

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP-36323-2019

Date of decision: 20.11.2023

SAMSUL ALAM AND OTHERS

.....Petitioners

VERSUS

UTTAR HARYANA BIJLI VITRAN NIGAM AND OTHERS

.....Respondents

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

Present: - Mr. Vaibhav Mittal, Advocate
for the petitioner.

Ms. Mehak Sawhney, Advocate for
Mr. Aakash Yadav, Advocate
for the respondent.

VINOD S. BHARDWAJ, J. (Oral)

Challenge in the present writ petition is to the order No. 496 dated 06.05.2019 endorsed vide letter dated 15.05.2019 whereby compensation of Rs. 1,20,000/- has been awarded to the petitioner, which is inadequate and alleged to be improperly determined.

2. Learned counsel appearing on behalf of the petitioner contends that petitioner No.1 is husband of the deceased Harbala Khatoon while petitioners No.2 to 4 are minor children of the deceased. The deceased was a rag-picker and was aged about 30 years. She went on her daily chores as a rag picker and was working near paper mill area at Payao Manihari, Sonipat on 05.09.2017 when a live wire, having been snapped from overhead electric line, was lying unattended and energized. While lifting garbage from the

said area, Harbala Khatoon came in contact with the above live snapped wire and suffered an electrocution as a result thereof. The deceased was immediately brought to Satyawadi Raja Harish Chandra Hospital for treatment where she was declared dead by the doctors due to electrocution. The matter in question was informed to Police Station Narela and body of deceased Harbala Khatoon was taken in their possession and was later sent to Babu Jagjivan Ram Memorial Hospital, Jahangirpuri for postmortem. A DDR bearing No. 38 B dated 05.09.2017 under Section 174 Cr.P.C. was duly recorded at Police Station Narela. A claim was thereafter submitted by the petitioner for compensation on account of electrocution death.

3. It was averred that deceased being 29-30 years at the time of her death and being a healthy female working as rag-picker and also doing agricultural work was having a monthly income of Rs. 20,000/- at the time of her death and that the State of Haryana had notified the compensation policy for the fatal/non fatal accidents of the human being vide notification dated 18.05.2017. As per Clause 11 of the above said policy, the compensation for fatal accidents of the private persons had to be dealt with in accordance with the provisions of the Employees Compensation Act, 1923. The relevant part thereof reads thus:

11. Private Person for Fatal Accident & Non-Fatal Accidents

UHBVN is engaged in the hazardous activity and risky for the human life and thus UHBVN owns strict liability for compensation to the private person. Accordingly, the compensation to the private person shall be payable in case of fatal as well as non-fatal accident irrespective of the reasons for such accident as the electricity system is open to the public. The compensation amount shall be payable as per provision of the Employees Compensation Act, 1923. However, this compensation shall be applicable for the accident cases occurring with the

electrical network of the UHBVN and not in private premises.

4. It is contended that notwithstanding the above said clause of the compensation policy, the respondents have awarded a meager compensation of Rs. 1,20,000/- to the petitioner without giving any valid explanation, vide impugned communication dated 15.05.2019. Hence, the present writ petition.

5. Counsel for the respondent-Distribution Licensee does not dispute the facts as regards the manner and occurrence of the incident that took place resulting in electrocution death of Harbala Khatoon. It is also pointed out that the fatal accident was duly investigated and a case report dated 14.03.2019 was filed by Executive Engineer, Operation City, Division-UHBVN, Sonipat whereby it was reported that the accident occurred due to poor maintenance and unhealthy condition of 11kv line. Hari Das, Junior Engineer, Ramesh Kumar, Lineman and Ravinder Kumar, Asstt. Lineman were held responsible for the negligence resulting in death of Harbala Khatoon. It is further averred that compensation under the fatal/non fatal accidents of human being due to electrocution had been decided and an amount of Rs. 1,20,000/- has been released in favour of the petitioner on account of death of Harbala Khatoon.

6. Counsel for the petitioner contends that the mandate under Clause 11 of the policy was to determine the compensation as per the Employees Compensation Act, 1923 and that in response to the communication sent by the respondents about furnishing the income certificate duly authenticated by the revenue authorities, the petitioner had replied that the income may be computed on the minimum wages notified by the State of Haryana as on the date of incident. However,

notwithstanding the above said response submitted by the petitioner in his reply dated 30.04.2018, the respondents have arbitrarily released compensation of Rs. 1,20,000 even though the compensation of Rs. 1,20,000/- or the compensation as assessed by applying the principles of the Employees Compensation Act, 1923 with the multiplication factor, whichever is higher, was to be released in favour of the victim. The respondents have not referred to the response submitted by the petitioner for computing the income as per the Minimum Wages Act and have instead arbitrarily determined the maximum compensation at Rs. 1,20,000/- which is rather contrary to the mandate of Employees Compensation Act, 1923 as adopted by the respondents and they have offered the lowest compensation. It is argued that compensation, even as per the minimum wages existing as on the date of the incident as per the Government of Haryana notification for an unskilled worker, would have ensured a minimum compensation of more than Rs. 8 lacs.

7. Counsel for the respondent is not in a position to refer to document on the strength whereof it can be ascertained that the compensation of Rs. 1,20,000/- was in fact higher of the two compensations and had been rightly released. As a matter of fact, the Memo dated 15.05.2019 does not refer to any assessment/computation done by the respondents for applying the principles of the Employees Compensation Act, 1923 and fails to disclose that the compensation of Rs. 1,20,000/- was in fact highest of the two figures.

8. Taking into consideration, the circumstances noticed above and considering that the computation of the compensation is not done in accordance with the policy notified by the respondent-State on 18.05.2017

and the procedure stipulated in the Employees Compensation Act, 1923 has not been followed, the present writ petition is allowed. The impugned order No. 496 dated 06.05.2019 endorsed on 15.05.2019 (Annexure P-9) is hence set aside.

9. The respondents are directed to compute the compensation under the provisions of the Employees Compensation Act, 1923 read with Clause 11 of the aforesaid policy and to re-determine compensation admissible to the petitioners. Let the requisite exercise of carrying out an assessment of compensation be undertaken by the respondents-authorities within a period of 04 months of a receipt of certified copy of this order and a final order be passed after granting an opportunity of hearing to the respective parties.

10. Needless to mention that in the event of the respondents arriving at a compensation which is higher than the compensation already released, the differential amount shall be released in favour of the petitioner within a period of two months of such decision. If the said amount is not released in the above said period, the petitioner shall be entitled to interest @ 6% from the date of filing of the present writ petition till final disbursement of the due compensation.

(VINOD S. BHARDWAJ)

JUDGE

NOVEMBER 20, 2023

Vishal Sharma

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No