

(2012) 04 GAU CK 0005

In the Gauhati High Court

Case No : Writ Petition No. 5578 of 2008

Altaf Ali M.D. and Another

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 05-04-2012

Acts Referred:

Constitution of India, 1950 — Article 21, 226

Citation : (2013) 1 ACC 406 : (2012) 3 GLD 371 : (2012) 2 GLT 787

Hon'ble Judges : Arun Chandra Upadhyay, J

Bench : Single Bench

Advocate : H.R.A. Choudhury, Mr. M. Alam and Mr. A.B. Siddique, for the Appellant; D. Bhattacharjee, S.C., Aseb and Dr. B. Ahmed, S.C., Irrigation Deptt., for the Respondent

Final Decision : Allowed

Judgement

A.C. Upadhyay, J.—Heard Mr. A.B. Siddique, learned counsel for the petitioners and Mr. D. Bhattacharjee, learned standing counsel, ASEB as well as Dr. B. Ahmed, learned standing counsel, Irrigation, for the respondents. This writ petition, under Article 226 of the Constitution of India has been filed praying for a direction to pay compensation of Rs. 10 Lacs each to the petitioners, for the loss suffered by them due to electrocution of their sons, on 18.7.2010, at Putikhaiti in the district of Nagaon due to negligence of the respondents.

2. Brief facts, leading to filing this writ petition is as follows:

Both the petitioners are agriculturalists by profession having their family members, who contribute in their earnings. Son of Petitioner No. 1, namely, Md. Harun Rashed (19 years), was a Rajmishtri by profession and son of petitioner No. 2, namely, Sabirul Islam (15 years), was a helper of Rajmishtri by profession. On 18.7.2008, both sons of the petitioners above named had gone for catching fish in Puthikhaiti Beel. Irrigation department had added a new pipeline in the Pump set installed near the Puthikhaiti Beel (pond). However, while

connecting electricity, a live wire was attached with the new iron pipe. The victims being unaware of the death trap came in contact with the new iron water pipe connected with live electric wire and thus got electrocuted. As a result of this, both of them suffered severe burn injuries on their persons and died on the spot.

3. One Md. Rustom Ali, younger brother of the petitioner No. 1 filed an "ejahar" before the Rupahihat police station, stating about the electrocution of the victims. On receiving the FIR, police registered a case and enquired into the matter. Police, thereafter, confirmed that the death was due to electrical shock. A certificate to that effect was also issued by the local police authority.

4. Accordingly post mortem examination of the dead body of the victims was carried out by the Doctor of B.P. Civil Hospital, Nagaon. The doctor also opined that the death was due to shock, as a result of the electric burn. The petitioners, thereafter, submitted representation before the authority concerned claiming compensation of Rs. 10 Lacs each, for the loss of life of their sons. But the respondent authority did not respond to said representation and in the circumstances, the petitioners have filed this writ petition seeking direction from this Court to compensate the petitioners for the loss of two precious lives, which occurred due to negligence of the respondents.

5. One counter affidavit dated 20.3.2012 was filed, on behalf of the Respondent No. 7 i.e. Senior Electrical Inspector, Assam, by annexing the report of the Senior Electrical Inspector, Govt. of Assam, relating to the alleged incident of electrocution, which occurred on 22.7.2008. The report of the Inspector reveals that due to non compliance of the provisions of the Indian Electricity Rule, 1956, in electric installation and for not taking preventive measure and for lack of checking and corrective maintenance works, the incident had occurred. It has been further stated in the report that had there been an effective preventive and maintenance works done by the owner of the pump house by installing effective earthing system, the incident of electrocution accident resulting in the death of the deceased persons, would not have taken place.

Apparently, the respondent ASEB should not have provided electric connection in a faulty wiring without proper verification and inspection of the earthing, electric connection etc. of the offending pumpset connection.

6. The report of the Electrical Inspector, Assam, relating to the incident, unequivocally lay the responsibility for the remiss on both the ASEB, as the provider of electricity connection, who had the responsibility to enforce compliance of Indian Electricity Rules, 1956, as well as the Respondent No. 6, Executive Engineer, Irrigation Department, who had installed and maintained the offending pumpset.

7. Learned counsel for the petitioners submits that there was no inspection from the side of the ASEB and no "danger-marked" signboard was installed or displayed anywhere nearby, to prevent and pre-warn the victims to go near the

location, where live wires were kept exposed. According to the learned counsel for the petitioners, the incident took place due to sheer negligence of the respondent authorities. As rightly pointed out by the learned counsel for the petitioners, exposing live wire was not less than a death trap.

8. Mr. Bhattacharjee, learned standing counsel, ASEB, vehemently submitted that it was the duty of the consumer to maintain the electricity connection effectively, so that no accident could take place. Therefore, as accident took place after installing the pumpset, ASEB cannot be held responsible after such remiss on the installation of the consumer.

9. Dr. Ahmed, learned standing counsel, Irrigation, submits that it was the duty of the ASEB to inspect the electric connection, as a provider of the electricity and it is due to sheer negligence on behalf of the electricity department, the accident had taken place. Dr. Ahmed pointed out that if the connection was defective, the respondent ASEB should not have given the electric connection in the pumpset.

10. On perusal of the report of the Electricity Inspector and on careful appraisal of the instant matter and upon hearing learned counsel for the parties, it transpires that accidental death of the petitioners' sons due to electrocution is admitted by the respondents. It appears from the report of the Electrical Inspector, Asam that the respondent ASEB as well as the Respondent No. 6 did not maintain the electricity connection free from defect, and it is due to their negligence, the fatal incident took place. Therefore, for the negligent act on the part of the respondents, two young villagers lost their lives.

11. Mr. Bhattacharjee, learned standing counsel, ASEB, has submitted that in terms of the Office Memorandum issued by the Respondent, ASEB, the rate fixed for compensation in respect of the victims (fatal), who are not the employees of the Board, are as follows:

Upto 20 years of age - Rs. 1 Lac

Above 20 years and upto 55 years of age -

Rs. 1.50 Lacs Above 55 years of age - Rs. 1 Lac

However, despite having positive information regarding the incident, none of the respondent authorities could rise to the occasion, to compensate the petitioners, for the loss caused due to their remiss and/or negligence.

12. On the other hand, learned counsel for the petitioners pointed out that in respect of deceased, namely, Md. Harun Rashid, who was aged about 19 years at the time of his death, if he is considered as unskilled labourer, as per rate of minimum wages of Rs. 100/-per day, his earning would be Rs. 3,000/- per month, out of which he would have contributed Rs. 2,000/- per month in the family. Accordingly, considering his age, the loss of income could be assessed at Rs. 3,84,000/- applying the multiplier method.

Learned counsel for the petitioners further pointed out that in case of the

deceased, namely, Sabirul Islam, aged about 15 years, if he was considered to be non-earning persons and if his notional income was considered as Rs. 15,000/- per annum; considering his age, applying the multiplier method, the loss of income would be more than Rs. 2,25,000/-.

13. The respondents did not file affidavit to deny the incident alleged by the petitioner. The counter affidavit filed by the respondent no. 7 has admitted the incident and lay the responsibility on both respondent No. 2 and 6. In such circumstances, prima facie, there is an admission on the part of the respondents, in respect of the incident. The Apex Court in the case in Tamil Nadu Electricity Board Vs. Sumathi and Others, , held that if there are disputable question of facts, Article 226 of the Constitution of India cannot be pressed into service.

Nevertheless, the Supreme Court has also held that the same cannot be understood as laying a law in every case of tortious liability. When there is negligence on the face of it, and due to such negligence on the part of the public undertaking, there is a loss of life, it is relatable to violation of fundamental rights as guaranteed under Article 21 of the Constitution of India and in such circumstances, it will be improper to drive the parties to approach the Civil Court and to wait for the agony of prolong civil litigation. More so, in the instant case, due to the death of the young members in the family, a pathetic situation has arisen.

14. In Chairman, Grid Corporation of Orissa Ltd. (Gridco) and Others Vs. Smt. Sukamani Das and Another, , the Apex Court laid clear proposition of law that when a disputed question of fact arises and there is clear denial of any tortious liability, remedy under Article 226 of the Constitution may not be proper. However, in the present case there is no denial of negligence by the respondents.

15. However, it cannot be understood as laying a law that in every case of tortious liability recourse must be had to a suit. When there is negligence on the face of it and infringement of Article 21 is there, there will be no bar to proceed under Article 226 of the Constitution to give appropriate relief to the sufferer.

16. In U.P. State Cooperative Land Development Bank Ltd. Vs. Chandra Bhan Dubey and Others, the Apex Court after examining various decisions of the Courts on the power of the High Court under Article 226 observed that the Constitution is not a statute, but a fountainhead of all the statutes. When the language of Article 226 is clear, no shackles can be put on the High Courts to limit their jurisdiction by putting an interpretation on the words, which would limit their jurisdiction. When any citizen or person is wronged, the High Court will step in to protect him, be that the wrong be done by the State, an instrumentality of the State, a company or a cooperative society or association or body of individuals, whether incorporated or not, or even an individual. Right that is infringed may be under Part III of the Constitution or any other right which the law validly made might confer upon him. But then the power conferred upon the High Courts under Article 226 of the Constitution is so vast, that the

Apex Court has laid down certain guidelines, and self-imposed limitations have been put there, subject to which the High Courts would exercise jurisdiction, but those guidelines cannot be mandatory in all circumstances. The High Court does not interfere, when an equally efficacious alternative remedy is available or when there is an established procedure to remedy a wrong or enforce a right. A party may not be allowed to bypass the normal channel of civil and criminal litigation. The High Court does not act like a proverbial "bull in a china shop" in the exercise of its jurisdiction under Article 226.

17. In fact, this has been the consistent view, as it is seen in the judgement of the Apex Court in *Smt. Kumari Vs. State of Tamil Nadu and others*, wherein a six years old boy died falling in a 10 feet deep uncovered sewerage tank and ultimately, the matter was considered by the Supreme Court as a prima facie negligence, on the part of the Government and directed the compensation to be paid instead of directing the parties to approach the Civil Court.

18. In *Parvati Devi v. Commissioner of Police, Delhi*, 2000 (3) SCC 754, the Hon'ble Supreme Court awarded compensation to the legal heirs in respect of death, which was on account of electrocution while walking on the road. In that decision their Lordships have held:

Once it is established that the death occurred on account of electrocution while walking on the road, necessarily the authorities concerned must be held to be negligent, and therefore, in the case on hand, it would be NDMC who would be responsible for the death in question."

After noting that the deceased was aged about 54 years on the date of death and his retirement is 60 years, the Hon'ble Supreme Court awarded a compensation of Rs. 1 lakh in favour of the legal heirs of the deceased and directed NDMC to pay the same within three months from the date of order, failing which it will carry interest at the rate of 12 per cent.

19. In view of the a long line of judgements of this High Court as well as the Apex Court on this issue in question, and also taking note of the negligence on the part of respondent ASEB as well as the Respondent No. 6, in terms of the counter affidavit by the Respondent No. 7; further considering non-denial of the assertions made by the petitioners in the writ petition, I am of the view that it is too late in the day to drive the parties to the Civil Court for appropriate relief, since there is no questionable facts, which are required to be established.

20. In such view of the matter, this Court is of the considered opinion that the respondents ASEB and Respondent No. 6 are equally liable to compensate the petitioners, for the loss caused due their negligent act. Therefore, this Court directs payment compensation of Rs. 2,50,000/- (Rupees two lakhs fifty thousand) each to the petitioners. The respondents ASEB as well as Respondent No. 6 are directed to pay the said amount of compensation, in equal proportion, within a period within a period of 3 (three) months from the date of receipt of certified copy of this order. In case of failure to make payment within the time

specified above, the respondents shall pay the amount aforesaid with interest at the rate of 12% per annum from the date of petition, till the date of actual payment.

21. In the result, the writ petition is allowed. However, there is no order as to costs. Let a copy of this order be furnished to the learned standing counsel, ASEB as well as the Irrigation Department, for doing the needful.