



Writ Petition Nos.19871 and 19872 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 3/11/2022

C O R A M

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Writ Petition Nos.19871 and 19872 of 2017

a n d

W.M.P.Nos.21466 and 21467 of 2017

P. Rajalakshmi ... Petitioner in
W.P.No.19871 of 2017

N. Karpagavalli ... Petitioner in
W.P.No.19872 of 2017

Vs

1. The Chairman
Tamil Nadu Electricity Board
Anna Salai
Chennai.
2. The Chief Superintendent Engineer
Tami Nadu Electricity Board
Kancheepuram District.
3. The Superintending Engineer
Tamil Nadu Electricity Board
No.130 G.S.T. Road, Chengalpet
Kancheepuram District.



Writ Petition Nos.19871 and 19872 of 2017

4. The Assistant Engineer
Tamil Nadu Electricity Board
Karasankal (TANGEDCO)
No.1/99 II Street, Anna Nagar
Kancheepuram District.

...

Respondents

PRAYER : Petitions filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus to direct the respondents to pay compensation of a sum of Rs.10 lakhs for negligence act of the fourth respondent, based on the representations dated 22/7/2016.

For Petitioners ... Mr.E. Sathiyaraj

For respondents ... Mr.L.Jai Venkatesh

COMMON ORDER

These writ petitions have been filed praying to direct the respondents to pay compensation for a sum of Rs.10 lakhs to each of the petitioners, for the negligent act of the fourth respondent, based on the representations dated 22/7/2016.

2. Brief facts which are necessary for the disposal of these writ petitions are as follows:-

Page No:2/14



. On 27/6/2016, at about 10.00 a.m., when both the petitioners were going to K.R.Puram Main Road, nearby Thulukanathamman temple, an electrical lamp post fell on the petitioners. Due to that they got grievous injuries on head and all over the body. Immediately, they were taken to Parvathy Hospital, Chromepet and admitted in ICU, wherein, the petitioners were taken treatment till 1/7/2016 and 30/6/2016, respectively.

3. A complaint has been lodged before Manimangalam Police Station and registered a case in F.I.R.No.240 of 2016, under Section 337 of the Indian Penal Code, against the fourth respondent.

4. The main grievance of the petitioners is that the respondents who have committed grave negligence, ought to have given adequate compensation and medical expenses to the petitioners. Hence the petitioners have filed representations, dated 22/7/2016, to the respondents, with regard to the payment of compensation of Rs.10 lakhs each. Since the said representations have not been disposed of, present writ petitions have been filed.



5. Counter affidavit was filed on behalf of the respondents, wherein it is stated that in and around Padappai and Karasangal area, there was heavy wind and rain, which caused heavy damages to installations of HT and LT line, poles and accessories. Due to which, a tree at K.R.Puram, III Street in Kilpaddapai area fell on the nearby LT line and damaged 3 numbers of LT 7.5 Mtr poles. In order to restore electricity supply to the said area, TANGEDCO staffs had been working to replace damaged poles and LT line, after taking proper precautionary measures to avoid accident to the staff and public. EB authorities had placed the sign board "EB work in progress" at the entrance of KR puram in Kilpadapai.

6. On the fateful day, the petitioners, aged about 34 and 35 years respectively, without noticing the sign board, crossed the working area. While so, one of the damaged poles fell on the petitioners, as the soil appears to have been got loose due to the previous day's rain and hence, they met with mechanical accident and got injuries. This accident had happened only due to the act of God, which is beyond the control of the respondents.



7. Heard Mr.E.Sathyaraj, learned counsel for the petitioners and Mr.L.Jaivenkatesh, learned counsel for the respondents.

8. The learned counsel appearing for the petitioners submitted that the petitioners have sustained injuries on all over the body and they were admitted in Parvathy Hospital and had taken treatment till 1/7/2016 and 30/6/2016, respectively, and spent Rs.2 lakhs each. Due to grave negligence, respondents are liable to pay the compensation.

9. The learned Standing Counsel appearing for the respondents submitted that it is the admitted case of the petitioners that they had sustained injuries and had spent about a few thousands to recoup from the injuries. Had the petitioners had seen the sign board, accident would not have happened. Due to their carelessness, the petitioners are not entitled to any compensation.

10. Perused the materials available on record.

11. It is not disputed that pole fell on both the writ petitioners which resulted in serious injuries on both of them. They have been admitted in the



hospital on the same day and treated till 1/7/2016 and 30/6/2016 respectively.

First Information Report was filed on the same day. A perusal of the same would indicate that the staff of the respondents are working on the electric pole. It is admitted in the counter at para 4 (g) that due to the loose soil, mechanical accident had happened. Had they erected the pole in a safety manner, the same would not have been fell on the petitioners. Therefore, it cannot be contended by the respondents that writ petitioners have not noticed the sign board placed at the entrance of KR Puram in Kilpadappai. It is the duty of the respondents staff to make them present near the working area. Placing of sign board alone will not serve any purpose. One cannot expect every passer-by will meticulously see the sign board placed by the E.B officials. The employees, who are working at the site should have been guided to put proper barricade, blocking the required area and the street, so that the public movement will be stopped till the work is completed, which will help both the employees and public safety. Therefore, this Court is of the view that erection of the pole in a loose soil is the grave negligence on the part of the respondents and that they have not taken precautionary measures and they casually dealt with the repair work.



12. This Court on an earlier occasion, in Appeal Suit No. 758 of 2012 (1.

Vestas RRB India Ltd., rep. By its Managing Director, No.189, Sukhder Vihar, New Delhi 110 025 and another Vs. 1. K. Ramasamy and two others, has dealt with the similar issue, wherein, this Court had extracted the relevant portion from the judgment reported in **2002 (1) CTC 362, M.P.ELECTRICITY BOARD Vs. SHAIL KUMARI**, it has been held as follows:-

“17. The basis of such liability is the foreseeable risk inherent in the very nature of such activity. This is based on the doctrine of strict liability. The concept of negligence comprehends that the foreseeable harm could be avoided by taking reasonable precautions. If the third 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.where an enterprise is



engaged in a hazardous or inherently dangerous activity and harm is caused on any one on account of the accident in the operation of such activity, the enterprise is strictly and absolutely liable to compensate those who are affected by the accident; such liability is not subject to any of the exceptions to the principle of strict liability under the rule in **Rylands vs. Fletcher (1868)** **LR 3 HL 330.**

13. Under the principles of strict liability, the Electricity Department ought to have maintained the poles carefully and properly and the accident had happened to the petitioners, only due to the negligence on the part of Electricity Department. Such things cannot be ignored altogether.

14. In **R.KUMAR Vs. ELECTRICITY DEPARTMENT {2017 (1) CTC 668}**, the learned Single Judge has observed at para Nos.6 and 7 are as follows:-



WEB COPY



Writ Petition Nos.19871 and 19872 of 2017

“6. The first question that needs to be addressed is whether the snapping of OH-LT live wire due to heavy wire and rain, would amount to an “Act of God”. It is needless to mention that prior to installation of live-wire, careful precaution must be taken to ensure that the electric wires which are prone to come in contact with the public if snapped in times of heavy rain and wind, are installed with utmost durability and endeavour to withstand such unforeseen calamity. Rigorous periodical inspection needs to be conducted to such installation to avoid any untoward incident. Absence of the precaution would amount to negligence on the part of the respondents. It is common knowledge that rain tends to become heavy only after gradual and constant down-pour thereby turning into storm or gale wind, which are always predictable and hence precautions like cutting down the power supply to the openly installed live wires and



transformer is essential during such untoward incidents.

7. In the case on hand, the live wire, to which the deceased Victor came into contact, had snapped either due poorly installed electric pole or lack of proper and periodical maintenance of the same. The respondents do not seem to have taken any precaution to cut down the power supply, when heavy rains and winds were anticipated. I do not find any of the reasonings put forth by the learned counsel for the second respondent in its counter affidavit as well as during his oral submissions to the effect that the accident was due to an “Act of God”. On the other hand, the unfortunate incident is attributable due to the negligence on the part of the concerned Officials of the second respondent.”



WEB COPY 15. In ARULMERI Vs. SUPERINTENDENT ENGINEER, TNEB

(2013) 2 MLJ 302, this Court has rejected the objection of the electricity board with regard to the maintainability of the writ petition and directed the respondents to compensate the petitioner.

16. Considering the strict liability theory, it is the duty of the respondents to maintain the poles in a proper manner. Merely because the poles were loose in the wet soil, it cannot be stated by the Department that the said negligence is an act of God. In such a view of the matter, this Court is of the view that the respondents are liable to pay compensation.

17. A perusal of the Discharge Summary, dated 1/7/2016 and 30/6/2016, reveals that D 3 both bone were fractured with I.A.Distal Talus” for the petitioner in W.P.No.19871 of 2017 and Colloid cyst at third ventricles was present, for the petitioner in W.P.No.19872 of 2017. For treatment, both had spent about Rs.2 lakhs each.



Writ Petition Nos.19871 and 19872 of 2017

WEB COPY

18. Considering the above nature of injuries and the amount actually spent for medical expenses and also considering the nourishment and pain and suffering and further treatment, this Court is of the view that fixing Rs.4 lakhs to each of the petitioners, as compensation would meet the ends of justice.

19. Accordingly, these writ petitions are allowed. The respondents are directed to pay Rs.4 lakhs as compensation to each of the petitioners, totally Rs.8,00,000/- (Rupees Eight lakhs only). The said amount shall be paid with interest at 7.5% p.a., from the date of accident, till the date of payment, within a period of one month, from the date of receipt of a copy of this order. No costs. Consequently, the connected Miscellaneous Petitions are closed.

3/11/2022

Index : Yes / No

Internet: Yes

Speaking/non speaking order

mvs.

Page No:12/14



Writ Petition Nos.19871 and 19872 of 2017

WEB COPY

To

1. The Chairman
Tamil Nadu Generation of Energy and
Distribution Corporation (TANGEDCO)
Annasalai
Chennai 600 002.
2. The Superintending Engineer
Villupuram Electricity Distribution Circle
Tamil Nadu Electricity Board
Villupuram.
3. The Executive Engineer
Operation and Maintenance
Tamil Nadu Electricity Board
Kandamangalam
Villupuram Taluk.
4. The Assistant Engineer
Operation & Maintenance
Thiruchittrambalam Koot Road, Vanur Taluk
Villupuram.



WEB COPY



Writ Petition Nos.19871 and 19872 of 2017

N. SATHISH KUMAR, J

mvs.

W.P.Nos.19871 and 19872 of 2017

3/11/2022



WEB COPY



Writ Petition Nos.19871 and 19872 of 2017