

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

OWP No.826/2014

Vaishno Devi and others Appellant/Petitioner(s)

Through :- Mr. Irfan Khan, Advocate

V/s

State of J&K and othersRespondent(s)

Through :- Mr. Ravinder Gupta, AAG

Coram: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE

JUDGMENT (ORAL)

31.07.2023

1. Petitioner No.1 is widow and petitioners No. 2 to 4 are minor children of deceased Vakil Chand, who died of electrocution on 29.11.2012. It is alleged that death of the Vakil Chand occurred due to electrocution because of sudden increase in voltage resulting in short-circuiting many home appliances and electric connections in the entire Kotli Manhatrian area. In the accident deceased Vakil Chand and one lady, namely, Vandana Devi suffered serious injuries. Vakil Chand succumbed to the injuries. It is submitted that the deceased at the time of his death by electrocution was 42 years of age and the cause of death was *cardio respiratory arrest* by electrocution, as per the post-mortem report issued by the District Hospital, Reasi.

2. The grievance of the petitioners, as projected in this petition, is that they approached the Deputy Commissioner for sanction of compensation on the ground that due to negligence on part of the respondents in maintaining the voltage of electric supply, their sole bread winner had lost his life. The Deputy Commissioner, it is alleged, suggested the petitioners to approach respondent No.3 i.e. Executive Engineer concerned of the Power Development Department. Accordingly, the petitioners approached respondent No.3 but he, too, denied his liability to compensate the petitioners. The petitioners claim that the deceased was an agriculturist and was supplementing his income by working as a labourer. The petitioners further submit that their predecessor-in-interest i.e. Vakil Chand was earning Rs.7,500/- per month and that all the petitioners were wholly dependent for their existence on the income of the deceased. Relying strongly upon the policy orders of the Government issued from time to time, the petitioners submit that they are entitled to ex-gratia payment of Rs.10,00,000/- in addition to the compensation that is required to be paid to the petitioners by applying the principles laid down by Hon'ble the Supreme Court for calculating compensation under the Motor Vehicles Act, 1988.

3. On being put on notice, the respondents have filed their objections. The respondents have not denied the accident but they submit that the accident occurred due to the deceased fiddling with the service line supplying electric energy to the house of the

deceased. The respondents are, however, on record to say that with respect to the accident in question they did not conduct any enquiry but relied only upon the information provided by the Assistant Engineer concerned. The respondents further submit that, though, the accident has not happened due to some negligence of the respondents, yet the petitioners may be entitled to seek ex-gratia amount of Rs.3.00 lac in terms of Government Order No.328-PDD of 2011 dated 24.11.2011.

4. Having heard learned counsel for the parties and perused the material on record, it is seen that indisputably cause of death of the deceased is cardiac arrest due to electrocution. As per the specific allegation made by the petitioners, the death occurred due to short-circuiting of the electric connections and appliances in the house of the deceased due to sudden increase in voltage. It is the specific case pleaded by the petitioners that this increase in voltage happened in the entire vicinity in which one more person was similarly injured due to electrocution. The respondents have not placed on record any material, which would suggest that the death of the deceased occurred due to any lapse attributable to the deceased. The least that the respondents were expected to demonstrate was that on the day of accident, there was no sudden increase in voltage nor there was any damage caused to life and property of the inhabitants of the area. As a matter of fact, as and when the electrocution accident happens, whether due to negligence of the department or otherwise, such

accidents are verified by the Director, Training, Testing, Inspection and Commission (TTI&C) but in the instant case, no such enquiry was conducted.

5. In view of the aforesaid, reliance placed by the respondents on the communication of the Assistant Engineer is of no help. The Assistant Engineer concerned has given his first impression about the accident without verifying the true facts. In these facts and circumstances, this Court is left with no option but to agree with the petitioners that the accident occurred due to lapse attributable to the Department of Power Development and, therefore, the respondents cannot escape their liability to compensate the petitioners. This Court, however, appreciates the stand of the respondents that in terms of Government Order No.328-PDD of 2011 dated 24.11.2011, the petitioners are entitled to ex-gratia compensation of Rs.3.00 lac but no explanation is coming forth as to why said ex-gratia compensation was not paid to the petitioners, which they needed the most aftermath the accident in which their sole bread winner lost his life.

6. Much water has flown since issuance of Government Order No.328-PDD of 2011. The Government of J&K has now come up with latest government Order No.454-F of 2019 dated 24.10.2019, which provides for compensation of Rs.10.00 lacs in case of death by electrocution. This Court under somewhat similar

circumstances allowed OWP No.532/2008 titled *Mst. Taja Begum and others v. State of J&K and others* and awarded a sum of Rs.10.00 lacs as lump sum compensation to be paid to the petitioners in the aforesaid case.

7. The plea of the respondents that the Government Order No.454-F of 2019 is prospective in operation cannot be accepted for the simple reason that the Government Order, which was applicable at the time of accident i.e. Government Order No.328-PDD of 2011 dated 24.11.2011 providing for payment of Rs.3.00 lac in case of death, has not been adhered to by the respondents. Had the respondents extended the ex-gratia benefit of Rs.3.00 lac to the petitioners immediately aftermath the death of the deceased, different consideration would have prevailed with the Court while awarding compensation in this case. Since the respondents maintained complete silence for the last eleven years and, therefore, cannot be heard to say that they are bound to pay only Rs.3.00 lacs as ex-gratia to the petitioners even after eleven years of the accident.

8. Having regard to the identity of the facts and circumstances of the case and seeking support from the latest Government Order dated 24.10.2019 issued by the Government, this Court is inclined to allow this petition and award a lump sum amount of Rs.10.00 lacs in favour of the petitioners to mitigate their hardship.

9. Accordingly, this petition is disposed of by holding the petitioners entitled to a lump sum amount of Rs.10.00 lacs to be paid by the respondents in equal share to all the petitioners within a period of two months from today, failing which the entire amount shall become payable along with interest @ 6% per annum to be calculated from the date of judgment till its realization.

(Sanjeev Kumar)
Judge

Jammu:
31.07.2023.
Vinod, PS

Whether the order is speaking: Yes
Whether the order is reportable: Yes/No

