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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.7814 of 2017 (O&M)

Date of decision : 11.09.2023

Shashi Bala and Ors

....Petitioners

Versus

State of Haryana and Ors

....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S BHARDWAJ

Present :- Mr. Navneet Kumar, Advocate for
Mr. D.S. Matya, Advocate for the petitioners.
Mr. Pankaj Mulwani, DAG, Haryana.
Mr. Anil Chawla, Advocate for respondent Nos.3 & 4.

VINOD S BHARDWAJ, J. (ORAL)

Prayer in the present petition filed by the widow (petitioner No.1) and children (petitioner Nos.2 to 6) of deceased Gopi Chand is for seeking a direction to respondents to compensate the petitioners on account of death of said Gopi Chand-husband of petitioner No.1 due to electrocution.

It is averred that Gopi Chand-husband of petitioner No.1 died as a result of electric burns received on 06.01.2015 at about 9.00 P.M. when he was coming back by foot near Gurucharan Public School. It is averred in the writ petition that the transformer has been installed at nominal height of 4-1/2' and does not have any fences around. As per the postmortem report, the cause of death is due to electric shocks and burns. FIR No. 65 dated 28.01.2015 was registered at Police Station Nuh under Section 304-A and the police recorded the statements of Om Parkash-complainant and other witnesses including the petitioners. Additionally, statements of Junior Engineer Rashid Hussain and other employees of respondent Nos.3 & 4 were also recorded. However, a cancellation report has been filed against the respondents.

Upon notice, reply dated 16.07.2018 of Promod Kumar, SDO 'OP' Sub Division, Tehsil Nuh, District Mewat was filed on behalf of respondent Nos.

3 and 4 wherein the factum of the consequent death of Gopi Chand is not disputed. It is however, submitted that investigation was not only carried out by the police authorities but also by the Executive Engineer Official Division, Nuh on 07.01.2015. It was concluded in the said investigation/inquiry that there was no fault on the part of the employees of DHBVN. No LT line was present at the transformer and there was no leakage. Further, the H-pole earthing was proper and there was no complaint of breaking of any conductor on the date of incident. Neither the feeder had broken down nor any tripping was observed in 66KV/stn. Accordingly, a cancellation report was submitted by the police authorities on completion of investigation. At the time of filing cancellation report, a protest petition was filed by one Om Prakash and pursuant to the same, the officials were summoned by the learned JMIC, Mewat.

It is also averred that the transformer had been fixed at correct height as per the standards laid down by the Rural Electrification Corporation. It is stated that the transformer was set up at the height of 2440 mm (8.005 feet) from the ground level and that the only possible way to reach the High Tension wire was to climb up the platform, which itself is at a height of 8 feet and then to climb 5-6 feet further up. It is thus, suspected that the deceased himself had climbed the transformer so as to commit theft of transformer oil which is common in the said locality and exposed himself to high risk of electrocution. It is averred that merely because said Gopi Chand died as a result of electrocution would not *ipso facto* determine the negligence on the part of the distribution licensee and consequent liability. It is further averred that the questions of facts are disputed and in the absence of any negligence on the part of the respondents, they cannot be fastened with any liability on account thereof. It is also averred that there is no requirement prescribed under the applicable regulations to fence

the transformer and that no additional obligation can be passed against the employees. Moreover, the deceased himself was negligent in climbing over the platform and up to the transformer in a probable bid to steal the transformer oil.

Even though the reply has been filed way back in July 2018, no replication to the disputed questions raised by the respondents has been filed, hence, the response/defence of the respondents stays uncontroverted.

Having heard learned counsel appearing on behalf of the respective parties and after going through the documents on record, I am of the view that notwithstanding that death of Gopi Chand took place as a result of electrocution, however, there are disputed questions of facts involved as regards the manner in which the accident took place and as to whether the lapse was on the part of the distribution licensee or there was a contributory negligence also on the part of the deceased . Apart therefrom, additional issue pertaining to the determination of compensation as well as apportionment thereon shall also arise. Following disputed questions cannot be gone into by this Court under Article 226 of the Constitution. The present petition is accordingly disposed of, at this stage with the liberty to the petitioners to take recourse to the appropriate alternative remedy available to them, in accordance of law for seeking compensation on account of death of husband-Gopi Chand of petitioner No.1, if so advised.

The period during which the present petition remained pending before this Court shall be taken into consideration while computing limitation.

Pending application(s), if any, shall also stand disposed of.

September 11, 2023
manoj

(VINOD S BHARDWAJ)
JUDGE

Whether speaking/reasoned: Yes
Whether Reportable : No