



W.P.(MD)No.3773 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 29.11.2023

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

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Velmurugan

... Petitioner

vs.

1.The Government of Tamil Nadu,
Represented by its Assistant Secretary,
Electricity Department, Secretariat, Chennai-600 009.

2.The Superintending Engineer ,
TANGEDCO, Theni, Theni District,

3.The Assistant Executive Engineer,
TANGEDCO, Andipatti, Theni District.

4.Lalitha

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the respondents 1 to 3 to pay compensation of Rs.80,00,000/- (Rupees Eighty Lakhs) to the petitioner's son namely Vettri Kannan for the loss of his right leg and right hand due to electrocution on 16.11.2020 within a time frame fixed by this Court.



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For Petitioner	:Mr.J.Senthil Kumariah
For R1	:Mr.A.K.Manikkam Special Government Pleader
For R2 and R3	:Mr.S.Deenadhayalan
For R4	:No Appearance

ORDER

This Writ Petition has been filed for the issue of a Writ of Mandamus directing the respondents 1 to 3 to pay compensation of Rs.80,00,000/- (Rupees Eighty Lakhs only) to the petitioner's son, who lost his right leg and right hand due to electrocution on 16.11.2020 due to the negligence on the part of the Electricity Department.

2. The case of the petitioner is that his son was aged about 13 years and was studying 7th Standard at Hindu Higher Secondary School, Aundipatti Taluk, Theni District. The petitioner's son went to the house of the fourth respondent and was playing in the terrace on 16.11.2020. Unfortunately, he came in contact with a live high tension wire and as a result of which, he sustained grievous injuries in his right hand and right leg and all over body.



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3. The petitioner's son was rushed to the Theni Government Medical College and Hospital and thereafter, he was transferred to Madurai Government Rajaji Hospital. The Specialist, on assessing the injuries sustained by the petitioner's son, came to a conclusion that the right hand and right leg should be amputated, failing which, it will endanger the life of the boy. Left with no other option, the operation was performed on 21.11.2020 and the entire right hand and the right leg below the knee was amputated.

4. A complaint was lodged before the Inspector of Police, Aundipatti Police Station and the same was registered in Cr.No.999 of 2020. The further case of the petitioner is that his son was continuously taking treatment and as a result, the petitioner incurred huge expenses. That apart, it adversely affected the mental status of the boy and he was dependent even for doing his normal activities. It is under these circumstances, the petitioner made a representation, dated 31.01.2021 to the respondents 1 to 3 seeking for monetary compensation. Since the same was not acted upon, the present Writ Petition has been filed before this Court.



5. The third respondent has filed a counter affidavit. The relevant

portions in the counter affidavit are extracted hereunder:

“4.It is respectfully submitted that the occurrence was takes place as stated in the affidavit of the petitioner that when the petitioner's went to his grandparents rental house and while playing near the EB HT line and also there was a heavy rain at that time the above said accident was takes place.

5.It is respectfully submitted that petitioner himself already made a representation on 23.12.2020 seeking for compensation and his above said representation was considered and amount of Rs.2,00,0000/- was given as compensation to the petitioner on 21.01.2021. Is further respectfully submitted that at the time of receiving the amount of Rs.2,00,000/- the petitioner himself reserved his right for demanding more compensation by filing necessary applications before the court.

6. It is respectfully submitted that the above said 22Kv HT line was there more than 50 years and the same was properly maintained and which is the primary line which supplies electricity for that area.

7.It is respectfully submitted that the above said occurrence was happened due to negligence of the petitioner's son. There was an old building situated near the place where the incident of electrocution took place and it was in a damaged condition.

8.It is respectfully submitted that para 4 of the affidavit, based on the spot inspection which was conducted prior to the incident itself, have informed about shifting of the HT line. And an estimate was given to them.

9.It is respectfully submitted that no one came with the proposal made and the said transfer of the HT line was done by the Electricity board itself.

10.It is respectfully submitted that in that area most of the buildings were constructed without following the proper rules and regulations by constructing the buildings very close to the above said HT line which is the prime factor for the above said accident.”



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6. Heard Mr.J.Senthil Kumaraiah, learned Counsel appearing on behalf of the petitioner, Mr.A.K.Manikkam, learned Special Government Pleader appearing on behalf of the first respondent and Mr.S.Deenadhalaylan, learned Counsel appearing on behalf of the respondents 2 and 3.

7. When the matter came up for hearing on 21.11.2023, this Court passed the following order:

“This Writ Petition has been filed seeking for compensation against the respondents 1 to 3 on account of loss of right leg and the right hand of the petitioner's son due to electrocution on 16.11.2020.

2.The third respondent has filed a counter affidavit and took a stand that a sum of Rs.2,00,000/- was already paid as compensation to the petitioner on 21.01.2021. However, a reply has been filed to the counter affidavit and a specific stand has been taken to the effect that the petitioner has not received any amount from the respondents.

3.The learned Standing Counsel appearing on behalf of the respondents 1 to 3 wants time to take instructions in this regard and report before this Court.

4.Post this case under the caption “for orders” on 29.11.2023.”



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8. When the matter was taken up for hearing today, the learned Standing Counsel appearing on behalf of the respondents 2 and 3 submitted that the third respondent, due to inadvertence, has made a statement in the counter affidavit as if a sum of Rs.2,00,000/- (Rupees Two Lakhs only) was paid to the petitioner and whereas, this amount was paid to the petitioner only on 22.11.2023. The receipt for payment of this amount was also produced before this Court. The learned Standing Counsel also submitted that the third respondent did not intentionally make such a statement in the counter affidavit and it was done due to inadvertence.

9. The learned Counsel for the petitioner also submitted that the petitioner received a sum of Rs.2,00,000/- (Rupees Two Lakhs only) from the respondents only on 22.11.2023.

10. The learned Counsel for the petitioner submitted that it is a clear case, where the accident had happened due to the negligence on the part of the Electricity Department. The learned Counsel further submitted that the high tension live wire was running very close to the terrace of the



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fourth respondent's house and the same is in violation of Rules 79 and 80 of Indian Electricity Rules, which specifically provide for the safety distance at which, the high tension wire/power line must be located. The learned Counsel further submitted that the respondents also failed to properly inspect and maintain the electricity lines, as provided under Section 68 of the Indian Electricity Act read with Rule 91 of the Rules. The learned Counsel further submitted that on the available materials, it is evident that the power line was running very close to the terrace and as a result, the petitioner's son come in contact with the live wire, as a result, this serious accident had taken place and therefore, the learned Counsel wants to bring this case under the strict liability doctrine by relying upon the judgment in *Rylands vs Fletcher* reported in (1866) *LR 1 Exch 265*; (1868) *LR 3 HL 330*.

11. Per contra, the learned Standing Counsel appearing on behalf of the respondents 2 and 3 by relying upon the counter affidavit filed by the third respondent submitted that the high tension line was in existence for more than fifty years and it is being properly maintained and that there has been unauthorised constructions in that area, wherein, the



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height of the building was extended upto the high tension line as a result of which, this accident had taken place. The learned Counsel further submitted that there was absolutely no negligence on the part of the Department and even otherwise, there are disputed questions of facts, which cannot be gone into this Writ Petition. Therefore, it is contended that the *exgratia* payment of Rs.2,00,000/- (Rupees Two Lakhs only) has been paid to the petitioner and if the petitioner wants to seek for enhanced compensation, he must only move the competent civil Court and establish the negligence and thereafter, seek for enhanced compensation.

12. This Court has carefully considered the submissions made on either side and the materials available on record.

13. There is no dispute with regard to the fact that the accident had taken place, when the boy was playing in the house of the fourth respondent in the terrace where he came in contact with a live high tension wire. On going through the treatment that was given to the petitioner's son and the medical records that were placed before this



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Court, it is seen that the accident caused serious burn injuries on the right hand and right leg of the petitioner's son and going by the seriousness of the injury, the Specialist had insisted for amputation of the right leg and right hand and accordingly, the right hand below the shoulder and the right leg below the knee was amputated. The photographs that were placed before this Court also establish this fact.

14. The stand that has been taken by the third respondent is that there were unauthorised constructions in that area and as a result of which, the height of the building was very close to the high tension line and that the same resulted in an accident. The Electricity Department is expected to make regular inspection in the service line maintained by them and should take safety measures to prevent any accident. This is mandated under the Indian Electricity Act and Rules and it will not lie in the mouth of the Electricity Department to state that there was an unauthorised construction and therefore, this accident had taken place. If the Department found that the building has been put up unauthorisedly and as a result, the height of the building is very close to the high tension line wire, they should take immediate action to either seek for demolition



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of the unauthorised construction or they should rise the height of the live wire. Hence, by merely stating that there was an unauthorised construction, the Department cannot try to wash of their hands. It is clear from the Rules 79 and 80 of Indian Electricity Rules that there is a specification for the height of the overhead live wire, which is mandatory and if it is not maintained as per the Rules, negligence will have to be necessarily mulcted upon the Electricity Department only.

15. The boy unfortunately came in contact with the live wire and had lost his right hand and right leg upto knee and as a result, he is facing substantial disability throughout his life. As rightly contended by the learned Counsel for the petitioner, the principle of strict liability has to be applied in the facts of the present case as per the doctrine of ***Rylands vs Fletcher***.

16. While dealing with cases of negligence, this Court can always take into account the materials that are available on hand to decide as to whether there was negligence. There is no bar for this Court to exercise the power under Article 226 of Constitution of India and if at all, there is



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any limitation, it is only a self imposed restriction. On the facts of this case, this Court does not find any serious dispute on facts and this Court has already held that the unauthorised construction cannot come by way of a defence on the part of the Electricity Department.

17. It is also now too well settled that while deciding the compensation, the Writ Court can also employ the principles under the Motor Vehicles Act to fix the compensation. Useful reference can be made to the judgment of the Apex Court in ***Raman vs Uttar Haryana Bijli Vitran Nigam Limited and others*** reported in ***(2014) 15 SCC 1***.

18. In view of the above, this Court is inclined to fix the compensation in this case by taking cue from the above judgment and by applying the principles adopted under the Motor Vehicles Act. The victim boy was aged about 13 years at the time of the accident and he has faced 90% disability. The same is evident from the disability certificate issued by the Government Theni Medical College and Hospital. The Electricity Department has paid a sum of Rs.2,00,000/- (Rupees Two Lakhs only) to the petitioner on 22.11.2023 as *exgratia* payment.



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19. A calculation memo, dated 21.11.2023 has been filed before this Court, wherein, the petitioner is seeking for compensation under the heads, expenses relating to treatment, hospitalization, medicines, transportation, etc., loss of earnings, attendant charges, pain and sufferings, compensation for disfigurement, loss of marriage prospects and future medical treatment (for fitment of prosthesis).

20. Insofar as the first head, namely, expenses relating to treatment, hospitalization, medicines and transportation, the petitioner has sought for compensation of Rs.2,00,000/- (Rupees Two Lakhs only). Going by the facts of the case, the amount sought for is very reasonable. The next head under which the compensation has sought for is loss of earnings. On the facts of this case, this Court is not inclined to use the multiplier method and rather, this Court will go by the traditional fixation of compensation by taking into account the percentage of disability. Accordingly, for the 90% disability faced by the petitioner's son, this Court is inclined to fix the compensation for the disability to the tune of Rs.3,00,000/- (Rupees Three Lakhs only). The attendant charges and the



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pain and sufferings undergone by the petitioner's son can be clubbed together and a sum of Rs.5,00,000/- (Rupees Five Lakhs only) can be fixed under this head. This Court is inclined to fix a sum of Rs.2,00,000/- (Rupees Two Lakhs only) under the head of loss of marriage prospects. Insofar as the future medical treatment is concerned, prosthesis has to be fixed both in hand and in the leg and the petitioner will incur substantial expenses in this regard. Therefore, this Court is inclined to fix a sum of Rs.8,00,000/- (Rupees Eight Lakhs only) towards future medical treatment. In view of the above, the compensation is fixed in the following manner:

S.No.	Heads under which the compensation is given	Amount
1.	Expenses relating to the treatment, hospitalization, medicines, transportation, etc.	Rs.2,00,000/-
2.	Loss of earnings, disability (90%) Rs. 3,000/- for every percentage	Rs.3,00,000/-
3.	Attendant Charges and pain and sufferings, mental agony, etc.,	Rs.5,00,000/-
4.	Loss of marriage prospectus	Rs.2,00,000/-
5.	Future medical treatment	Rs.8,00,000/-
Total		Rs.20,00,000/-
Deduct the amount paid as <i>exgratia</i> payment to the petitioner		Rs.2,00,000/-
Balance amount to be paid by the respondents		Rs.18,00,000/-



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21. In the light of the above discussion, this Court is inclined to fix a total compensation of Rs.20,00,000/- (Rupees Twenty Lakhs only) payable by the Electricity Department and after giving credit to the amount of Rs.2,00,000/- (Rupees Two Lakhs only) that has already been paid, the Electricity Department is liable to pay the balance of Rs. 18,00,000/- (Rupees Eighteen Lakhs only) to the petitioner within a period of three months from the date of receipt of a copy of this order. If this amount is not paid within the time frame fixed by this Court, the same will carry an interest of 7.5% p.a., till the date of actual payment of the balance compensation.

22. In the result, this Writ Petition is allowed with the above directions. No costs.

Index :Yes / No
Internet :Yes / No
NCC :Yes / No
cmr

29.11.2023

To
The Assistant Secretary,
Government of Tamil Nadu,
Electricity Department,
Secretariat, Chennai-600 009.

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N.ANAND VENKATESH, J.

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