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W.P.No.36903 of 2006

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 02.03.2023

Pronounced on: 06.06.2023

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

WP.No.36903 of 2006 and
MP.Nos.1 of 2006 & 2 of 2007

1.Katheeja
2.E.A.Mohammed Irfan
3.E.A.Muhammed Rizwan
4.Kochaisha
(P2 to P4 impleaded vide order dated 24.6.2022 made
In WMP.32301/2019 in WP.36903/2006)

... Petitioners

Vs

1.The Chief Secretary
to the state of Tamil Nadu,
Secretariat Buildings, Fort St. George,
Chennai-600 009.

2.The Commissioner,
Corporation of Chennai,
Ribbon Building, Chennai-3.

3.The Chairman,
Tamil Nadu Electricity Board [TNEB]
Anna Salai, Chennai-2.

4.Sub-Inspector of Police,
B-2, Esplanade Police Station,
Chennai-104.



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5.M/s.Reliance Information & Communication Limited,
Rep. by its Managing Director,
No.6/3, Haddows Road,
Chennai-6.

... Respondents

(R5 impleaded as per order dated 29.6.2007 in
MP.1 of 2007 in WP.36903 of 2007)

PRAYER: Writ Petition filed under Article 226 of the Constitution of India
praying to issue a Writ of Mandamus, directing the 2, 3 and 5 Respondents to
jointly and vicariously pay the compensation of Rs.Twenty Lakhs to the
Petitioners with interest from the date of incident viz., 26.09.2003.

(Prayer amended vide order dated 2.3.2023 made in
WMP.No.32303/2019 in WP.36903/2006)

For Petitioners : Mr.Alaguraja

For Respondents: Mr.P.Kumaresan, Additional Advocate General
assisted by
Mr.Alagu Goutham (for R1 and R4)
Government Advocate

Mr.Rahul Aditya (for R2)
For Ms.P.T.Ramadevi, Standing Counsel

Ms.Revathi (for R3)
Mr.L.Jai Venkatesh, Standing Counsel

Mr.Balamurali (for R5)
For M/s.Shivakumar and Suresh



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ORDER

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The first petitioner's husband Mr.Abdul Manaf was electrocuted on 26.09.2003 at about 6.00 a.m. His family is based in Kerala and he was working as a cashier in a Hotel in Chennai and had been on his way to work. He had left behind, his widow, two sons, who were minors when the Writ Petition was filed and his parents. His father passed away on 13.10.2009 and the other dependents have been impleaded as P2 to P4 on 24.06.2022.

2. The petitioners seek a mandamus directing R2, the Commissioner, Corporation of Chennai (in short 'R2'/'Corporation'), R3, the Chairman, Tamil Nadu Electricity Board (in short 'R3'/'TNEB') and R5, Reliance Information & Communication Limited (in short 'R5'/'Reliance') to jointly pay a compensation of a sum of Rs.20.00 lakhs with interest from date of incident.

3. The case of the petitioners is simple and proceeds on the admitted basis that Mr.Manaf had been electrocuted by virtue of the carelessness of the respondents. The leakage of electricity had been caused by stressing of the cables at the accident site and seepage/leakage of stagnant rain water through underground cable wires. Admittedly, one Tmt.Ravanammal of Royapuram had passed away on the same day on the same spot by electrocution.



4. A police complaint had been filed in both cases with the Sub-Inspector of Police, Esplanade Police Station and registered jointly in crime No.459 of 2003 under Section 174 of the Criminal Procedure Code. None of the parties are aware of the fate of the aforesaid FIR. That apart, P1 had made representations on 15.10.2003 to R1 to R3 seeking compensation for the untimely demise of her husband that have not found favour of even a reply thus far.

5. R3 has filed a counter on 24.11.2006 denying that the accident causing Mr.Manaf's death was due to carelessness or indifference on their part. They do admit that after inspection, it was found that the accident was caused because of the inadequate clearance between the metal plate and the TNEB electric cable which touched the electric cable at the site of the accident. The accident had occurred in front of Door No.23, Mannady Street, Chennai – 600 001. The explanation in their own words is as follows:

“7. The 3 x ½ 120 Sq. MM LT. cable from 2nd Pillar to 3rd Pillar of Mannady Triple Pole Transformer 500 KVA was laid before 2 years. The optical fiber cable was laid by the Reliance Company over the Tamil Nadu Electricity Board cable during the month of October 2002, with the permission granted by 1st and 2nd respondent. The optical fiber cable (Red and Block) of the Reliance Company were housed inside the Galvanized metal pipe (Two joined together) and the metal plate erected for the



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protection of the said optical fiber cable was found below the recommended clearance at the accident site.

8. *I further submit that the accident was caused because of the inadequate clearance between the metal plate and the Tamil Nadu Electricity Board Electric cable, as it touches the electric cable at the accident pipe.”*

6. The entirety of the blame was thus placed on Reliance Information and Communication Limited, who had laid the underground optic cables without providing mandatory clearance. A plea has also been taken that the petitioner ought to have approached the Civil Court instead of filing this Writ Petition. This plea is rejected straight away as this Court has adequate power and jurisdiction to award compensation in such matters, if thought fit.

7. In the counter filed by R5, it is stated that Reliance Telecom Infrastructure Limited is the successor-in-interest to Reliance Information and Communication Limited, the latter undergoing Corporate Insolvency Resolution Proceedings before the National Company Law Tribunal, Bombay. Though some technical objections have been raised including maintainability, such technical objections do not, in my view hold any merit.

8. Suffice it to say that there is no dispute on the position that accident has been caused by leakage of electricity involving power lines laid by TNEB/R3 and underground optic cables laid by Reliance and thus this Court is



concerned only with the substantial issue that arises in this matter in regard to the prayer of the petitioners seeking compensation.

9. R5 has admitted at paragraph 9 of the Counter that the cables had been laid in November/December, 2002, around one year before the incident and that there had been heavy showers at the time. The laying of power cables was after due permission obtained from the Corporation of Chennai and various other Departments, such as TNEB, Metrowater, Telecom Departments and the Corporation.

10. It is their defence that no untoward incident had occurred during the laying and hence the claim of the petitioners is untenable. That apart and on the technical aspects of the matter, they would have this to say.

“10.....It is submitted during the process of laying multiple Government agencies monitor the situation to ensure that no untoward incident occurs, especially since the digging is below the ground. If any damage had occurred during the process of laying the OFC to the TNEB cables the entire transformer would have burst. Persons laying would have been electrocuted and the entire area plunged in darkness. No untoward incident had occurred during the laying which is done with the knowledge of multiple government agencies. Hence it is totally false to state that the respondent pipes while laying had affected the TNEB cables. As mentioned supra in the DBC method no fish plates are used. If at all the respondent uses GI pipes in some non bituminous surfaces. Even this GI pipe used is by inserting the OFC through it and as such there will be



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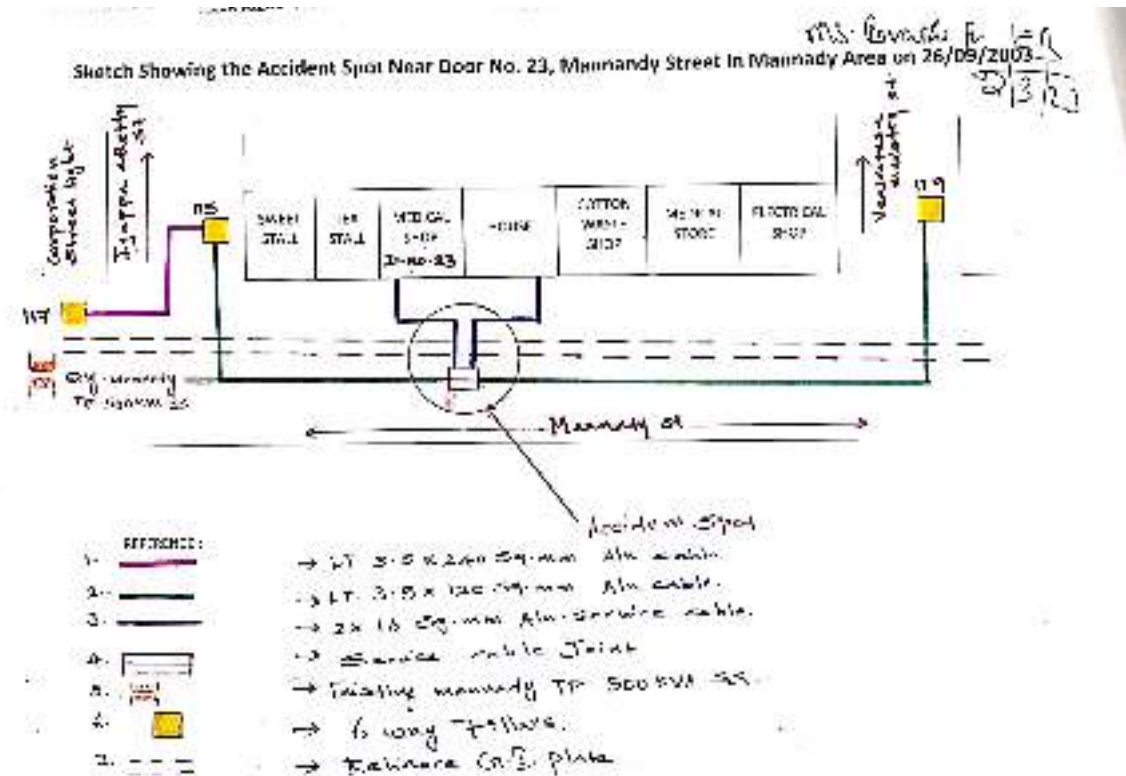
hardly any sag since the OFC will hold the GI Pipe. For instance if a pipe is inserted into a clothesline, since the clothesline is secured at either end, there would be only a minimal sag. Further in the case of OFC the laying is in a groove hence this issue of any sag would not arise as the OFC would be only in the groove. The SBS filling will ensure that the OFC is practically fastened and would not be freely moving.

11. As mentioned supra the materials used by the respondents are non-conductors of electricity and even if there is any leakage, these materials would not conduct electricity. However if there is water logging and there is any leakage the entire area would be conducting electricity. The presence of any non-conducting material would be of no avail in this regard. It is therefore submitted that only electricity leakage would be the proximate cause for the electrocution. The post mortem report would make this clear. The impact of the current is directly proportional to the voltage. It is submitted in many areas during rain and floods, the electricity is shut down to ensure that there is no such incidence. Supply is restored only after ensuring preventive maintenance.”

11. As far as Corporation is concerned, they would state that street lights were switched off well before 6.00 a.m. normally and on 26.09.2003, since it was raining, the power supply was switched off at 5.45 a.m. itself. Thus, according to them, power supply in the underground cable was itself not possible.



12. R3 has also filed a graphic representation of the laying of power cables and the topography of the area to illustrate the probable scenario causing the accident. The sketch is as follows:



13. Proceedings of the TANGEDCO dated 16.10.2019 have been circulated stating that for fatal accidents, a sum of Rs.5.00 lakhs would be paid to the victims on accidents reported on or after 29.07.2019, the compensation prior to that was a sum of Rs.2.00 lakhs.

14. Upon reading of the counters filed by R2, R3 and R5, only one thing is clear. Each authority wishes to pass the buck from one to another. Since the



matter involves technical appreciation and an understanding of how exactly the accident had occurred, this Court thought it fit to refer to an expert to look into the explanation tendered by Reliance and TNEB and assist the Court.

15. Mr.Sarathy, Professor of Indian Institute of Technology was requested to look into the counters and file a report vide order of this Court dated 15.02.2023. The report of the expert dated 02.03.2023 infers that it is possible that Mr.Manaf was electrocuted by the leakage of current initiated near the weak link (loop) into the soil due to the ingress of moisture into the aged/stressed cable.

16. Prior to the inference, site visit was also carried out which revealed that in the encircled area, in the diagram above (after paragraph 12), TNEB has made an insertion to the cable to provide electricity supply to an adjoining medical shop and house. The insertion is stated to have been covered with bitumen as routinely done. The date when the loop was made by the TNEB is not available. It is at this point, where the loop joint was made, that the cables are said to have been stressed, electricity had leaked and on account of the seepage of rain water, caused the fatal electric shock.

17. The report reveals that the leakage could have taken place either because of the insertion and the tapping of the power or digging of the road for



subsequent civil work for which there was no documentation available, or laying of the optic cable by R5. The expert thus concludes that it is possible that any of the either situations could have stressed the cable momentarily.

18. In the interests of completion, the explanation and the inference of the expert is set out below:

“Explanation:

As per court direction, the respondents R3 and R5 were invited to IIT Madras on 20th Feb and on 23rd Feb. to know more about the incidence. Tangedco has arranged for a site visit on 25th Feb 2023.

In Annexure-1, the encircled area (accident spot) where the TNEB has made an insertion to the cable to provide electrical supply to the Medical shop and an adjacent house. This insertion (loop) is covered with bitumen, in the usual process. Reliance Industries has laid optical fiber along the stretch. The optical fiber is covered with a parallel metal plate bolted. This structure is continuous to the entire length. To keep the metal plate in position and for the safety of the optical fiber, a proper supporting structure is put with brick and cement. The UG power cable was running approximately at horizontal separation of 10 cm and vertical separation of 20 m below. Both the parties were asked to provide the photos, if any, taken immediately after the incident. Both parties indicated that they don't have any document.

The analysis reported here is based on the limited information made available for the study.



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Electrocution is reported near a place where the local electricity board had made a loop joint in the underground cable to supply power to the two nearby shops. It appears that the joint was properly sealed using bitumen sealant, which is the usual practice. However, the common practice is to tap the power for the consumers from nearby pillar and the above appears to be quick solution to provide service to the end user.

It is common that roads are dig for various civil works and there would be no serious documentation of them. Incidentally, the Reliance optical cable has also been laid. It is not clear whether cable laying is carried out with automatic cable laying equipment or by manual digging. It is possible that each of such operations can mechanically stress the cable, at least momentarily.

The continuous mechanical and electrical ageing of the cable insulation could have been accelerated by the ingress of moisture through the joints or the damaged jacket during laying of optical fiber cable laying (the outermost water impervious insulating cover of the cable). Over years, the ageing would have resulted in observable water leakage path from outside to the cable core (where the energised conductor run). This results in continuous leakage of the current to the soil. The magnitude of the current, which is rather difficult to predict, can vary over a wide range. On the lower side, it may not be high enough to be detectable by earth fault relays.....

Inference:

Given all these, it is possible and unfortunate that Mr. Abdul Manaf fatally got electrocuted by the leakage of current initiated near the weak link (loop) into the soil due to the ingress of moisture into the aged/stressed cable.”



19. It is impossible in a matter of this nature to conclusively fix the responsibility on one agency or the other, to the exclusion of the others. The fact remains however that all three agencies, R2, R3 and R5, a licensee of the State, have had a role to play in the matter and it is thus appropriate that they can and are, held jointly responsible for the leakage of electricity and the demise of Mr.Manaf.

20. Such unfortunate situations happen on a regrettably frequent basis and bearing in mind the impossibility of ascertaining the responsibility and the consequences for each of the parties in a matter like this, it is only possible for the Court to take a wholistic view of the matter.

21. The occurrence of the accident is admitted. The cause of the accident and the demise of Mr.Manaf is also admitted to be of electrocution as evidenced by the report of death dated 26.09.2003, that, at column 6, sets out the cause of demise as 'electric shock'. The identity of the contributing parties, being R2, R3 and R5, is also admitted.

22. The roles of R2, R3 and R5, as service providers and agencies responsible for civic duties to the public, are continuing roles. It is not that any of them have been engaged on a one-time basis, rendered service and stepped out of the picture. Both the Corporation and the TNEB continue to be



authorities who carry serious responsibility for the upkeep of all aspects of public infrastructure and facilities.

23. The role of R3 is also a continuing one, and till such time the optic fibre cables are part of the road infrastructure in Tamil Nadu, it must assume responsibility in the present circumstances. This is not to state that the three respondents as aforesaid, R2, R3 and R5 are being held responsible merely on account of their roles and responsibilities in general. They are jointly held responsible on account of the specific and unique circumstances of this matter.

24. Their presence of all three agencies, R2, R3 and R5 has been established conjointly at the very spot of the incident/accident as there has been an interplay between the cables of R3 and R5 at that very point. The leakage of electricity puts paid to the statement of R2 that the electricity was switched off at 5.45 a.m. that day on account of the rains. Had this been the position there would have been no active flow of power and the accident could consequently have been averted.

25. This matter more than amply illustrates the necessity for a regular audit and inspection of the infrastructure, particularly when there are multiple players involved in the provision of services. The State must put in place a



common mechanism to ensure such audit, setting a time line for the required remedial action.

26. In light of the discussion and conclusion as above, I am of the categorical view that the petitioners are entitled to compensation. This Writ Petition is of the year 2006 and P2, P3 and P4, at that time, were aged 4 years, 2 years and 60 Years (approx.). Today, P2 and P3 are aged 24 and 19 years and P3 is 70+.

27. A memo of calculation has been filed by the petitioners based on the judgments of the Hon'ble Supreme Court in the cases of (i) *Sarla Verma & Ors. V. Delhi Transport Corporation and another*¹ and (ii) *National Insurance Company Ltd. V. Pranay Sethi & Ors.*² and the same is accepted. As per these judgments, they have arrived at a total compensation computed in the following manner:

3. Date of Incident & Place	: 26.09.2003 at 6.00 AM, at Mannady Street, (opp) to Mannady Medicals.
Name of the victim (deceased)	: Abdul Manaf, (aged 38years/2003)
Father's name	: Mohamed
Residential address of petitioners:	'Illathu Parambil House', Challingad Village & Post Kaippamangalam, Trichur, Kerala State – 680 681.
Age of Victim	: 38 years/2003
Occupation	: Cashier at the Hotel by name "New

¹ AIR 2009 SC 3104

² 2017 (II) ILR – CUT – 998 (S.C.)



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Income of deceased

*Palace Hotel” at P.V.Iyer Street,
Broadway, Chennai – 106
: Rs.8000/- Per month, that apart
Rs.30/- towards daily allowance.*

*Thus Rs.8000 + 900 = Rs.8,900/- per
Month as on 2003 (page-6 of our typed
Set)*

*Family members/dependents : 5 Persons [viz. wife, two minor
children, parents viz. Smt.Kochaisha
and Mr.Muhammed. Father Muhammed
died on 13.10.2009 ie. After 6 years of
death of his son Abdul Manaf]*

4. Calculation Principles of Quantum & Interest:-

*(a) In this regard principles have been down by various High Courts
and the recent verdict to be followed is the ruling by Hon'ble Supreme Court in
the case;-*

National Insurance Co, Ltd-

Vs-

Pranay Sethi & Ors,

***reported in 2017 SCC (16) 680 = 2017 SCC online SC 1270. (The copy
of the Judgment is annexed herewith for more appreciation.***

(b) Future Prospects:-

*(i). 40% (on the fixed salary of victim below the aged of 40 years)
Thus salary of deceased is Rs.8,900/- per month as on 2003.
(Para-61(iv) of the Judgment supra)*

(c) Deductions for personal & Living Expenses:-

*(i) 1/4th deduction over the income of deceased (Since there were
5 dependents until death of father Muhammed died on
13.10.2009). As per Hon'ble Supreme Court ruling stated supra
para-61, 1/4th deduction will continue till date. (Para-61 (v) of
the Judgment supra).*



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(d) Multiplier;-

(i) M-15 multiplier for 36 to 40 years of age. (as per the table and Para-42 in Sarla Verma & ors – Vs-Delhi Transport Corporation & anr reported in AIR 2009 SC 3104. (web copy of Judgment is enclosed herewith)

5. Principles set out for Compensation:-

(i) Monthly income	Rs.8,900/-
(ii) Added future prospects 40% (as per, para-22 of Smt.Sarla Verma case)	Rs.3,560/-
(iii) Monthly income (as per rulings) Rs.8,900 + Rs.3,560 =	Rs.12,460/-
Annual income without deduction 12,460x12	Rs.1,49,520/-
Annual income after deduction of ¼	Rs.1,12,140/-
(iv) 15 multiplier 1,12,140 x 15 (as per para-19 of Smt Sarla case)	Rs.16,82,100/-
(v) Love and affection for 4 Dependents at the rate of Rs.25,000/- each	Rs.1,00,000/-
(vi) Loss of Estate at Rs.15,000/- Each 15,000 x 4	Rs.60,000/-
(vii). Loss of consortium (as per Pranay Sethi case)	Rs.40,000/-
(viii). Funeral expenses (since body Transported to Trichur, Kerala)	Rs.35,000/-
Total compensation	Rs.19,17,100

6. Principle followed for interest

(i) In the era of 2000, the investment on Postal “Indra Vikas Patras” doubled in 5 and half or six years at **10.75 to 11.25 % simple interest.**

(ii) **9.0% simple interest** is allowed in similar case by Hon’ble Supreme Court in R. Valli & others – Vs – Tamil Nadu State Transport Corporation Ltd, on 10.02.2022.



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(iii) 12% simple interest has been ordered by High Court of Madras in a civil suit in C.S.No.392/2014 pronounced on 31.01.2023 in “Flora Madiazagane – Vs – G.G. Hospital & ors”

28. In conclusion, R2, R3 and R5 are directed to remit a sum of Rs.15.00 lakhs equally, ie., a sum of Rs.5.00 lakhs each with interest at the rate of 9 % p.a. from the date of incident till date of payment within a period of four (4) weeks from date of receipt of a copy of this order.

29. This Writ Petition is allowed in the aforesaid terms. No costs. Connected Miscellaneous Petitions are closed.

06.06.2023

Index : Yes
Speaking Order
Neutral citation: Yes
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To

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to the state of Tamil Nadu,
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