

**IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH**

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**CWP-7356-
2023**

Date of Decision: 18.10.2023

SARITA AND OTHERS

... Petitioners

VERSUS

STATE OF HARYANA AND OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Tejeshwar Sullar, Advocate for
Mr. Govind Tanwar, Advocate for the petitioners.

Mr. Pankaj Mulwani, DAG, Haryana.

Mr. Vivek Chauhan, Advocate
for respondents No.2 to 7.

VINOD S. BHARDWAJ, J. (ORAL)

Challenge in the present petition is to the order dated 02.12.2021 (Annexure P-5) passed by the respondent No.7 whereby the claim of the petitioners for compensation on account of death of Santosh, who died due to electrocution, has been declined.

Learned counsel for the petitioners contends that deceased Santosh aged 55 years had gone to his agricultural land alongwith his nephew Sandeep Yadav on 25.02.2018 to change the pipeline from one part of land to another. Oblivious of the hanging overhead high tension wire, the deceased Santosh suffered electrocution at about 5.00 p.m. while changing the pipeline. The matter was reported to the police and a DDR No.10 dated 26.02.2018 was registered at Police Station Mahendergarh regarding the said incident. The

postmortem was also conducted and it was mentioned in the postmortem report that the death was on account of 'failure of cardio respiratory system due to electrocution' which is sufficient to cause death. Hence, the death on direct account of electrocution is not disputed. The petitioners had preferred a petition bearing CWP No.17279 of 2021 before this Court, which was disposed of vide order dated 03.09.2021 directing the respondents to decide the representation of the petitioners. Pursuant thereto, the respondents have passed the impugned order (Annexure P-5) dated 02.12.2021, whereby the claim of the petitioners was declined on the ground that there was no fault on the part of the respondents-Distribution Licensee and as such there is no liability of the respondent-Distribution Licensee to pay compensation.

A written statement on behalf of the respondents had been filed, wherein they have taken an additional plea that the petitioners had also been granted compensation under the Mukhya Mantri Kisan Evam Khetihar Majdoor Jivan Suraksha Yojna, 2013 and as such, they are not entitled to claim compensation for the same loss and that the present petition deserves to be dismissed for the said reason.

The facts as narrated above are not disputed, however, it is averred that the overhead high tension wire was at a height of 20 feet from the ground level and the same was as per the regulations notified by the appropriate Commission. The deceased himself committed an error in lifting the pipes notwithstanding the overhead high tension wire and thus suffered electrocution as a result of his own lapse. The respondents are thus not liable to pay compensation.

I have heard the learned counsel for the respective parties and have gone through the documents and record available on case file with their able assistance.

Insofar as the reference to the compensation awarded under the Mukhya Mantri Kisan Evam Khetihar Majdoor Jivan Suraksha Yojna, 2013 is concerned, the said aspect does not find mentioned in the impugned order for declining compensation. The respondents-Distribution Licensee thus cannot be permitted to substitute the reasons for declining compensation by the reasons that were never known and were never before the competent Authority passing the impugned order dated 02.12.2021. Once the said disbursement of compensation under Mukhya Mantri Kisan Evam Khetihar Majdoor Jivan Suraksha Yojna, 2013 has not weighed with the Authority, it cannot be the basis to defend the order impugned herein.

Insofar as the aspect that there was no negligence on the part of the respondent-Distribution Licensee is concerned, counsel for the respondent-Distribution Licensee could not dispute the fact that the respondents have already notified a policy dated 22.02.2017 for grant of compensation in case of electrocution. Clause 11 of the said policy deals with 'no fault liability' for fatal/non-fatal injuries to the private third persons. Surprisingly, even though the impugned order dated 02.12.2021 has been passed by an officer not less than the rank of Chief Engineer (Operation) himself, however, the said officer does not take into consideration the policy notified by the respondent-Distribution Licensee itself. Once the factum of 'no fault liability' has been applied and the obligation of the principal of strict liability has been adopted by the respondent-Distribution Licensee, after due approval from the

appropriate Commission, the compensation could not have been declined except for the reasons prescribed thereunder. Invariably and apparently, the Authorities have chosen to close their eyes qua their own policy as they have not referred to the same and resorted to passing the impugned order in a ministerial manner.

I find that the above conduct of the officer amounts to unnecessary burdening the State by unwanted litigation and that it causes undue harassment to a litigant/consumer of having to come through multiple litigations to secure for himself/herself the relief, which ought to have been granted to him/her at the first instance.

Finding that the impugned order dated 02.12.2021 passed by the respondent-Authorities is deficient of a valid reasoning and is not based upon valid consideration of the policy notified by the respondent-Distribution Licensee, I find that the impugned order dated 02.12.2021 suffers from non-application of mind and is thus liable to be set aside. The present writ petition is accordingly allowed and the impugned order dated 02.12.2021 passed vide Office Order No.61/NFA/FA by the Chief Engineer (Operation), DHVBNL, Delhi is set aside. The matter is remanded to the concerned Authority for passing an appropriate order in accordance with law and on payment of costs of Rs.22,000/- to the petitioners. The petitioners shall appear before the Competent Authority within a period of one month of the date of receipt of certified copy of this order, whereupon the Competent Authority shall proceed to pass a fresh order in accordance with law and after granting opportunity of hearing to the respective parties.

Needless to mention that any *ex-gratia* compensation already released under any other State Policy can be taken into consideration by the Agency. State is required to give benefit of the more benevolent policy. The said aspect may be kept in view by the Authority while deciding the matter afresh.

Petition stands allowed accordingly.

18.10.2023.
rajender

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No