

HIGH COURT OF JAMMU AND KASHMIR

AT JAMMU

CMA No. 147/2012 in LPAOW No. 59/2010

Date of order: 14.02.2013

State of J&K & Ors.

v

Zubida Begum

Coram:

Hon'ble Mr. Justice M. M. Kumar, Chief Justice

Hon'ble Mr. Justice Hasnain Massodi, Judge

Appearing counsel:

For the appellant(s) : Mr. G. S. Thakur, GA

For the respondent(s) : Mr. Baldev Singh, Advocate vice

Mr. C. S. Gupta, Advocate.

M.M. Kumar, CJ

1. This is an ill advised appeal under Clause 12 of the Letters Patent challenging judgment and order dated 08.10.2009 rendered by the learned Single Judge while accepting the claim made by the writ petitioner-respondent-Zubaida Begum. She had lost her son on account of electrocution when she alongwith her son-Riyaz Ahmed were digging the land on 18.10.2001. He came in touch with a live high tension wire and suffered serious injuries which proved fatal. He died on 21.10.2001.

2. The accident of electrocution has not been disputed. Even negligence is proved on presentation of challan against negligent employees after investigation of case FIR no. 80/2001 registered under Section 304-

A RPC at Police Station, Mandi Poonch. It shows that on account of negligence and carelessness imputable to the departmental employee, accident has occurred and the petitioner died. The learned Single Judge after recording these findings proceeded to assess compensation and awarded a sum of Rs.2,88,000/-. The view of the learned Single Judge is discernible from the following paras:-

“Admittedly, in para 3 of the petition, the age of the deceased is given as 23 years and was performing agricultural vocations, besides that he was working with a contractor and was earning Rs.150/- per day. Respondents have failed to rebut the said facts.

In order to assess the compensation, I deem it proper to apply the Schedule of Motor Vehicles Act. While going through the Schedule, multiplier of 17 is applicable, however, it is proper to adopt 16 instead of 17 in the instant case.

As discussed above, the respondents have not denied that the son of the petitioner was earning Rs.150/- per day. Even otherwise, now a days, a labour is earning Rs.200/- per day. Therefore, the approximate income of the petitioner is assessed to be Rs.4500/- per month, while treating him as a labourer. The deceased was not married and would have contracted marriage after few years and would have earned some more for his family, children and the petitioner-mother. Thus, it can safely be said and held that the son of the petitioner would have spent $\frac{1}{3}$ rd of his income for his personal expenses, $\frac{1}{3}$ rd for his family and $\frac{1}{3}$ rd for his mother, petitioner herein. Thus, the petitioner has lost the source of income and dependency and is entitled to Rs.2,88,000/- ($1500 \times 12 \times 16$) as compensation. She is also entitled to interest at the rate of 6% p.a. from the

date of institution of the petition, i.e., 07.04.2003 till its realization.

Accordingly, this writ petition is allowed and petitioner Zubaida Begum is held entitled to compensation to the tune of Rs.2,88,000/- along with the interest at the rate of 6% p.a from the date of institution of the petition, i.e., 07.04.2003 till its realization.”

3. It is pertinent to notice some interlocutory orders rendered in the instant appeal. The amount awarded by the learned Single Judge was required to be deposited vide order dated 08.03.2011. Thereafter a request for extension of time was granted on 12.05.2011. It was further extended by two weeks, yet the amount has not been deposited. It is unfortunate that the appellant-State has not complied with the directions issued by this Court till today.

4. Even otherwise law concerning compensation in cases of electrocution on account of negligence is well settled. In exercise of writ jurisdiction adequate compensation can always be awarded by the Courts if there is no dispute on facts. In the present case the accident is not disputed and negligence has been imputed to the appellant department. Hon'ble the Supreme Court has repeatedly held that in such circumstances writ Court could always award compensation by treating it tortious liability of the

State. In that regard, reliance may be placed on the views of Hon'ble the Supreme Court expressed in para 2 of the judgment rendered in ***Parvati Devi & ors. v. Commissioner of Police, Delhi & ors. (2000) 3 SCC 754***; Para 10 of the judgment in the case of ***Tamil Nadu Electricity Board v. Sumathi & ors. (2000) 4 SCC 543*** and Para 8 of ***M. P. Electricity Board v. Shail Kumari & ors. (2002) 2 SCC 162***. [Cf. ***Chairman, Grid Corporation of Orissa Ltd. (GRIDCO) & ors. v. Sukamani Das & anr. (1999) 7 SCC 298.***]

5. As a sequel to the above discussion, this appeal does not merit admission. It is, accordingly, dismissed with cost of Rs.5,000/-. In the peculiar facts and circumstances of this case, we direct that the amount be paid to the writ petitioner-respondent-Zubida Begum within two weeks from today. If the amount is not deposited within two weeks, then the rate of interest would be to 12% from the date of institution of the petition i.e. 07.04.2003 till the date of its realization. The enhanced rate of interest shall initially be paid by the appellant. An enquiry be conducted fixing the responsibility of the officer who has caused delay in complying with the various orders of the

Court including this order passed today. The amount of enhanced rate of interest would be recoverable from such an officer who is responsible for causing delay.

6. The appeal stands disposed of.

(Hasnain Massodi)
Judge

(M. M. Kumar)
Chief Justice

Jammu,
14.02.2013
Parshant