

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.2.2005

CORAM:

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

WRIT PETITION NO.11406 OF 1996

Amuthavalli

.. Petitioner

Vs.

- 1.The Tamil Nadu Electricity Board
rep.by its Chairman,
Madras.
- 2.The Divisional Engineer,
Tamil Nadu Electricity Board,
Alanthur,
Madras.
- 3.The Assistant Engineer,
Tamil Nadu Electricity Board,
Teynampet,
Madras - 600 018.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus as stated therein.

* * *

For petitioner : Mr.T.Srinivasaraghavan

For respondents : Mr.G.Vasudevan
Standing Counsel for EB.

O R D E R

The petitioner has filed the above writ petition praying to issue a Writ of Mandamus to direct the respondents to pay to the petitioner a sum of Rs.1,00,000/- as compensation for the loss caused to the petitioner by the death of her son, Natarajan due to the negligence of the respondents.

2. Today when the matter is taken up for consideration in the presence of the learned counsel for the petitioner as well as the respondents, what comes to be known is that the petitioner is the resident of Nazarathpuram, St.Thomos Mount, Madras; that the electricity lines in Nazarathpuram area was in damaged state and

in many places the power lines were hanging dangerously; that the Nazarathpuram Adi-Andhra Arundathi Welfare Association at St.Thomas Mount had repeatedly brought to the notice of the respondents the dangerous position of the electricity lines from 1991 onwards; that inspite of such notice to the respondents, no action was initiated to set right the lines; that consequently, on 22.12.1993 one Natarajan, the petitioner's son, while he was plying in the open space lying on the East of Ramar Temple, a live wire from the nearby lamp post suddenly fell on the said Natarajan and the child died by electrocution instantaneously; that the petitioner was subjected to mental agony and shock because of the untimely death of her son; that she has not recovered fully from the shock of the gruesome death of her son; that the death of the said Natarajan is wholly attributable to the total negligence of the Tamil Nadu Electricity Board and the failure to maintain the electricity lines properly; that a lawyer's notice was issued to the respondents calling upon them to pay a sum of Rs.1,00,000/- as compensation for the death of her son, Natarajan; that the respondents did not respond to such notice and hence the above Writ Petition seeking the relief extracted supra.

3. During arguments, learned counsel for the petitioner would submit that the son of the petitioner died of electrocution only due to the negligence on the part of the respondents in not maintaining electricity wire lines properly in spite of repeated requests to set right the wire lines that were hanging; that, had the respondents initiated action promptly in time, the death would not have occurred.

4. Further, the learned counsel for the petitioner would cite two judgements in support of his claim, invoking writ jurisdiction.

They are :-

(i) Kumari V. State of Tamil Nadu and others (1992 ACJ 283) wherein the Hon'ble Apex Court has allowed the claim of the petitioner therein when the Madras High Court dismissed the Writ Petition on the ground that in Writ Jurisdiction it was not possible to determine as to which of the respondents was negligent.

(ii) In M.S.Grewal and another v. Deep Chand Sood and Others (2002 -1-L.W.) the Hon'ble Apex Court has held that though mathematical nicety is not required, a rough and ready estimate can be had from the records, and there must be always some materials available and that it is not a fanciful item of compensation, but it is on legitimate expectation of loss of pecuniary benefits; that the plea of non-maintainability of Writ Petition was

rejected and the old doctrine of relegating the aggrieved persons to remedies available in Civil Law, stands excluded since 1997; that currently; judicial attitude has taken a shift from old draconian concept and traditional jurisprudential system and the law Court will lose its efficacy if it cannot respond to the need of the Society and the technicalities cannot outweigh the course of justice.

5. On the contrary, the learned counsel for the respondents would plead that Writ Petition is not maintainable since the loss cannot be determined in writ jurisdiction and that he would cite one judgment in support of his claim viz.,

AIR 1999 Supreme Court 3412 (Chairman, Grid Corporation of Orissa Ltd., V. Sukumani Das wherein the Apex Court has held that compensation for death due to electrocution by touching snapped gridwire cannot be awarded and the High Court committed an error in entertaining the writ petitions even though they were not fit cases for exercising power under Art.226 of the Constitution and that it 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 of the part of the appellants.

The learned counsel for the respondents would further submit that, even in those decisions cited supra by the learned counsel for the petitioner, the Apex Court has also held that the High Court should go into the disputed questions of facts and get satisfied on the materials placed on record with regard to factual position and should only thereafter decide the compensation.

6. However, in reply, the learned counsel appearing for the petitioner would contend that the proposition put forth by the learned counsel for the respondents has been shifted as held in the judgements cited supra and would assert that Writ Court can award compensation in such grave matters; moreover, the respondents have not filed their counter till date denying the serious allegations made against them in this Writ Petition; that the learned counsel for the respondents is arguing just for the sake of the case and that there is no substance in the argument of the learned counsel for the respondents; that in those circumstances, the learned counsel for petitioner would pray to this Court to grant compensation for the petitioner as prayed for.

7. On the contrary, the learned counsel for the respondents states that though the petitioner claims compensation has to be paid, he has not produced a copy of the F.I.R and Post-mortem Certificate to substantiate his claim and hence, no compensation can be awarded when no proper evidence is produced for the death caused due to electrocution.

8. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing both the learned counsel for the petitioner as well as the respondents, what this Court is able to assess is that the petitioner has filed the writ petition praying to direct the respondents to pay to the petitioner a sum of Rs.1 lakh as compensation for the loss on account of the death of her son Natarajan due to the negligence of the respondents in the maintenance of the power lines as a result of which the petitioner's son who was playing in the open space contracted a live wire which was hanging dangerously and the child died by electrocution instantaneously. Hence, the petitioner, claiming the compensation amount, has filed the above writ petition.

9. From the placed on record, it could be factually ascertained that because of the negligence of the respondents, the live wire was touching the earth causing the death of the petitioner's son while he was playing innocently in the open ground and therefore, no doubt, the respondents have exhibited negligence and become responsible to pay the said compensation as demanded by the petitioner.

10. Regarding the quantum of compensation, for the loss of life of a son, the compensation amount of Rs.1 lakh as sought for on the part of the petitioner, in the estimate of this Court, is meagre and quite reasonable which the respondents have to pay and therefore, this Court is of the considered view that ordering the respondents to pay compensation to the petitioner would meet the ends of justice though the loss caused to the petitioner cannot be compensated by money but it is only a solatium and hence the following order:

In result,

(i) the above Writ Petition is allowed;

(ii) the respondents are directed to pay a sum of Rs.1 lakh to the petitioner with interest at 12% per annum from the date of the writ petition till the date of payment and the same shall be paid in thirty days from the date of receipt of a copy of this order.

However, in the circumstances of the case, there shall be no order as to costs.

asvm/Rao

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Chairman,
The Tamil Nadu Electricity Board,
Madras.
2. The Divisional Engineer,
Tamil Nadu Electricity Board,
Alanthur,
Madras.
3. The Assistant Engineer,
Tamil Nadu Electricity Board,
Teynampet, Madras-600 018

RA (CO)
SR/24.3.2005

Order in
W.P.No.11406 of 1996



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