



W.P.No.7027 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.04.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.7027 of 2022

1.S.Anandavalli
2.V.Senthamizhselvan
3.S.Yuvaraj

... Petitioners

Vs.

1.The Union of India,
Rep. By its Chief Secretary to Government,
Union Territory of Puducherry,
Puducherry
2.The Superintendent of Engineer,
Electricity Department,
Puducherry & State
3.The Commissioner,
Villianur Commune Panchayat,
Villianur, Puducherry & State
4.The Station House Officer,
Villianur Police Station,
Puducherry & State

... Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India praying to issue a Writ of Mandamus directing the respondents 1 to 3 jointly and severally to pay to the petitioners a sum of Rs.56,68,072/- (Fifty Six Lakhs Sixty Eight Thousand and Seventy Two rupees) as compensation, on account of the death of first petitioner's son by name



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S.Praveen, aged about 20 years, who died on 19.07.2019 due to electrocution, registered in FIR.No.171 of 2019 on the file of the fourth respondent, with interest at 9% from 19.07.2019 within a time frame as may be fixed by this Court.

For Petitioner : Mr.R.Veeramani

For Respondents

For R1,2 &4: Mr.Ramasamy Meyappan,
Government Advocate(Pondy)

For R3 : Mr.R.Sreedhar,
Additional Government Pleader (Pondy)

ORDER

This writ petition has been filed for direction to respondents 1 to 3 to pay compensation to the petitioners to the tune of Rs.56,68,072/- on account of the death of the son of petitioners 1 & 2.

2. The first and second petitioners are husband and wife and the third petitioner is their son. One of the son of the first and second petitioners, i.e. one, Praveen (hereinafter called as the deceased), on 19.07.2019, after completion of his college came to his house situated at No.22 Mariamman Koil Street, Kottaimedu, Vilianur, Puducherry. In



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front of their house, a tree is there and due to rain, one branch of the tree laid down on their portico. Behind the tree, there is electric line. The broken branch laid down on the portico of the petitioners' house and also touched the electric line. When the deceased was trying to remove the branch of the tree, he was electrocuted and immediately he was taken to Primary Health Centre for treatment and he was referred to Government Hospital, Puducherry for higher treatment. Unfortunately, he was declared as 'brought dead'. On the complaint lodged by the third petitioner, who is the elder brother of the deceased, the fourth respondent registered FIR in crime No.171 of 2019 under Section 174 of Cr.P.C. Immediately the fourth respondent visited the place of occurrence and recorded the statements from the witnesses. All the witnesses collectively corroborated and stated that the deceased died due to electrocution. Postmortem was conducted on the deceased body and the cause of the death was stated as 'due to electrocution'. After completion of investigation, FIR was closed by dropping the case by the fourth respondent.



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3. The learned counsel for the petitioners would submit that the electric line which is drawn in front of the petitioners' house is under operation and maintenance of the second respondent. The electric line is a live High Tension electricity power lines (hereinafter called as 'HT lines') and even then, it does not have any protective cover in the residential area and the public road. It is the duty of the second respondent to maintain the electric line as without touching any tree in order to avoid electrocution and the electricity not passes through the trees and causes electrocution to general public. Therefore, the deceased died only due to gross negligence and non adherence and non compliance with the statutory requirement of protecting the electricity power lines with protective cover by the second respondent. When the electricity lines pass adjacent to the building, the Department ought to have maintained horizontal clearance of 1.2 meters from the nearest point of building in terms of Rule 79 of Indian Electricity Rules. However, the electric lines pass through near to the petitioners' house. That apart, it was drawn behind through the tree which is located adjacent to the house of the petitioners without cutting the tree. Further under Rule 91 of the



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Indian Electricity Rules, 1956, the second respondent is duty bound to protect every overhead line erected over any part of street or other public place or on any consumer premises is required to be protected with a device and thereby assuring that these lines are electrically harmless, in case it breaks.

3.1 He further submitted that the second respondent ought to have maintained the HT lines in a fit and proper manner by regular check up by replacing the damaged one and provide protective cover to the electric lines as required under the Indian Electricity Rules, 1956. Whenever if there is rain, the Department ought to have checked up the trees which are located nearer to the electric lines. Therefore, the respondents 1 to 3 are liable to pay compensation to the petitioners on the demise of the deceased aged about 20 years.

4. Respondents 1 and 2 filed counter and the learned Government Advocate(Pondy) appearing for respondents 1 and 2 submitted that it is a case of non-departmental fatal electrical accident,



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due to which the son of petitioners 1 and 2 died on 19.07.2019. The accident happened within the jurisdiction of Junior Assistant, Villinaur under Assistant Engineer Boomiyampet of Rural North Division, Electricity Department, Puducherry. The accident was immediately informed to the fourth respondent and FIR was registered under Section 174 of Cr.P.C.

4.1 He further submitted that HT line is on the road near the petitioners' residence with adequate clearances. Unfortunately, the deceased was electrocuted while breaking of tree branches which were hanging in the portico of his house. The required safety precaution devices are provided at Sub Station for tripping off the HT line for either permanent fault or instantaneous fault. Whereas in this case, the tree branches fallen on the portico of their house and not on the HT line due to which there was no tripping of the HT line. In fact, the nearby tree inside the Government Hospital premises was uprooted due to heavy wind on 18.07.2019 and had fallen on the residence of the petitioners. There was adequate clearance between the tree and the HT line. When



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the deceased pulled the tree branch by his hands from the second floor balcony of his house, the branch of the tree came into contact with the live line and the victim got electrocuted due to his negligence. Neither the occupants of the house nor the public had informed to Electricity Department in time about the uprooting of the tree on the building for safe clearance of the uprooted tree. But the deceased himself tried to pull the tree branches by his hands which was lying on the balcony of his house and the tree branches came into contact with the live HT line, due to which the accident occurred. Therefore, the accident happened only due to the negligence of the deceased and not on the fault of respondents 1 and 2. He further submitted that it is a mixed question of facts and as such, if at all any compensation is claimed by the petitioners, it has to be gone into by evidence and as such, the compensation cannot be granted by way of filing writ petition under Article 226 of Constitution of India.

5. Heard, the learned counsel appearing on either side.



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6. Admittedly, the deceased died due to electrocution. On 19.07.2019, there was heavy rain with heavy wind. Therefore, the Albizia tree which was completely uprooted from the adjacent residence of the petitioners' house, due to heavy wind and rainfall, had fallen on the petitioners' house. Further, HT line has been drawn down the tree i.e. the branches are grown up above HT line. Due to the fallen of the tree, the branches were fallen on the HT line as well as on the portico of the petitioners' house. When the deceased was trying to remove the branch of the tree, which was laying down on the portico, he was electrocuted due to the said branch also touched the HT line. It is also evident from the photographs which were taken on the date of occurrence and clearly shows that the branches of the trees were well grown above the HT lines. The entire tree was grown up above the HT line and whenever the branches cut from the tree, they fall down on the HT line. Due to heavy rain and wind, the entire tree was uprooted and fallen on the HT line. The branches of the tree also had fallen on the portico of the petitioners' house. Whenever the tree had fallen on the house, normally used to remove the tree. In fact, the branches of the tree had fallen on the portico



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of the second floor of the petitioner's house. Therefore, it caused disturbance and the deceased, while trying to remove the branches, was electrocuted and died. Therefore, it cannot be said that the accident was happened due to negligence on the part of the deceased. Further whenever heavy rain or wind, the second respondent ought to have maintained the electricity lines which passes through the tree and passes nearer to the house and ensure that electricity lines are proper. Further, admittedly, there was absolutely no protection for the HT line which was drawn near the house of the petitioners. As rightly pointed by the learned counsel for the petitioners, the second respondent ought to have maintained horizontal clearance of 1.2 metres from the nearest point of building in terms of Rule 79 of Indian Electricity Rules. It is relevant to the extract Rule 79 of Indian Electricity Rules hereunder:

79. Clearances from buildings of low and medium voltage lines and service lines:

(1) Where a low or medium voltage, overhead line passes above or adjacent to or terminates on any building, the following minimum clearances from any accessible point, on the basis of maximum sag, shall be observed:-



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(a)for any flat roof, open balcony, verandah roof and lean-to-roof-

(i)when the line passes above the building a vertical clearance of 2.5 metres from the highest point, and

(ii)when the line passes adjacent to the building a horizontal clearance of 1.2 metres from the nearest point, and

(b)for pitched roof-

(i)when the line passes above the building a vertical clearance of 2.5 metres immediately under the lines, and

(ii)when the line passes adjacent to the building a horizontal clearance of 1.2 metres.

(2)Any conductor so situated as to have a clearance less than that specified in sub-rule (1) shall be adequately insulated and shall be attached at suitable intervals to a bare earthed bearer wire having a breaking strength of not less than 350 kg. (700 lbs.)

(3)The horizontal clearance shall be measured when the line is at a maximum deflection from the vertical due to wind pressure.



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[Explanation: For the purpose of this rule, expression "building" shall be deemed to include any structure, whether permanent or temporary.]

7. Further, Rule 91 of the Indian Electricity Rules is also clear that it is the bounden duty of the second respondent to protect every overhead line erected over any part of street or other public place or on any consumer premises is required to be protected with a device and thereby assuring that these lines are electrically harmless, in case it breaks. Further the second and third respondents are duty bound to see that if any tree standing or lying near an overhead line or fallen near an overhead line, which interferes with conveyance and transmission of electricity is cut and removed in terms of Section 68 (5) of the Electricity Act. Therefore, respondents 2 and 3 failed to discharge their duty which caused heavy loss to the petitioners. Their negligence resulted in electrocution death of the deceased. Section 53 of the Electricity Act, 2003 provides to ensure safety of the electricity overhead lines against the risk of personal injury to any person. Therefore, failure to maintain these electricity lines harmless is the cause for the death of the deceased.



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The fourth respondent dropped the FIR after investigation. The entire investigation revealed from the statements recorded under Section 161 of Cr.P.C. that the deceased died due to electrocution when he was trying to remove the branch of the tree which was lying down on the portico of the second floor of his house which also touched the HT line which was drawn in front of the petitioners' house. Thus, it is clear that the deceased died due to the negligence on the part of the second and third respondents herein. Hence, it should be compensated by means of monetary benefits by respondents 1 to 3 herein. The petitioners are being the legal heirs of the deceased, are entitled to receive just and fair compensation. In respect of awarding compensation, there is no codified law for arriving at quantum of compensation in these types of cases. Therefore, the law such as Motor Vehicles Act and Workmen's Compensation Act may be applied for arriving at a just and fair compensation. Further, the principles of absolute liability will have to be applied for these types of cases.



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8. However, the learned counsel for the respondents would submit that it is a disputed question of facts and as such, it cannot be decided under Article 226 of the Constitution of India. It is true that when disputed question of facts arises and if there is clear denial of tortious liability, remedy under Article 226 of the Constitution may not be proper. But, it cannot be understood as laying a law that in every case of tortious liability recourse must be had to a suit. When there is negligence on the face of it and infringement of Article 21 is there, it cannot be said that there will be any bar to proceed under Article 226 of the Constitution of India. Therefore, the petitioners are entitled for reasonable compensation from respondents 1 to 3 for the death of the deceased and in the interest of justice, this Court would be justified in considering the relief prayed by the petitioners. The public law proceedings serve a different purpose than the private law proceedings. The relief of monetary compensation, as exemplary damages, in proceedings under Article 32 by the Supreme Court or under Article 226 by the High Courts, for established infringement of the indefeasible right



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guaranteed under Article 21 is a remedy available in public law and is based on the strict liability for contravention of the guaranteed basic and infeasible rights of the citizen.

9. The purpose of public law is not only to civilize public power but also to assure the citizen that they live under a legal system which aims to protect their interests and preserve their rights. Therefore, when the court moulds the relief by granting 'compensation' in proceedings under Article 32 or 226 seeking enforcement or protection of fundamental rights, it does so under the public law by way of penalizing the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizen. The payment of compensation in such cases is not to be understood, as it is generally understood in a civil action for damages under the private law but in the broader sense of providing relief by an order of making 'monetary amends' under the public law for the wrong done due to breach of public duty, of not protecting the fundamental rights of the citizen. The compensation is in the nature of 'exemplary



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damages' awarded against the wrongdoer for the breach of its public law duty and is independent of the rights available to the aggrieved party to claim compensation under the private law in an action based on tort, through a suit instituted in a court of competent jurisdiction or/and prosecute the offender under the penal law."

10. It is relevant to rely upon the judgment of the Hon'ble Supreme Court of India in the case of ***Raman Vs. Uttar Haryana Bijli Vitran Nigam Ltd and others*** reported in ***(2014) 5 SCC 1***, wherein it is held as follows:

16. The learned Single Judge of the High Court has awarded compensation keeping all these aspects of the matter and has applied the guiding principle of multiplier method after advertng to the case of [Sarla Verma & Ors. v. Delhi Transport Corporation & Anr](#)[6]. for the purpose of computation of just and reasonable compensation in favour of the appellant which method should not have been applied to the case on hand, particularly, having regard to the statutory negligence on the part of the respondents in not providing the safety measures to see



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that live electric wires should not fall on the roof of the building by strictly following the Rules to protect the lives of the public in the residential area. This Court in the case of [Dr. Balram Prasad v. Kunal Saha](#)[7], has deviated from following the multiplier method to award just and reasonable compensation in favour of the claimant in a medical negligence case. The same principle will hold good in the case on hand too.

101. he has also strongly [placed reliance upon](#) the observations made at para 170 in Malay Kumar Ganguly's case referred to supra wherein this Court has made observations as thus: (SCC p. 282) "170. Indisputably, grant of compensation involving an accident is within the realm of law of torts. It is based on the principle of restitutio in integrum. The said principle provides that a person entitled to damages should, as nearly as possible, get that sum of money which would put him in the same position as he would have been if he had not sustained the wrong. (See *Livingstone v. Rawyards Coal Co.*)"

103.1. In Ningamma's case, this Court has observed at para 34 which reads thus: (SCC p. 721)

"34.in our considered opinion a party should not be deprived from getting 'just compensation' in case



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the claimant is able to make out a case under any provision of law. Needless to say, the MVA is beneficial and welfare legislation. In fact, the court is duty-bound and entitled to award 'just compensation' irrespective of the fact whether any plea in that behalf was raised by the claimant or not."

112. The claimant has also placed reliance upon [Nizam's Institute of Medical Sciences v. Prasanth S.Dhananka's \[\(2009\) 2 SCC 688\]](#) case in support of his submission that if a case is made out, then the Court must not be chary of awarding adequate compensation. The relevant paragraph reads as under:

"88. We must emphasise that the court has to strike a balance between the inflated and unreasonable demands of a victim and the equally untenable claim of the opposite party saying that nothing is payable. Sympathy for the victim does not, and should not, come in the way of making a correct assessment, but if a case is made out, the court must not be chary of awarding adequate compensation. The 'adequate compensation' that we speak of, must to some extent, be a rule of thumb



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measure, and as a balance has to be struck, it would be difficult to satisfy all the parties concerned."

17. Further in para 119, it is heldthis Court has rejected the use of multiplier system to calculate and award the quantum of compensation which must be just and reasonable. The relevant paragraph is quoted hereunder: (SCC para 92)

"92. Mr Tandale, the learned counsel for the respondent has, further submitted that the proper method for determining compensation would be the multiplier method. We find absolutely no merit in this plea. The kind of damage that the complainant has suffered, the expenditure that he has incurred and is likely to incur in the future and the possibility that his [pic]rise in his chosen field would now be restricted, are matters which cannot be taken care of under the multiplier method." (emphasis supplied)

42. In R. Venkatesh v. P. Saravanan the High Court of Karnataka while dealing with a personal injury case wherein the claimant sustained certain crushing injuries due to which his left lower limb was amputated, held that in terms of functional disability, the disability sustained by the claimant is total and 100% though only the



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claimant's left lower limb was amputated. In para 9 of the judgment, the Court held as under: (Kant LJ p. 415)

'9. As a result of the amputation, the claimant had been rendered a cripple. He requires the help of crutches even for walking. He has become unfit for any kind of manual work. As he was earlier a loader doing manual work, the amputation of his left leg below the knee, has rendered him unfit for any kind of manual work. He has no education. In such cases, it is well settled that the economic and functional disability will have to be treated as total, even though the physical disability is not 100%.'

43. Lord Reid in Baker v. Willoughby has said: (AC p. 492A)

"... A man is not compensated for the physical injury: he is compensated for the loss which he suffers as a result of that injury. His loss is not in having a stiff leg: it is in his inability to lead a full life, his inability to enjoy those amenities which depend on freedom of movement and his inability to earn as much as he used to earn or could have earned...."

11. In the above case, the Hon'ble Supreme Court of India relied upon various judgments and granted just and reasonable compensation.



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Considering the above facts and circumstances of the case, the guiding principles of multiplier method in respect of 20 years of age as decided in the case of *Sarla Verma Vs. Delhi Transport Corporation* reported in **(2009) 6 SCC 121** are followed for the purpose of computation of just and reasonable compensation in favour of the petitioners, which is extracted hereunder:

Age of the deceased	Multiplier scale as envisaged in Susamma Thomas case	Multiplier scale as adopted by Trilok Chandra case	Multiplier scale in Trilok Chandra case as clarified in Charlie case	Multiplier specified in second column in the table in Second Schedule to the MV Act	Multiplier actually used in Second Schedule to the MV Act (as seen from the quantum of compensation)
15 to 20 years	16	18	18	16	19

12. Accordingly, the 18 multiplier scale to be adopted to calculate the income of the deceased. The deceased was a college going



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student and at the time of his death, he was aged about 20 years.

Therefore, his income notionally is fixed at Rs.15,000/- per month, in which 1/3 to be deducted for his personal expenses. Hence, the monthly income to be fixed for calculating the compensation as Rs.10,000/- per month. Accordingly, the total compensation is arrived at as follows:

Total income	Rs.10000/- p.m. x 12 x 18 =Rs.21,60,000/-
Transport Expenses	Rs.10,000/-
Funeral Expenses	Rs.25,000/-
Loss of Consortium	Rs.2,00,000/-
Loss of Love and Affection	Rs.3,00,000/-
Total	Rs.26,95,000/-

13. Accordingly, the petitioners are entitled to compensation to the tune of Rs.26,95,000/-, wherein the petitioners 1 and 2 are entitled to get a sum of Rs.10,00,000/- each and the third petitioner is entitled to get a sum of Rs.6,95,000/-, with interest at the rate of 6% per annum from the date of the accident i.e. 19.07.2019 till payment. Respondents 1 to 3 are jointly and severally liable and they shall pay the said compensation



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within a period of twelve weeks from the date of receipt of copy of this order.

14. With the above direction, this writ petition stands allowed.

There shall be no order as to costs.

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Neutral Citation: Yes/No
Index: Yes/No
Speaking/Non-speaking order
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To

- 1.Chief Secretary to Government,
The Union of India,
Union Territory of Puducherry,
Puducherry
- 2.The Superintendent of Engineer,
Electricity Department,
Puducherry & State
- 3.The Commissioner,
Villianur Commune Panchayat,
Villianur, Puducherry & State
- 4.The Station House Officer,
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