



W.P.(MD)No.21948 of 2021

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Reserved on : 29.04.2024

Pronounced on : 25.06.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

W.P.(MD)No.21948 of 2021

1. Selvi

2. Roseline Jothi

3. Jeyapaul

4. Jeinopaul

... Petitioners

Vs.

1. The District Collector,
Kanyakumari District,
Nagercoil.

2. The Superintendent of Police,
Kanyakumari District,
Nagercoil.

3. The Inspector of Police,
Karungal Police Station,
Karungal,
Kanyakumari District.



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4. The Home Secretary,
Secretariat, Fort St.George,
Chennai.
5. The Chief Engineer,
Tamilnadu Electricity Distribution Circle,
Maharaja Nagar, Tirunelveli.
6. The Assistant Engineer,
Tamilnadu Electricity Distribution Circle,
Killiyur, Tholaiavattam Post,
Kanyakumari District.
7. The Principal Secretary to Government,
Electricity Department (Energy),
Secretariat, Fort St.George,
Chennai.

... Respondents

Prayer : This Writ Petition filed under Article 226 of Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, quashing the impugned order of the sixth respondent in க.எண்.உ.பொ/வி/கிள்ளியூர்/கோ.புகார்/அ.எண்.79/19 dated 25.02.2019 and direct the respondents to grant a compensation of Rs.15,00,000/- (Rupees Fifteen Lakhs only) to the petitioners.

For Petitioners	: Mr.S.Titus
For R1 to R4	: Mr.A.K.Manikkam Special Government Pleader
For R5 & R6	: Mr.S.Deenadayalan Standing Counsel



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ORDER

The Writ Petition is directed against the order dated 25.02.2019 passed by the sixth respondent rejecting the claim of the writ petitioners and for further direction to the respondents to grant compensation of Rs.15,00,000/-.

2. The case of the writ petitioners is that on 13.09.2018 at about 05.30 a.m., when one Paul Rathinam, who is the husband of the first writ petitioner and father of the writ petitioners 2 to 4, was returning home after distributing milk in shops and houses, at a place near Mankarai Post Office, near his house, an electric post suddenly fell on his body by which his leg bone has broken, chest crushed and sustained severe injuries, that the injured Paul Rathinam was immediately taken to a nearby hospital and the Doctor, who examined him, found that he was dead and that the third writ petitioner informed the matter to Karungal Police Station and on that basis, FIR came to be registered in Crime No.306 of 2018 for the offences under Section 304(A) IPC r/w Section 134 of the Motor Vehicles Act against the driver of an unknown lorry.



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3. It is the further case of the writ petitioners that the first writ petitioner was informed that the electric post that fell on the body of her husband was in a damaged condition at the bottom and the concrete portion at the bottom was already removed and the post was standing with iron rods of the post, that though Karungal Police had registered the FIR against the driver of the lorry, who had hit against the electric pole, they have not traced out the lorry, that Karungal Police neglected to examine the nearby CCTV camera footings to find out the lorry that caused the accident, that the said Police had not enquired about the negligent acts of the electricity officials, that the Electricity Department was also negligent in keeping the electric post in a damaged condition which was also reason for the accident and that the first writ petitioner had sent repeated representations to the higher officials of the police, Electricity Department and State Government, but they had not taken any effective steps to find out the real accused.

4. It is the further case of the writ petitioners that the deceased Paul Rathinam was keeping a dairy farm and used to collect milk and sell it to the nearby shops and neighboring houses and they were getting more than



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Rs.700/- per day and it comes to Rs.21,000/- per month, that due to sudden demise of the said Paul Rathinam, the writ petitioners are fully collapsed and their income is lost, that the first writ petitioner had sent a representation through her advocate to the respondents 5 and 6 dated 15.12.2018, for which, the sixth respondent had sent a reply, in which, he admitted the accident but attempted to evade and that since the sixth respondent has passed the impugned order without application of mind and without enquiring the matter on merits and in accordance with law, the same is liable to be set aside.

5. The defence of the Electricity Department through the sixth respondent is that the electric pole was in a good condition, that an unknown lorry was carrying heavy load with excess height and the electric wire which was attached to the electric pole was stuck on the lorry's load and due to non stop of the lorry driver, the electric pole was damaged and fell on the deceased Paul Rathinam and there is no fault on the part of the Electricity Department and that the death was caused by the road accident and not due to the electric pole falling on the deceased Paul Rathinam on its own.



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6. It is their further contention that there is no previous complaint by public or any person regarding the damage of the electric pole, that the electric pole has been damaged after the accident only, that the writ petitioners can seek compensation only against the lorry owner as the FIR was only registered against the lorry owner, that the writ petitioners can claim compensation because the death caused due to the road accident and not due to the electrocution and that the writ petitioners ought to have filed a civil suit as there are disputed question of facts and unequivocal denial of tortious liability and as such, the writ petition is not maintainable.

7. Heard the learned counsel appearing for the writ petitioner, the learned Additional Government Pleader appearing for the respondents 1 to 4 and the learned Standing Counsel appearing for the respondents 5 and 6.

8. It is evident from the records that on the basis of the complaint lodged by the third writ petitioner-son of the deceased Paul Rathinam, FIR came to be registered in Crime No.306 of 2018 dated 13.09.2018 against an unknown lorry driver for the offences under Section 304(A) IPC r/w



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Section 134 of the Motor Vehicles Act, wherein, it has been alleged that on 13.09.2018, when the deceased Paul Rathinam was returning to his home in the road near Mankarai Post Office, a lorry with load exceeding the height came on the said road and the upper part of the lorry got stuck with the electric wire attached to the electric post and the electric post, which was already in a damaged condition, got broken and fell on the deceased Paul Rathinam and as a result of which, he sustained serious injuries. The jurisdictional police has filed a final report dated 06.05.2019 as Un-Detected (UN) and according to them, despite the serious efforts and investigation in all angles, they were not able to trace out the lorry which allegedly caused the accident.

9. It is not in dispute that the first writ petitioner has earlier filed a writ petition in W.P.(MD)No.5994 of 2021 seeking a writ of mandamus directing the respondents to grant compensation of Rs.40,00,000/- and a learned Judge of this Court, by observing that FIR averments says that the death was caused by a road accident and not due to the electric pole falling on the deceased on its own, has held that the writ petition was not maintainable for two reasons that the amount that has been claimed is



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highly exaggerated which cannot be countenanced both in fact and in law and that the petitioner has not come up with any specific reason as to how the petitioner can first of all lay any claim against the Electricity Department and dismissed the petition. The learned Judge has also observed that the petitioner's claim as against the Electricity Department has been rejected by the letter of the Assistant Engineer, Distribution, Tamil Nadu Electricity Board, Killiyur dated 25.02.2019 and without challenging the said rejection order, the petitioner cannot maintain a writ of mandamus. In pursuance of the said order, the writ petitioners have filed the present writ petition challenging the rejection order passed by the sixth respondent and consequently claimed the relief of compensation.

10. Regarding the claim of the writ petitioners as against the police officials on the ground that they have failed to trace out the lorry and closing of the case as Un-Detected, as already pointed out, in the final report, they have stated that despite their best efforts and investigation in all the angles, they were not able to trace out the lorry. It is not the case of the writ petitioners that they have furnished the particulars of the lorry and despite the same, the police has failed to snatch the lorry or its driver.



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Even assuming for arguments sake that the police is at fault for non-tracing out the lorry, they cannot be mulcted with liability for the accident. Hence, the claim of the compensation as against the police cannot be sustained.

11. Now turning to the claim of the compensation as against the Electricity Department, in the FIR itself, it has been stated that the electric pole was in a damaged condition even before the accident. Though the first writ petitioner in her earlier writ petition has alleged that her husband had died due to the fall of the electric pole and also electrocution, but there is absolutely no evidence to say that her husband died due to the electrocution. But the fact remains that due to the fall of the electric post on the body of the deceased Paul Rathinam, he sustained serious injuries and subsequently succumbed to the injuries.

12. It is not in dispute that the writ petitioners have sent legal notice to the respondents 5 and 6 dated12.2018, for which, the sixth respondent has sent the impugned reply dated 25.02.2019. In the advocate notice, the writ petitioners' side have specifically stated that electric posts



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and electric wires were in damaged condition in and around the Mankarai Post Office and despite information and request for rectification, there was no response, that they have installed a new electric post near the old post and failed to remove the old post, which was in a damaged condition, that they have also not taken any steps to repair the wires, which were lying in lower level and that their negligence alone is responsible for the death of the deceased Paul Rathinam. In the reply, the sixth respondent has stated that the electric post which caused the accident was in a good condition, that since the vehicle had dragged the electric wire, electric post got damaged, that there was no complaint with regard to the damage condition of the electric post and that their Department is not responsible for the death of the deceased Paul Rathinam.

13. The writ petitioners have produced some news items published in the papers, but that cannot be relied on for deciding the disputes involved. But the writ petitioners have also produced a news items, wherein, member of legislative assembly to that area has issued a statement condemning the non-action of the Electricity Department officials. It is not the case of the respondents 5 and 6 that member of the legislative assembly has not issued any such statement.



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14. The learned Additional Government Pleader appearing for the respondents 1 to 4, on instructions from the Tahsildar, Killiyur, would submit that since the electric wire attached to the concerned electric poles was stuck with the heavy load lorry, the electric post got broken and fell on the deceased Paul Rathinam. The respondents 5 and 6 have not specifically disputed the version of the respondents 1 to 4. Moreover, as already pointed out, the writ petitioners in their representation as well as in the advocate notice have specifically stated that after erecting a new electrical post, the authorities have failed to remove the old post and the same was also not disputed specifically by the respondents 5 and 6. Moreover, it is nobody's case that the lorry had directly hit the electric pole and as a result of which, the pole got broken. But on the other hand, it is the specific case of the authorities that the electric wire attached to the electric post got stuck with the over load lorry and since the same was dragged, the post got broken. Though the respondents 5 and 6 have taken a stand that electric post was in good condition even before the accident, they have not produced any iota of evidence to substantiate the same.

15. As stated by the writ petitioners, if new electric post was erected and supply was given from that electric post, the respondents 5 and 6 have



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not offered any reason or explanation for not removing the old post or not removing the wires attached with the old post. As rightly contended by the learned counsel appearing for the writ petitioners, the respondents 5 and 6 have not even furnished any particulars as to when the disputed electric pole was erected, how the electric wires were taken from that post and why it was stuck with the lorry. Even assuming for arguments sake that the electric wire attached to the old post was stuck with the lorry, there is every chance for snapping of that electric wire from that post and absolutely no chance for the pole to brake. If the electric post was broken in the way stated above, then it is only for the Electricity Department to say as to how such a quality pole was erected. On considering the entire facts and circumstances, this Court has no hesitation to hold that the negligence of the Electricity Department was the reason for braking of the electric pole and the consequent death of the said Paul Rathinam.

16. The learned Standing Counsel appearing for the respondents 5 and 6 would submit that since there are disputed question of facts and an unequivocal denial of tortious liability, the writ petition invoking Article 226 of Constitution of India cannot be entertained and relied on the



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decision of the Hon'ble Supreme Court in the case of **Tamil Nadu Electricity Board Vs. Sumathi and others** reported in (2000) 4 SCC 543

and the relevant passage is extracted hereunder:-

“In view of the clear proposition of law laid by this Court in Sukamani Das case when disputed question of fact arises and there is clear denial of any tortuous liability remedy under Article 226 of the Constitution may not be proper. However, it cannot be understood as laying a law that in every case of tortuous 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. Right of life is one of the basic human rights guaranteed under Article 21 of the Constitution. In U.P. State Co-operative Land Development Bank Ltd. vs. Chandra Bhan Dubey & Ors., where one of us (Wadhwa, J.) was a party, this Court after examining various decisions of the courts on the power of the High Court under Article 226 of the Constitution observed that the language of Article 226 of the Constitution does not admit of any limitation on the powers of the High Court for the exercise of jurisdiction thereunder though by various decisions of this Court with varying and divergent views, it has been held that jurisdiction under



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Article 226 can be exercised only when a body or authority, the decision of which is complained, was exercising its power in the discharge of public duty and that writ is a public law remedy. This Court then observed :

"... [i]t may not be necessary to examine any further the question if Article 226 makes a divide between public law and private law. Prima facie from the language of the Article 226 there does not appear to exist such a divide. To understand the explicit language of the Article it is not necessary for us to rely on the decision of English Courts as rightly cautioned by the earlier Benches of this Court. It does appear to us that Article 226 while empowering the High Court for issue of orders or directions to any authority or person does not make any such difference between public functions and private functions. It is not necessary for us in this case to go into this question as to what is the nature, scope and amplitude of the writs of habeas corpus, mandamus, prohibition, quo warranto and certiorari. They are certainly founded on the English system of jurisprudence. Article 226 of the Constitution also speaks of directions and



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orders which can be issued to any person or authority including, in appropriate cases, any Government. Under clause (1) of Article 367 unless the context otherwise requires, the General Clauses Act, 1897, shall, subject to any adaptations and modifications that may be made therein under Article 372 apply for the interpretation of the Constitution as it applies for the interpretation of an Act of the Legislature of the Dominion of India. Person under Section 2(42) of the General Clauses Act shall include any company, or association or body of individuals, whether incorporated or not. Constitution is not a statute. It is a fountain head of all the statutes. When the language of Article 226 is clear, we cannot put shackles on the High Courts to limit their jurisdiction by putting an interpretation on the words which would limit their jurisdiction. When any citizen or person is wronged, the High Court will step in to protect him, be that wrong be done by the State, an instrumentality of the State, a company or a cooperative society or association or body of individuals whether incorporated or not, or even an individual. Right that is infringed may be



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under Part III of the Constitution or any other right which the law validly made might confer upon him. But then the power conferred upon the High Courts under Article 226 of the Constitution is so vast, this court has laid down certain guidelines and self-imposed limitations have been put there subject to which High Courts would exercise jurisdiction, but those guidelines cannot be mandatory in all circumstances. High Court does not interfere when an equally efficacious alternative remedy is available or when there is established procedure to remedy a wrong or enforce a right. A party may not be allowed to by-pass the normal channel of civil and criminal litigation. High Court does not act like a proverbial bull in china shop in the exercise of its jurisdiction under Article 226”.

17. Even in the said decision, the Hon'ble Apex Court has also specifically observed that when the language of Article 226 is clear, we cannot put shackles on the High Courts to limit their jurisdiction by putting an interpretation on the words which would limit their jurisdiction and when any citizen or person are wronged, the High Court will step in to



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protect him, be that wrong done by the State, an instrumentality of the State, a company or a cooperative society or association or body of individuals whether incorporated or not, or even an individual.

18. In the case of ***D.Matsa Gandhi Vs. Tamil Nadu Slum Clearance Board*** reported in ***2000 (3) CTC 24***, this Court has held that in cases where there is denial of tortious liability, the writ petition cannot be maintained, but however, when negligence *per se* is visible, the same has to be construed as violation of right to life and liberty guaranteed under Article 21 of the Constitution of India and the High Court has jurisdiction to grant compensation under Article 226 of the Constitution of India and the relevant passage is extracted hereunder:-

“10. In the course of argument it is brought to my notice the recent decision of the Hon'ble Supreme Court reported in Nath Bros., Exaim International Ltd., v. Best Roadways Ltd., 2000 (4) S.C.C. 553 and power of this Court under Article 226. No doubt, the Hon'ble Supreme Court has not accepted the action of the High Court in granting compensation to the family of the victim who died by electrocution in a writ petition filed under Article 226. It is equally true that when disputed questions of fact arises and if there is clear denial of tortious liability



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remedy under Article 226 of the Constitution may not be proper. However, in the very same judgment their Lordships after saying so, in paragraph 10 have observed.

“.... However 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.” In such circumstance and in view of the factual conclusion as referred to above, I am of the view that the petitioner is entitled reasonable compensation from the respondent for the death of her daughter and in the interest of justice this Court would be justified in considering the relief prayed by the petitioner.”

19. In the case of ***V.Chellam Vs. The Chairman and Managing Director, Tamil Nadu Generation and Electricity Distribution Co. and others*** in ***W.P.(MD)No.14131 of 2011 dated 22.07.2022***, the writ petitioner's husband was proceeding in a two wheeler and an electric pole fell on him and sustained head injury and died subsequently, a learned



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Judge of this Court has fixed the liability on the electricity board and directed to pay compensation. Considering the legal position above referred, the contention of the respondents 5 and 6 that the writ petition cannot legally be maintained, is devoid of merits and the same is liable for rejection.

20. Now turning to the quantum of compensation, in the absence of any mechanism to compute the compensation, compensation can be determined by applying the formula applicable in motor accident cases. In the case on hand, the deceased was aged 67 years as per the FIR and the same was not specifically disputed. According to the writ petitioners, the deceased was keeping a dairy farm and used to collect milk and sell it in nearby shops and houses and was earning Rs.21,000/- per month. Admittedly, the writ petitioners have not produced any evidence to substantiate the same. Considering the age and the nature of job, this Court fixes the monthly income of the deceased at Rs.10,000/-. Admittedly, the deceased was survived by his wife and three children, but the writ petitioners 2 to 4 are majors. Considering the above, 1/4th of the income is to be deducted towards his personal and living expenses and after such deduction, the monthly income would come to Rs.7,500/- {Rs.



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10,000/- - Rs.2,500/-}. Considering the age, the appropriate multiplier would be 5. Hence, the loss of income to the family would come to Rs.4,50,000/- {Rs.7,500/- x 12 x 5}.

21. The writ petitioners are certainly entitled to get Rs.40,000/- each towards loss of consortium. The writ petitioners are also entitled to get Rs.15,000/- for funeral expenses and Rs.15,000/- for loss of estate. Accordingly, the writ petitioners are entitled to get total compensation of Rs.6,40,000/-.

22. In the result, this Writ Petition stands allowed. The respondents 5 and 6 are directed to pay a sum of Rs.6,40,000/- (Rupees Six Lakhs and Forty Thousand only) as compensation with interest at 7.5% per annum from the date of filing of this petition i.e., 06.12.2021 till the date of actual payment within a period of four weeks from the date of receipt of a copy of this order. No costs.

25.06.2024

NCC :yes/No
Index :yes/No
Internet:yes/No
csm



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- To
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Kanyakumari District.
 3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

csn

Pre-Delivery Order made in
W.P.(MD)No.21948 of 2021

Dated : 25.06.2024