d) Registry, in turn, shall deposit the amount in three interest bearing accounts [in the ratio - 30:35:35] in any of the Nationalized Banks;

e) After getting necessary permission from the Registry,

- the petitioner / husband of the deceased is permitted to withdraw his share amount; and

- the petitioner, being the natural guardian of the two children, is also permitted to withdraw the interest pertaining to the share of the children once in six months, till they attain majority. Once they attain majority, the children are entitled to withdraw their respective shares.



25. The prayer sought for in the writ petition is for a mandamus to dispose of his representation. However, considering the peculiar facts and circumstances of the case, this Court has gone in detail and has passed the aforesaid order. Therefore, the petitioner is exempted from paying any additional Court fee, if any.

In the result, this writ petition stands disposed of in the above terms. There shall be no order as to costs.

Sd/-

Assistant Registrar (CS-IX)

//True copy//

Sub Assistant Registrar

mrm/gk

To

1. The Collector of Thiruvallur,
Thiruvallur - 602 001.
2. The Tahsildar of Ponneri,
Ponneri - 601 204.
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Red Hills, Chennai - 52.

12.The Dean,
Government Stanley Hospital,
Chennai - 600 001.

Copy To

1. The Registrar (Judicial)
High Court, Madras.

2. The Section Officer,
Accounts Section,
High Court, Madras.

+2ccs to Mr.V.Nandagopalan, Advocate SR.No.29596

+1cc to Mr.L.Jaivenkatesh, Advocate SR.No.28813

W.P.No.5889 of 2020

AD(CO)
GMY(25/05/2022)