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**(1999) 09 GAU CK 0009**  
**In the Gauhati High Court**  
**Case No : Civil Rule No. 3602 of 1994**

Abdul Matin (Md.)

APPELLANT

Vs

A.S.E.B. and Others

RESPONDENT

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**Date of Decision :** 14-09-1999

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (1999) 3 GLT 179

**Hon'ble Judges :** Brijesh Kumar, C.J.; B. Biswas, J

**Bench :** Division Bench

**Advocate :** G. Uzir and B. Chetri, for the Appellant; N.N. Saikia, G. Deka and N.J. Dutta, for the Respondent

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## Judgement

Brijesh Kumar, C.J.—This petition has come up for answering the question relating to maintainability of the writ petition in the matters where compensation on account of negligence is claimed by the Petitioner.

2. It appears that on 1.6.94 in the night, a storm was there, as a result of which electricity supply of Petitioner's locality was affected and some damage was also caused. At about 4.30 A.M., the son of the Petitioner, Mahmood Ali, came out of his room to attend to the call of nature; but he was touched by a live electric wire which was lying on the ground, as a result of which, he died on the spot at Islampur, Gandhibasti, Guwahati. The electric wire, according to the Petitioner's case, was later on disconnected by the officials of the Assam State Electricity Board (ASEB). The body was sent for post-mortem and thereafter the report, etc, was lodged. The Petitioner prayed for grant of adequate compensation on account of the death of his son, Mahmood Ali, caused by the electric wire due to negligence of the Respondents. By way of interim compensation, an amount of Rs. 50,000/- was prayed for.

3. We have heard Shri G. Uzir, learned Counsel for the Petitioner and Shri N.N. Saikia, learned Counsel appearing for the ASEB.

4. It appears that when the matter was taken up for hearing before the learned Single Judge on 24.11.98, the learned Single Judge passed an order for referring the matter to the Chief Justice to constitute a larger Bench to decide the question of maintainability of the writ petition, as prayed for by the learned Counsel for the Respondents. In the order of reference, it has been mentioned that a Division Bench of this Court while deciding a similar matter by judgment dated 8.10.91 took a view that a petition cannot be entertained by the High Court for a claim of compensation. It is also observed that the Division Bench held that the ordinary common law remedy in the case of a claim arising from a tortious liability based on negligence is by way of a suit in a competent court. It is further observed that against the aforesaid judgment, an appeal was preferred before the Hon''ble Supreme Court, namely, Civil Appeal No. 888/92 and by order dated 1.5.96 the Hon''ble Supreme Court allowed the appeal with some compensation. It seems to have been submitted before the learned Single Judge that the question of maintainability of the petition was involved, which was not decided by the Hon''ble Supreme Court. The learned Single Judge observed in the referring order as follows:

As the Division Bench of this Court held that claim for compensation from ASEB on account of death due to electrocution is not maintainable under Article 226 of the Constitution, this matter may be referred to a larger Bench to decide this point.

This is how this matter has come up before us.

The main reason which has been assigned for referring the matter to a larger Bench is the Division Bench decision of this Court, date of which has been indicated as 8.10.91. This decision is reported in 1991 (2) GLR 303, Surjya Kanta Talukdar v. Assam State Electricity Board and Ors. We may first examine as to whether it has been held or not in the said case that a petition is not maintainable or is barred under Article 226 of the Constitution for the purposes of award of compensation. It was also a case where an amount of Rs. 2 lakhs was claimed as compensation on account of death of the daughter of the Petitioner due to electrocution on 18.3.91. An objection was taken on behalf of the ASEB that the proper remedy is by way of a suit. The Bench after considering a number of decisions, has drawn its conclusions in paragraphs 13 and 14 of the judgment. In the concluding part of paragraph 13 it is thus observed as follows:

A mandamus may issue when there is a specific legal right and no specific remedy; it may be refused when there is an alternative remedy which is equally convenient, effectual, adequate or efficacious. Existence of such an alternative remedy does not effect the jurisdiction of the court to issue a writ or direction; but existence of remedy has to be taken into consideration in the matter of exercise of jurisdiction by the Court. We ordinarily decline to exercise jurisdiction in favour of the claimant in such cases unless there are good grounds therefor.

6. From the observations quoted above, it is quite clear that the Bench itself has

taken the view that existence of alternative remedy does not affect the jurisdiction of the Court to issue a writ, meaning thereby, that despite the alternative remedy, the Court still have the jurisdiction to entertain a writ petition, which jurisdiction may be exercised in appropriate cases. A necessary corollary of the same would be that it may not be open to argue that a petition, in a matter like this, is not at all maintainable. Maintainability of the petition cannot be in doubt, nor the jurisdiction of the court to entertain it; but, at the same time, as observed by the Bench, the existence of an alternative remedy would be a very material fact to be taken into account while considering the question as to whether the jurisdiction is to be exercised or not. It is needless to burden this judgment by quoting citations where it has been held, times and again, that an alternative remedy is not an absolute bar to exercise the jurisdiction under Article 226 of the Constitution; but, at the same time, it is to be noted that where an alternative remedy or statutory remedy is available, normally that remedy is to be resorted to unless there may be good reasons to bypass such statutory remedy and resort to the extraordinary jurisdiction of the High Court to issue any prerogative writs or directions as provided under Article 226 of the Constitution.

7. We may further like to highlight some of the observations made by the Bench in the case of Surjya Kanta Talukdar (supra), as made in paragraph 14 of the judgment, which reads as follows:

...Relief based on negligent act of instrumentality of State or its officers can be granted only on proof of actionable negligence. It may well be that in a given case actionable negligence can be presumed provided facts leading to such a presumption are admitted or proved.

8. Therefore, considering the facts of the case that only the factum of death was admitted and not the other circumstances, nor even the responsibility of the Board or its officers and where quantification of compensation was also in controversy as the said amount was varied by the claimant later on, it was held that the proper and effective remedy which could be availed of by the Petitioner was by way of a suit in a competent court. In the end of paragraph 14, the Court further observed as follows:

Having regard to all the relevant circumstances, we are satisfied that the writ petition should not be entertained and the Petitioner must be referred to a civil suit.

9. From the observations made by the Bench in the case of Surjya Kanta Talukdar (supra), which has been quoted above, it is quite clear that this Court has never held that existence of alternative remedy is an absolute bar and in no case the court would be entitled to entertain such a petition, nor that such a petition is not entertainable, whatever be the circumstances. On the other hand, the court considered the facts and circumstances of the case and took the view that the petition was not entertainable.

10. Learned Counsel for the ASEB has also drawn our attention to a case reported in Shakuntala Devi (Smt) Vs. Delhi Electric Supply Undertaking and Others, Our attention has been particularly drawn to the following observation made in paragraph 5 of the judgment:

...it is true that the question of negligence of the officials of Respondent 1 can be established but as that would involve long delay and the misery of the Petitioner and her young children who are stranded in life would linger on we suggest to the learned Counsel for Respondent 1 to give a reasonable amount ex-gratia to the Petitioner and her young children so that their misery can be to some extent lessened.

11. The above observation to which our attention has been drawn also leads to the inference that normally the remedy by way of suit or any other statutory remedy would be the appropriate forum for establishing the negligence, or the amount of compensation, etc.; but some special facts and circumstances can always be taken into account by the Court, as has been taken by the Hon''ble Supreme Court in the case of Shakuntala Dei (supra).

12. We even find that a reference has been made to yet Anr. order passed by the Hon''ble Supreme Court in Civil Appeal No. 888 of 1992 (Surja Kanta Talukdar v. ASEB and Ors.), dated May 1, 1996. This was a special appeal which was filed by the Petitioner in the case cited above, namely (1991) 2 GLR 303, Surjya Kanta Talukar (supra). There is no observation made by the Hon''ble Supreme Court in the above order indicating that in no circumstances a petition under Article 226 of the Constitution would be entertainable, or in such matters the High Court has no jurisdiction to entertain a petition. On the other hand, the Respondents were asked to pay some more amount to the Appellant and the matter was accordingly closed.

13. In view of the position as indicated above, we do not think there is any conflicting view in the area so as to refer the matter to a larger Bench or a Full Bench. The legal position, as also indicated in the case of Surjya Kanta Talukdar (supra) is that the jurisdiction of the Court is not ousted by existence of alternative remedy. A petition for compensation can be entertained in appropriate cases dependent upon the facts of the case, normally, though, of course, the claimant has to resort to the ordinary remedy as available under the law--may be under any statute before the Tribunal or before the Civil Court, as the case may be.

14. The question is thus answered in the manner indicated above.

15. The petition may be listed for hearing before the appropriate Bench.