

(1996) 11 OHC CK 0020
In the Orissa High Court

Ananda Chandra Behera

APPELLANT

Vs

Chairman, Orissa State Electricity Board and Another

RESPONDENT

Date of Decision : 05-11-1996

Acts Referred:

Citation : (1998) 1 ACC 346

Hon'ble Judges : S.N. Phukan, C.J;A. Pasayat, J

Bench : Division Bench

Judgement

A. Pasayat, J.—Bipin Behera alias Bapina Behera (hereinafter referred to as "the deceased"), a minor boy who had not even reached teen age, having lost his life by electrocution on 19.6.1994, this writ application has been filed by his father for a direction to the Orissa State Electricity Board, now Grid Corporation of Orissa Ltd. (in short, "the Corporation") to pay compensation of Rs. 2,00,000/-.

2. The case of the petitioner sans unnecessary details essentially is as follows:

On 19.6.1994, deceased was found lying dead near an electric pole. He lost his life due to electrocution as a live electric wire fell down on him being disconnected from the pole and resulted in instantaneous death. At the fateful moment the deceased was tending cattle. He was taken to Subdivisional Medical Hospital and was declared dead by the Medical Officer. The matter was reported at the Jaipur Police Station and U.D. Case No. 29 of 1994 was registered. Postmortem was conducted in the Jaipur Subdivisional Hospital, and the cause of death was found to be on account of injury sustained by electrocution. Investigation was undertaken by the police. Death certificate and inquest report were prepared. On account of negligence of functionaries of opposite parties high voltage electric line got snapped and the accident occurred resulting in death of an innocent person, a minor boy. The concerned Subdivisional Officer (Electrical) of the Corporation was requested to compensate the petitioner, but no action was taken and the petitioner was forced to file the writ, application for redressal.

3. In the counter affidavit filed, the Subdivisional Officer has refuted the stand

that the conductor got detached and fell down as a result of which electric line came in contact with the deceased. On the contrary, it is stated that one of the cows being tended by the deceased, dashed against the low tension line below and overhead line conductor, and all on a sudden it got snapped due to heavy jerk due to which the deceased got electrocuted. The stand that the Corporation is negligent, is denied. It is pleaded that the lines were drawn in compliance with Rules 74 and 76 of the Indian Electricity Rules, 1956 (in short "the Rules"). As required under the aforesaid Rules, all sorts of safety precautions were taken to prevent loss of human and animal lives. The place where the accident took place was a paddy field and over-head line was drawn cross country-wise. Before arrival of monsoon, the lines are checked to prevent loss of human and animal lives. The conductors which are being used for supply of line are of approved categories as per the Rules. It is also pleaded that the accident was an act of God and there was no human control over it. Therefore, there was no violation of any statutory requirement.

4. Learned Counsel for the petitioner submitted that after having accepted snapping of electric lines, it is not fair on the part of the Corporation to plead that the accident was an act of God, and there was no human control over it, and/or that no negligence was involved.

It is stated by Mr. B.R. Sarangi, learned Counsel for the Corporation that many times suggestions have been given to prevent recurrence of the type of accidents which result from snapping of wires, and subsequently resulting in electrocution. As possible care and caution has been taken and preventive measures adopted, no negligence can be attributed to warrant grant of compensation.

5. Preventive measures suggested to be taken may provide safety in future. Those cannot be pressed into service to deny liability of the Corporation. The term "compensation" as stated in the Oxford Dictionary, signifies that which is given in recompense, an equivalent rendered. "Damages" on the other hand constitute the sum of money claimed or adjudged to be paid in compensation for loss of injury sustained, the value estimated in money, of something lost or withheld. The term "compensation" etymologically suggests the image of balancing one thing against another; its primary signification is equivalence, and the secondary and more common meaning is something given or obtained as an equivalent. Pecuniary damages are to be valued on the basis of "full compensation". That concept was first stated by Lord Blackburn in *Livingstone v. Rawyards Coal Co.* (1880) A.C. 25.

6. The "Rule of law" requires that the wrongs should not remain unredressed. All the individuals or persons committing wrongs should be liable in an action for damages for breach of civil law or for criminal punishment. "Compensation" means anything given to make things equivalent, a thing given or to make amends for loss, recompense, remuneration or pay: it need not, therefore, necessarily be in terms of money, because law may specify principles on which manner in which compensation is to be determined and given. Compensation is

an act which a Court orders to be done, or money which a Court orders to be paid, by a person whose acts or omissions have caused loss or injury to another in order that thereby the person damnified may receive equal value for his loss; or be made whole in respect of his injury; something given or obtained as equivalent; rendering of equivalent in value or amount; an equivalent given for property taken or for an injury done to another; a recompense in value; a recompense given for a thing received; recompense for whole injury suffered; remuneration or satisfaction for injury or damage of every description. The expression "compensation" is not ordinarily used as an equivalent to "damages", although compensation may often have to be measured by the same rule as damages in an action for a breach. The term "compensation" as pointed out in the Oxford Dictionary signifies that which is given in recompense, an equivalent rendered; "damages" on the other hand constitute the sum of money, claimed or adjudged to be paid in compensation for loss or injury sustained. "Compensation" is a return for a loss or damages sustained. Justice requires that it should be equal in value, although not alike in kind. "Amends" is a return for something that is faulty in ourselves or towards others. "Satisfaction" is that which satisfies the individual requiring it, is given for personal injuries, and may be made either by a return or otherwise, according to disposition of the person to be satisfied. "Recompense" is a voluntary return for a voluntary service; it is made from a generous feeling and derives its value not so much from the magnitude of service or return, as from intention of the parties towards each other; and it is received not so much as a matter of right as of courtesy. "Remuneration" is not voluntary as recompense, but it is equally indefinite, being estimated rather according to condition of the person and dignity of service than its positive worth. "Requital" is the return of a kindness, the making it is an act of gratitude. "Reward" may be a bad return when it is inadequate to the merits of the person.

7. It is true that perfect compensation is hardly possible and money cannot renew a physique frame that has been battered and shattered, as stated by Lord Merris in *West v. Shepard* 1964 A.C. 326. Justice requires that it should be equal in value, although nor alike in kind. Object of providing compensation is to place claimant as far as possible in the same position financially as he was before accident. Broadly speaking in the case of death, basis of compensation is loss of pecuniary benefits to the dependents of the deceased which includes pecuniary loss, expenses, etc. and loss to the estate. Object is to mitigate hardship that has been caused to the legal representatives due to sudden demise of the deceased in the accident. Compensation awarded should not be inadequate and should neither be unreasonable, excessive, nor deficient. There can be no exact uniform rule for measuring value of human life and measure of damages cannot be arrived at by precise mathematical calculation; but amount recoverable depends on broad facts and circumstances of each case. It should neither be punitive against whom claim is decreed nor it should be a source of profit of the person in whose favour it is awarded. Upjohn L.J. in *Charter House Credit v. Jolly*

(1963) 2 C.B. 683, remarked, "the assessment of damages has never been an exact science", it is essentially practical.

8. The question of negligence of a Company engaged in transmission of electric energy was considered in *Umbec Railway, Light, Heat Power Company Ltd. v. Vandry* 1920 A.C. 662. The concerned Railway Company in exercise of statutory powers had erected two overhead cables for the distribution of electric current. In that case, on account of a violent wind, a branch from a tree growing about 28 feet away from the cables was broken, which resulted in the breaking down of the cables and the high tension current found its way alongwith the low tension cable into the respondents' premises and caused a fire. An action for damages was brought by the respondents against the concerned power Company. The Court of Appeal held that the Company was liable for the damage without proof that it had been negligent, since it had failed to establish that it could not have prevented the escape of the electric current, further that its statutory powers afforded no defence, since the escape of the current was not necessarily incident to the exercise of those powers.

9. The expression "act of God" signifies the operation of natural forces free from human intervention, such as lightening. It may be thought to include such unexpected occurrences of nature as severe gale, snowstorms, hurricanes, cyclones and tidalbures and the like. But every unexpected wind and storm does not operate as an excuse from liability, if there is a reasonable possibility of anticipating their happening. An act of God provides no excuse, unless it is so unexpected that no reasonable human foresight could be presumed to anticipate the occurrence, having regard to the conditions of time and place known to be prevailing at. For instance, where by experience of a number of years, the Railway Administration knows that in a particular area during a particular season there have been heavy down-pours of rain and consequent extraordinary floods causing damage to their track, they cannot take the plea that they were due to act of God because it is within their competence to take such steps as would prevent damage. Lord Westbury defined act of God (*demnum fatals* in Scotch Law) as an occurrence which no human foresight can provide against and of which human prudence is not bound to recognise the possibility. This appears to be the nearest approach to the true meaning of act of God. Lord Westbury's definition was approved by Lords Denning and Shaw in the House of Lords in *Greenock Corporation v. Calendonian Ry.* Similarly, Lord Blaneburgh spoke of it as an irresistible and unsearchable providence nullifying all human effort.

10. The "Rule of Law" requires that the wrongs should not remain unredressed. All the individuals or persons committing wrongs should be liable in an action for damages for breach of civil law or for criminal punishment. The liability should not remain restricted to the acts of ordinary individuals only, it should not extend to the acts of the Government servants and agents as nobody should be above the law having special privileges or immunities. If those affected by the power of their rulers can hold their rulers. In theory, liable, that can be termed as a liberal

democracy, or a "Rule of Law" society. To Dicey, the personal liability of Government servants for his public functions coupled with the immunity of Government from liability, would be a vindication of the principle of equality before the law. Moreover, equality before the law requires governmental liability also for the acts of its servants or agents on the same footing as of any other person. Historically, the idea of equality has always been influential and the King has always been regarded as under a duty although unenforceable to give to the subject the same redress for the wrongs done by him as a subject is accountable for his wrongs to another. Any system of law failing to make the Government liable for the wrongs of its servants or agents negates the "Rule of Law" since the accountability is a key concept in constitutional Government under the "Rule of Law". These aspects have been illuminated by many authors e.g. Alice Jacob in "Vicarious Liability of Government in Torts". Wolfgang Friedman in "Law and Society - Law in Changing Society", Holdsworth in "A History of English Law", L. Ehrlich in "Proceedings against the Crown", and S.S. Srivastava in "Rule of Law and Vicarious Liability of Government".

11. Although there appears to be no such developed principle of vicarious liability in ancient India as we find today, yet the rule of accountability of the Government or the ruler or the Government servants for their wrongs throws light on the "Rule of Law" in the field of governmental liability. The "Dharma" was an indispensable part of human conduct and the whole machinery of Government was operated by "Dharma". We have illustrations in ancient India that Guru enjoyed a pride of place in the King's assembly and the interpretations of "Dharma" based on "Vedas", "Shashtras", and "Smritis" were the governing factors of ruler's conduct. Nobody was above the Dharma. The King could attain his temporal and spiritual perfection only by following "Dharma", "Rajdharm" was an essential part to be followed by the King which defined the powers and obligations of the King. According to Manu, the King could not make new laws but according to Kautilya, he could make only regulatory laws and not substantive laws. "Dharma" was the law and a great faith was reposed in Dharma. The rules of Shashtras were believed to be divine and higher than the King. Compliance with "Dharma" was regarded as a matter of great social and cultural importance and the King could not keep himself aloof of it. Nothing could be more than the "Dharma". On the basis of "Dharma" even a weaker could have the right over a stronger. What is "Dharma" is "Truth". "Dharma" and "Truth" are the same. According to Ramandak, Yavan King ruled on this earth for a long period because, he ruled according to dictates of Dharma. (See Rules of Law and Vicarious Liability of Government by S.S. Srivastava at page 39).

We are, therefore, of the considered opinion that the Corporation is liable to pay compensation.

12. The residual question is the amount of compensation. Undisputedly the deceased was aged about 11 years. Loss of life of a person can hardly be compensated in terms of money. That is why it becomes extremely difficult to

estimate the amount that can be fixed. Problem becomes still more acute in case death of young children is involved. In such cases, claims are normally made by the parents. Therefore, the life expectancy of the deceased or of the beneficiaries whichever is shorter is an important factor. Some assistance can be derived from two decisions of the Apex Court in *General Manager, Kerala State Road Transport Corporation, Trivandrum v. Mrs. Susamma Thomas and Ors.* AIR 1094 S.C. 1631 : I (1994) ACC 346, and in *U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others*, , in the matter of quantification. The Schedule which was introduced in the year 1994 by the Motor Vehicles (Amendment) Act, 1994 amending the Motor Vehicles Act, 1988 (in short, "the M.V. Act") can also be taken note of. Keeping in view the guidelines indicated by the Apex Court, and the Schedule which was introduced with effect from 14.11.1994, the amount is fixed at Rs. 60,000/-. Out of the said amount, a sum of Rs. 45,000/- shall be kept in a fixed deposit in a nationalised bank for a period of five years in the names of parents. No withdrawal shall be permitted against the fixed deposit before expiry of the period. The balance amount shall be paid to the petitioner on proper identification by any of the learned Counsel appearing for him in this Court. The amount awarded as compensation be deposited in this Court within a period of four months from today by the opposite parties.

The writ application is allowed to the extent indicated above. No costs.

S.N. Phukan, C.J.

13. I agree.