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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **25.08.2023**

CORAM

THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**
AND
THE HONOURABLE **MR.JUSTICE R.VIJAYAKUMAR**

W.A.(MD)No.998 of 2018
and
C.M.P.(MD)No.6860 of 2018 and 12210 of 2022

1.Tamil Nadu Electricity Board,
represented by its Chairman,
800, Anna Salai, Chennai – 600 009.

2.Assistant Electrical Engineer,
(Distribution),
Tamil Nadu Electricity Production and Distribution,
Sikkal, Ramnad District-623 528. ...Appellants

-Vs.-

1.Kadhar Mohaideen

2.State represented through its
Home Secretary, St.George Fort,
Chennai-6.

3.The Inspector of Police,
Vaalinokkam Police Station,
Ramanathapuram District. ...Respondents

PRAYER:- Writ Appeal - filed under Clause 15 of Letters Patent Act, to
set aside the order dated 24.03.2017 made in W.P.(MD)No.3426 of 2013
on the file of this Court.



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For Appellants : Mr.Viji
for Mr.S.Deenadhalayan
For R1 : Mr.J.Lawrance
For R2 and R3 :Mr.T.Amjad Khan
Government Advocate

JUDGMENT

(Judgment of the Court was delivered by **DR.ANITA SUMANTH, J.**)

This litigation arises out of an untoward incident, that had taken place on 03.10.2011. The Writ Petitioner is the father of a child, who, at the time of institution of Writ Petition, was studying in the 10th standard. The incident took place near the Government Primary Health Centre playground at Vaalinokkam, Ramanathapuram District. The petitioner is a fisherman residing in that area abutting the sea.

2.The child was studying in a Government High School in 10th standard and was playing in the playground near Government Primary Health Centre, Vaalinokkam. While so, a high tension electrical wire in the area had come into contact with the body of the child. As a result, both hands of the child as well as part of his foot had been charred. He was taken to Government Hospital, Ramanathapuram and shifted, thereafter, to Madurai Government Rajaji Hospital on 13.10.2011 for



continuous treatment.

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3.The case was referred to the Department of Plastic and Reconstructive Surgery at Madurai Government Rajaji Hospital and despite their best efforts, a toe on the left foot and both hands of the child could not be saved and had been amputated. The child was, thereafter, discharged and the discharge summary reads that the child has suffered *post electrical burns-gangrene-LT-hand- Raw area - LT Thigh*. The child, thus, was permanently disabled to the extent of 90% as certified by the District Disabled Rehabilitation Officer, Ramanathapuram.

4.The petitioner had lodged a complaint before the Inspector of Police, Vaalinokkam Police Station, and a case was registered in Cr.No.81 of 2011, as against the Assistant Electrical Engineer, who was arrayed as R3 in the Writ Petition. Investigation is pending. The Writ Petitioner had also prayed for compensation claiming that the entire incident had been caused due to the negligence of R2 and R3, the Chairman, Tamil Nadu Electricity Board and Assistant Electrical Engineer, (Distribution), Tamil Nadu Electricity Production and Distribution, Sikkal, Ramnad District, respectively. The request came to



be rejected by way of order impugned in the Writ Petition passed on 11.11.2011, whereunder, the authorities completely avow all on negligence or even involvement with the tragedy.

5.The Writ Petition came to be allowed by order dated 11.11.2011, where, after considering the entire trajectory of events as well the categorical admission in the counter affidavit filed by R2, a direction was issued to the respondents in the Writ Petition to pay a sum of Rs.15,00,000/- to the petitioner's son with interest at 6% per annum from date of institution of the Writ Petition.

6.The present Appeal has been filed by the Tamil Nadu Electricity Board and the Assistant Electrical Engineer, who have obtained a stay of operation of the order in the Writ Petition at the time of admission on 26.07.2018.

7.Though the direction issued by the Writ Court to pay compensation was concurrent as against the authorities of the Tamil Nadu Electricity Board as well as the State, the State has not challenged the order being advised that the responsibility for the accident and



consequences of negligence as and when decided, would have to be met by the Electricity Board and their officials alone, if at all.

8.We have heard the detailed submissions of Mr.Viji, learned Counsel for Mr.S.Deenadhayalan, learned Counsel for the appellants, Mr.J.Lawrance, learned Counsel for R1 and Mr.T.Amjad Khan, learned Government Advocate for R2 and R3.

9.The counter affidavit filed by the Board before the Writ Court is rather cryptic. However, at para 4, two critical facts are admitted. Firstly, the Board concedes to the position that there was a high tension electrical line in the area abutting the Primary Health Centre near the sea. Secondly, they also concede to the position that there was a sag in the electrical on account of the heavy winds in the area.

10.Section 53 of the Electricity Act, 2003, coming under the head '*Provisions with respect to safety and electricity supply*' cast a serious responsibility upon the appellants to provide for suitable measures for protecting the public from risk caused by the transmission of electricity. In terms of this provision, it is absolutely necessary for



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measures in place to ascertain that overhead electrical lines do not sag/dip beyond to be a certain level, where it may come into contact with passers by.

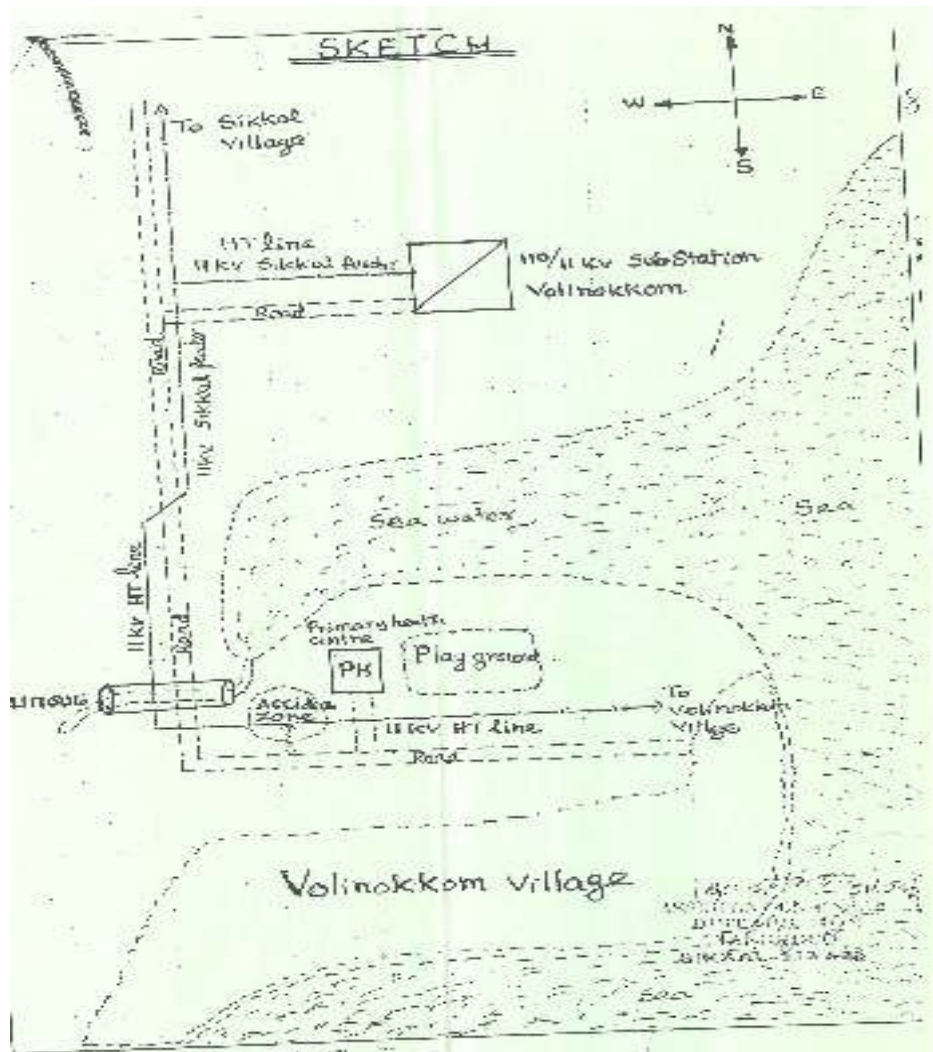
11. That apart, Rules 90 and 91 of the Indian Electricity Rules, 1956, require measures for earthing and safety and protective devices, such as circuit breaker to be provided such that there shall be an instantaneous disconnection of flow of electricity in the event of breaking to render the wire harmless. Evidently, the above rules and regulations have been lost sight of by the appellants.

12. These two admitted facts would suffice to establish negligence on the part of the Board.

13. That apart, our attention is drawn to a sketch that is part of the writ records. The sketch makes it abundantly clear that the Primary Health Centre and the playground are next to each other and thus, there is no merit in the averment in the counter that the wire is beyond the Primary Health Centre and hence not near the playground.



14. Evidently, any visitor to the Primary Health Centre, particularly, the children, would use the playground and the sketch makes it clear that the 11 kv HT wire runs from one end of the road to the other and thereafter, onwards to Sikkal Village. The sketch is re-produced below for ease of appreciation of the topograph of the area where the incident occurred:





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15. That apart, the appellants also attempt to state that there was only a 'sag' in the electrical line meaning perhaps to object to the averment in the writ affidavit that the electrical line had 'snapped'. The explanation set out is that a 'sag' or 'let' is provided deliberately in the line to ensure that the heavy winds do not result in the snapping of the wires, which is a possibility should the electrical wires be strung tightly from end to end. While this is an acceptable explanation, the sagging of wire must not be to such an extent that it dips beyond certain level, where it could interfere with movement of persons or pose a threat to one's life or limb. This is what has happened in the present case. The very fact that there has been a sag in the line would result in a situation where the line would come into contact with a person in the vicinity. Thus, whether there was a snap or sag is immaterial and the admission of the appellants to the effect that there was a sag in the electrical line would more than suffice to crystalise their negligence.

16. The appellants have not established that there was equipment available or lying around in the vicinity, which the child used to contribute to the accident. Clearly, either the sagging of the wire was to such an extent that it came into contact with the child or the wire snapped, with the same result.



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17.This view is fortified by ground No.2 in the Writ Appeal, where there is a further contention on the part of the appellants that the electrical wire was '*waving due to wind*'. This, by itself, makes it clear that the amount of sag/let in the electrical wire was beyond reasonable or acceptable levels leading to a situation where the wire was waving at a low height, so as to come into contact with the child.

18.The Electricity Act and connected regulations place a heavy burden on the appellants to ensure continuous upkeep and maintenance of the lines, specifically, to ensure that the lines are kept sufficiently taut and beyond the access of passers by. The claim of the appellants that proper and regular maintenance is carried out is found to be wholly incorrect, as if it has been so, the flaw in the electrical wire should have been seen and corrected.

19.The ground with regard to judicial review/maintainability of a Writ Petition also does not find favour with us. It is a settled position that Courts are well empowered under Article 226 of Constitution of India to consider cases of payment of compensation, where the breach of law is clearly established by a party. In the present case, we are of the



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considered view that electrocution on account of negligence by the authorities has been made out. In fact, the counter of the appellants (respondents in the Writ Petition) as well as the grounds filed by them in the Writ Appeal serve to establish the case of the Writ Petitioner far better than the Writ Petition itself.

20. In light of the discussion above, the Writ Appeal is dismissed. At the time of admission, the appellants were directed to deposit the entire compensation of Rs.15,00,000/- to the credit of W.A. (MD)No.998 of 2018 and liberty was granted to the Writ Petitioner to withdraw a sum of Rs.5,00,000/- which he has done. With this order, the petitioner is permitted to take steps to withdraw the balance of the amount. A direction is issued to the Registrar Judicial, Madurai Bench of Madras High Court to pay over the amount of Rs.10,00,000/- lying to the credit of W.A(MD)No.998 of 2018, forthwith to the Writ Petitioner. No costs. Consequently, connected miscellaneous petitions are closed.

[A.S.M.J.,] & [R.V.J.,]
25.08.2023
(2/2)

NCC : Yes/No
Index : Yes/No
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To
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1. The Registrar Judicial,
Madurai Bench of Madras High Court,
Madurai.

2. Home Secretary, St. George Fort,
Chennai-6.

3. The Inspector of Police,
Vaalinokkam Police Station,
Ramanathapuram District.



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DR.ANITA SUMANTH, J.
AND
R.VIJAYAKUMAR, J.

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