



W.P(MD)No.20518 of 2016

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.08.2024

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P(MD)No.20518 of 2016

Thangam

... Petitioner

Vs.

1.The Superintending Engineer (O&M),
TANGEDCO,
Tuticorin,
Tuticorin District.

2.The Executive Engineer,
TANGEDCO,
Sankarankovil,
Tuticorin District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondent to pay compensation of Rs.10,00,000/- to the petitioner towards the death of petitioner's husband due to electrocution and pass such other orders as this Court.



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For Petitioner : Mr.N.Mohideen Basha

For Respondents : Mr.Deenadhayalan
Standing Counsel for TNEB

ORDER

The present writ petition has been filed for Mandamus seeking direction to the respondents to pay compensation of Rs.10,00,000/- to the petitioner towards the death of petitioner's husband due to electrocution.

2. It is submitted by the learned Counsel for the petitioner that the petitioner's husband was a farmer and was the sole bread winner of the family. They had two daughters viz., Indrani and Sneha. Adjacent to the petitioner's land, Cable TV network was run by Kumar, who was drawing electricity illegally from nearby electric pole. The wire carrying such unauthorized electric connection was passing through the house of the petitioner and Kalaimani. Realizing the imminent danger posed by such unauthorized electric connection



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passing through the residence of the petitioner and Kalaimani, they approached the respondents to take action. However, no action was taken.

3. It is further submitted by the learned Counsel for the petitioner that, on 10.12.2015, when the petitioner along with her husband were cleaning / removing bushes and shrubs in their land, the petitioner's husband came in contact with the said wire and got electrocuted. He was immediately taken to the hospital, where he was declared as dead. The petitioner's husband got electrocuted and died. The death was only in view of the negligence of the Board. It is undisputed that the death of the petitioner's husband was caused due to leakage of electricity from unauthorized electric connection. However, the respondents are refusing to pay due compensation to the petitioner. Being left with no other option, the petitioner is before this Court by way of filing this writ petition.

4. The learned counsel for the petitioner would submit that the accident occurred only due to the negligence of the respondent Board. If the Board had taken due care and not been negligent in supervising/maintaining the electric connections, the accident would not have occurred at all. It was further



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submitted that the petitioner does not have any employment or income from any other source. After the demise of her husband, she has been living alone with two children and finding it extremely difficult to make both ends meet and that the respondents are liable to compensate the petitioner not only for the monetary loss but also for loss of love and affection and the mental agony suffered. The responsibility of supplying electric energy in that locality was statutorily cast on the respondents and if energy so transmitted causes injury or death, the primary liability to compensate is on the supplier of electric energy.

5. To the contrary, it is submitted by the learned Standing Counsel for the respondent Board that there is no proof of negligence on the part of the respondent Board, which caused the accident resulting in death of the petitioner's husband. That being the case, the claim for compensation cannot be justified.

6. Heard the learned counsels on both sides and perused the materials on record.



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7. Actions in tort and negligence are first required to be established by the petitioner/claimant. Mere fact that the claimant had suffered loss as a result of coming in contact with a live service wire by itself may not render the Board liable for compensation. It is trite law that while dealing with the claim of compensation or tort as a result of action of tort or negligence, Courts are required to examine whether the injury is caused by the negligence of the defendants/respondent and the respondent ought to be provided with an opportunity to prove that the injury cannot be attributed to negligence on its part. Those are normally disputed questions of fact, which fall outside the realm of Article 226. In this regard, it may be relevant to refer to the judgment of the Hon'ble Supreme Court in the case of ***SDO, Grid Corporation of Orissa Limited and others Vs. Timudu Oram*** reported in (2005) 6 SCC 156, wherein, it was held as under:

"6. In Chairman, Grid Corpn. of Orissa Ltd. (GRIDCO) [(1999) 7 SCC 298] with which case these appeals were listed for hearing but could not be heard for want of service, this Court took the view that the High Court committed an error in entertaining the writ petitions under Article 226 of the Constitution and were not fit cases for exercising the jurisdiction under Article 226 of the Constitution. It was held that actions in tort and negligence were required to be established initially by the claimants. The mere



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fact that the wire of electric transmission line belonging to the appellants had snapped and the deceased had come into contact with it and died by itself was not sufficient for awarding compensation. The Court was required to examine as to whether the wire had snapped as a result of any negligence on the part of the appellants, as a result of which the deceased had come in contact with the wire. In view of the defence raised and the denial by the appellants in each of the cases, the appellants deserved an opportunity to prove that proper care and precautions were taken in maintaining the transmission line and yet the wires had snapped because of the circumstances beyond their control or unauthorised intervention of third parties. Such disputed questions of fact could not be decided in exercise of jurisdiction under Article 226 of the Constitution. That the High Court could not come to the conclusion that the defence raised by the appellants had been raised only for the sake of it and there was no substance in it. In para 6 it was observed thus: (SCC pp. 301-02)

“6. In our opinion, the High Court committed an error in entertaining the writ petitions even though they were not fit cases for exercising power under Article 226 of the Constitution. The High Court went wrong in proceeding on the basis that as the deaths had taken place because of electrocution as a result of the deceased coming into contact with snapped live wires of the electric transmission lines of the appellants, that ‘admittedly/prima facie amounted to negligence on the part of the appellants’. The High Court failed to appreciate that all these cases were actions in tort and



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negligence was required to be established firstly by the claimants. The mere fact that the wire of the electric transmission line belonging to Appellant 1 had snapped and the deceased had come in contact with it and had died was not by itself sufficient for awarding compensation. It also required to be examined whether the wire had snapped as a result of any negligence of the appellants and under which circumstances the deceased had come in contact with the wire. In view of the specific defences raised by the appellants in each of these cases they deserved an opportunity to prove that proper care and precautions were taken in maintaining the transmission lines and yet the wires had snapped because of circumstances beyond their control or unauthorised intervention of third parties or that the deceased had not died in the manner stated by the petitioners. These questions could not have been decided properly on the basis of affidavits only. It is the settled legal position that where disputed questions of facts are involved a petition under Article 226 of the Constitution is not a proper remedy. The High Court has not and could not have held that the disputes in these cases were raised for the sake of raising them and that there was no substance therein. The High Court should have directed the writ petitioners to approach the civil court as it was done in OJC No. 5229 of 1995.”

...

9. In the present case, the appellants had disputed the negligence attributed to it and no finding has been recorded by the High Court that GRIDCO was in any way negligent in the



performance of its duty. The present case is squarely covered by the decision of this Court in Chairman, Grid Corpn. of Orissa Ltd. (GRIDCO) [(1999) 7 SCC 298] . The High Court has also erred in awarding compensation in Civil Appeal No. 4552 of 2005 [@ SLP (C) No. 9788 of 1998]. The subsequent suit or writ petition would not be maintainable in view of the dismissal of the suit. The writ petition was filed after a lapse of 10 years. No reasons have been given for such an inordinate delay. The High Court erred in entertaining the writ petition after a lapse of 10 years. In such a case, awarding of compensation in exercise of its jurisdiction under Article 226 of the Constitution cannot be justified."

8. Secondly, yet another reason why I would think that the claim for compensation cannot be resolved in a Writ Petition under Article 226, is in view of the fact that even if this Court in exercise of its powers under Article 226, does come to a conclusion that the petitioner is entitled to compensation, however, the measure of damages would depend on variety of factors such as loss of pay, medical expenses, mental and physical sufferings, etc. There is no straight jacket formula and there is no process articulated nor is there any uniform policy which could be applied in determining the measure of damages. Thus, it may not be appropriate for this Court to decide on the entitlement of compensation nor evaluate the measure of damages.



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9. Having stated that, it is necessary to note that the Board vide proceedings in B.P.No.6 dated 16.10.2019 has enhanced the grant of ex-gratia payment in the case of fatal accidents to Rs.5,00,000/- and in the case of non-fatal accidents to Rs.2,00,000/-. It may be necessary to extract the relevant portion of the Board Proceedings in B.P.No.6 dated 16.10.2019:

“Accident – Compensation payable by TANGEDCO in cases of Fatal/Non-Fatal, Nondepartmental, Mechanical/Electrical accidents to human beings/animals – Enhancement of payment of compensation - Orders – Issued.

(Administrative Branch)

(Per.) (FB) TANGEDCO Proceedings No.6 Dated 16th October 2019.

*Purattasi-29, Vikari Varudam,
Thiruvalluvar Aandu-2050.*

READ:

- 1. (Per.) (FB) TANGEDCO Proceedings No.5, Dated 29.04.2013.*
- 2. Extract from the Minutes of 90th Board Meeting of the TANGEDCO held on 30.09.2019.*

PROCEEDINGS

In modification of the orders issued in the B.P. cited, the TANGEDCO directs that the exgratia payment payable on compassionate grounds in respect of Fatal/Non-fatal, Non-departmental, Mechanical/Electrical accidents to human beings/animals is enhanced as detailed below:-

Sl.No.	Mode of Accident	Existing	Enhanced	Competent Authority
1	For Fatal	Rs.2,00,000/-	Rs.5,00,000/-	



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2	<i>For No-Fatal</i> a) <i>Loss of two limbs or two eyes</i> b) <i>Loss of one limb or one eye</i>	<i>Rs.1,00,000/-</i>	<i>Rs.2,00,000/-</i> <i>Rs.1,00,000/-</i>	<i>Chief Engineer/ Personnel</i>
3	<i>Animals (Cow/Buffalow/ Bullock)</i>	<i>Rs.10,000/-</i>	<i>Rs.25,000/-</i>	

2. The above enhanced rates of compensation shall be paid to the victims on incidents reported on or after 29.07.2019. Previous closed files need not be reopened.

(By Order of the Board of TANGEDCO)

*A.Ashok Kumar,
Chief Engineer/Personnel.*

*TANGEDCO – Bonus and Ex-gratia to Workmen of TANGEDCO or
the year **2018-2019** - Orders – Issued.*

(Secretariat Branch)

*(Per.) CMD TANGEDCO Proceedings No.189
October2019.*

Dated 16th

*Purattasi-29, Vikari
Varudam,
Thiruvalluvar Aandu-2050.*

READ:



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- i) (Per.) FB TANGEDCO Proceedings No.9, (SB) Dated 02.03.2018.
ii) G.O.Ms.No.302, Finance (BPE) Department, Dated 26.09.2019.

PROCEEDINGS

The quantum of Bonus and Ex-gratia payable for the financial year 2018-2019 to the Workmen of the TANGEDCO covered by the Wage Settlement has been considered in consultation with Government. The ceiling limit for Rs.3,500/- payment of Bonus and Ex-gratia has been enhanced to Rs.7,000/- as per the Revised Bonus Act 2015. In the reference second cited, the Government have accorded sanction for payment of Bonus and Ex-gratia to the employees of the TANGEDCO. The Government of Tamil Nadu has announced for payment of Bonus and Ex-gratia to the eligible employees of TANGEDCO."

In my view, the petitioner would be entitled to the above ex-gratia payment of Rs.5,00,000/- without having to demonstrate that the accident occurred due to negligence/carelessness on the part of the respondent Board.

10. In this regard, it may be relevant to refer to the judgment of the Hon'ble Supreme Court in the case of *Sudesh Dogra v. Union of India* reported in **(2014) 6 SCC 486**, wherein, the nature of ex-gratia payment has been explained as under:

“22. The petitioners who are the widows of the victims of the unfortunate incidents of violence have received ex gratia of Rs 1 lakh each both from the State of Jammu and Kashmir and State of



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Chhattisgarh. Ex gratia is an act of gratis and has no connection with the liability of the State in law. The very nature of the relief and its dispensation by the State cannot be governed by directions in the nature of mandamus unless of course there is an apparent discrimination in the manner of grant of such relief.”

11. The above ex-gratia is apparently paid by the Board in recognition of the “strict liability” that is cast on it by virtue of undertaking the supply of electricity, which is hazardous and risky. In this regard, it may be relevant to refer to the judgment of the Hon'ble Supreme Court in the case of ***M.P.Electricity Board Vs. Shail Kumari and others*** reported in (2002) 2 SCC 162, wherein, while dealing with a fatal accident in view of a live wire getting snapped, falling on a public road and a cyclist, who without noticing the same was electrocuted on coming in contact with the said wire and died, it was held as under:

"8. Even assuming that all such measures have been adopted, a person undertaking an activity involving hazardous or risky exposure to human life, is liable under law of torts to compensate for the injury suffered by any other person, irrespective of any negligence or carelessness on the part of the managers of such undertakings. The basis of such liability is the foreseeable risk inherent in the very nature of such activity. The liability cast on such person is known, in law, as “strict liability”. It differs from the liability which arises on



account of the negligence or fault in this way i.e. the concept of negligence comprehends that the foreseeable harm could be avoided by taking reasonable precautions. If the defendant did all that which could be done for avoiding the harm he cannot be held liable when the action is based on any negligence attributed. But such consideration is not relevant in cases of strict liability where the defendant is held liable irrespective of whether he could have avoided the particular harm by taking precautions.

....

13. In the present case, the Board made an endeavour to rely on the exception to the rule of strict liability (Rylands v. Fletcher [(1868) 3 HL 330 : (1861-73) All ER Rep 1]) being “an act of stranger”. The said exception is not available to the Board as the act attributed to the third respondent should reasonably have been anticipated or at any rate its consequences should have been prevented by the appellant-Board. ”

12. For the above reasons, this Court is inclined to direct the respondents to pay ex-gratia amount of Rs.5,00,000/- (Rupees Five Lakhs only) to the petitioner, to which the learned Standing Counsel for the respondent Board agreed to and submitted that the same would be paid within a period of four (4) months from the date of receipt of a copy of this order. If the petitioner intends to claim any compensation over and above the ex-gratia



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payment/compensation, liberty is granted to her to work out the remedies available to her in the manner known to law.

13. Accordingly, the writ petition stands disposed of. There shall be no order as to costs.

21.08.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

To

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MOHAMMED SHAFFIQ, J.

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