

(2024) 10 GAU CK 1179
In the Gauhati High Court
Case No : WP(C) Of 8251 Of 2017

Asma Khatun

APPELLANT

Vs

Assam Power Distribution Company Limited And 4 Ors

RESPONDENT

Date of Decision : 24-10-2024

Acts Referred:

Electricity Act, 2003 — Section 20, 62(6), 161, 162

Citation : (2024) 10 GAU CK 1179

Hon'ble Judges : Michael Zothankhuma, J

Bench : Single Bench

Advocate : M. Ahmed, K.P. Pathak, S.R. Baruah

Final Decision : Disposed Of

Judgement

Michael Zothankhuma, J

1. Heard Mr. M. Ahmed, learned counsel for the petitioner. Also heard Mr. K.P. Pathak, learned counsel for the APDCL and Mr. S.R. Baruah, learned counsel for the respondent No.5.

2. The petitioner's case is that the petitioner's husband died due to electrocution on 16.05.2011, while drying his clothes in his residence. The petitioner's husband suffered electrocution from the supply line of the Electricity Department due to which he lost his life. In the post-mortem conducted on the body of the petitioner's husband, the Doctor opined that the cause of death was due to electrocution. Due the death of the petitioner's husband Sri Monowar Hussain @Monowar Islam @Nongor due to electrocution, Mankachar P.S. U/D Case No.02/2011 was registered. The Office-in-Charge of the Mankachar P.S. submitted his final report on 06.08.2011 in the Mankachar P.S. U/D Case No.02/2011, to the effect that the injury on the deceased was ante-mortem in nature and in his opinion, the cause of death is shock and haemorrhage as a result of rupture of the heart due to electrocution.

3. The petitioner thereafter made a claim for payment of compensation due to

the premature death of her husband on account of electrocution on 11.03.2013. However, as the petitioner's claim was rejected by the authorities, the present writ petition has been filed in the year 2017.

4. This Court, vide order dated 24.02.2020, impleaded the Chief Electrical Inspector, Electricity & Power Supply Department as respondent No.5 in the writ petition. The respondent No.5 thereafter filed an affidavit-in-opposition, wherein the electrical accident enquiry report made by the office of the Chief Electrical Inspector, pertaining to the petitioner's husband, was annexed. A perusal of the Electrical Accident Enquiry Report dated 19.01.2021 issued by the Deputy Chief Electrical Inspector, Government of Assam, who is an officer authorized under Sections 161 and 162 of the Electricity Act, 2003, is to the effect that the accident appeared to have been caused due to contravention of Regulations 13(1), 13(2) and 16(1) of the Central Electricity Authority (Measures Relating to Safety and Electric Supply) Regulations, 2010 (hereinafter referred to as the '2010 Regulations') on the part of the owner of the overhead line, i.e., the APDCL.

5. Mr. M. Ahmed, learned counsel for the petitioner submits that as the report of the Chief Electrical Inspector clearly shows that the electrocution of the petitioner's husband occurred due to the contravention of the Regulations, attributable to the APDCL, compensation in terms Regulations 5 and 20 of the AERC (Compensation to Victims of Electric Accidents) Regulations, 2019 (hereinafter referred to as the '2019 Regulations') would have to be paid.

6. Mr. K.P. Pathak, learned counsel for the APDCL and Mr. S.R. Baruah, learned counsel for the respondent No.5 submit that in view of the report made by the Chief Electrical Inspector's office, wherein the fault of the APDCL has been shown to be the cause of death of the petitioner's husband, the petitioner would be entitled to compensation as per the 2019 Regulations.

7. Regulation 5 of the 2019 Regulations provides the procedure for payment of compensation due to an electrical accident, attributable to the fault/negligence of the generating company, i.e., the APDCL. Regulation 20 provides for the payment of interest on the compensation amount @12% per annum from the due date, if the compensation amount is not paid within 120 days from the date of occurrence of the electrical accident. Schedule-B of the 2019 Regulations provides that the compensation payable for loss of human life as a result of electrical accident would be Rs.4 lakhs per person. As the Chief Electrical Inspector's office report dated 19.01.2021 regarding the death of the petitioner's husband lays the blame/fault attributable to the APDCL, the APDCL would have to pay the compensation amount of Rs.4 lakhs to the petitioner in terms of Regulation 5 and Schedule-B. However, the question arises as to the date from which the interest is to be paid to the claimant/petitioner as the accident occurred on 16.05.2011. The cause of death was made attributable to the APDCL only from the report dated 19.01.2021, issued by the Chief Electrical Inspector and the provision for payment of interest under Regulation 20 came into existence only when the 2019 Regulations was notified in the Official Gazette on

09.08.2019.

8. Regulations 5, 6, 20 and Clause 1 of Schedule-B of the 2019 Regulations are reproduced hereinbelow as follows:-

"5. Liability for compensation:

Notwithstanding anything contained in any other law in force, the licensee/ generating company including CPP shall be liable to pay compensation as specified in these Regulations to the person affected or his dependents for loss of animal or human lives or injury to human beings and animals in consequence of an electrical accident, provided the electrical accident is attributable to the fault/ negligence of the licensee/generating company / CPP.

Provided that if the loss of human life is due to suicide or homicide or the injury to a human being is due to an attempt to commit suicide or homicide, the licensee/ generating company /CPP shall not be liable to pay any compensation for the same under these Regulations."

6. Quantum of compensation :

The quantum of compensation payable for loss of life/injury to human or animal is given at Schedule B.

"20. Interest:

The quantum of compensation determined by the order of the licensee/ generating company/ CPP shall be paid within 120 days from the date of occurrence of the electrical accident, and if such payment is delayed for any reason beyond 120 days, the compensation shall be paid with additional interest of 12% per annum on the amount from the due date of payment.

"Schedule-B

Quantum of Compensation

(1) The compensation payable for loss of human life as a result of an electrical accident: Rs 4.00 lakhs per person."

9. The Electrical Accident Enquiry Report dated 19.01.2021 states as follows:-

"9) Cause of Death : As per Post Mortem Report of Civil Hospital Dhubri in the matter of U/D Case No.02/2011 dtd. 16.05.2011 of Mankachar Police Station under South Salmara Mankachar District, the cause of death was "Shock and hemorrhage as a result of rupture of the heart due electrocution".

10) Brief Description of the accident: From the documents furnished by the concerned official of APDCL and information gathered from witnesses during site visit, it appears that on 16th May 2011 about 10.30AM, the victim Monowar Islam came in contact with live GI wire and he received the fatal electric shock and thus electrocuted. As per the report furnished by the Sub -Divisional

Engineer, Mankachar Electrical Sub- Division of APDCL, the PVC wire i.e service cable with thin naked G.I wire (conductor) was used for power supply to the consumer (i.e victim) premises. Somehow, the PVC wire got leaked and the carrier G.I wire was energized. There was also another G.I wire which was drawn in the corridor (baranda) in the victim premises for drying cloths. When the victim Monowar Islam tried to dry cloth on the G.I wire drawn in the corridor, suddenly he received electric shock from the live G.I wire which was somehow energized. The victim had come in direct contact with the live G.I wire resulting in instant death as mentioned in the report furnished by the concerned Sub-Divisional Engineer. During site verification by the officials of this Inspectorate along with the APDCL officials, the villagers present at the site told that the victim came in contact with live GI wire drawn in the corridor and got fatal electric shock, while the victim was trying to dry cloths on the said G.I wire.

11) Causes leading to the accident: From the above stated facts and circumstances leading to the accident, it appears that the victim came in contact with live GI wire drawn in the corridor and he received the fatal electric shock and thus electrocuted. It was observed during site verification that the service connection of victim house has been connected without any protective device and earthed terminal.

Had appropriate safety preventive measures been taken by the supplier of electricity, the instant electrical accident resulting to death of the victim would not have taken place.

12) Contraventions: From the facts and circumstances leading to the accident it appears that there occurred contravention of regulations 13(1), 13(2) & 16(1) of the Central Electricity Authority (Measures relating to Safety and Electric Supply) Regulations, 2010 on part of the owner of the overhead line that is the Assam Power Distribution Company Limited (APDCL).

13) Recommendations: The provisions as laid down in the Central Electricity Authority (Measures relating to Safety and Electric Supply) Regulations, 2010 should be strictly complied with by the owner of the supply line for installing and maintaining its supply network as well as the consumer of that supply network to ensure safety."

10. A reading of Regulations 5 and 6 shows that the licensee, which is the APDCL in the present case, shall be liable to pay compensation to the person affected or his dependents, for loss of human or animal life, provided that the accident is attributable to the licensee. For loss of human life, the quantum of compensation payable is Rs.4,00,000/-. The facts of the case shows that the petitioner's husband had died due to electrocution on 16.05.2011 and that the petitioner had made a claim for compensation on 11.03.2013. The APDCL not having considered the representation of the petitioner for compensation, the petitioner filed the present writ petition on 22.12.2017. The Chief Electrical Inspector, Electricity and Power Supply Department, Assam was made a party respondent

no.5, vide this Court's order dated 24.02.2020. The report of the respondent no.5, attributing the death of the petitioner's husband due to the fault/negligence attributable to the APDCL had been made on 19.01.2021. The compensation has not been paid to the petitioner till date and as such it is clear that the time period of 120 days for making payment under Regulation 20 of the 2019 Regulations has not been complied with by the APDCL. As such, in terms of Section 20, interest would have to be paid from the date of occurrence of the electrical accident, which in this case is 16.05.2011. The problem arises due to the fact that the payment of interest provided in Regulation 20 came into effect only from 09.08.2019, when the 2019 Regulations was published in the Official Gazette. The issue is whether the petitioner can be given interest from a period prior to 09.08.2019, in terms of Regulation 20 of 2019 Regulations, when Regulation 20 was not in existence.

11. In the case of National Thermal Power Corporation Limited vs. Madhya Pradesh State Electricity Board and Others, reported in (2011) 15 SCC 580, the Supreme Court was to decide whether the Appellate Tribunal erred in denying interest on the differential amounts to the Electricity Boards concerned under Section 62(6) of the Electricity Act, 2003. The Supreme Court held that the specific provision for claiming interest prior to 01.06.2006 could not be made applicable retrospectively, when no such regulation was in existence. The provision for charging interest was a substantive provision which have to be specifically provided and would become operative when provided.

12. In the case of The Assam Power Distribution Company Limited vs. The District Legal Services Authority & 3 Others, WP(C) 1296/2016, which was disposed of vide order dated 22.08.2023, a Coordinate Bench of this Court had allowed interest to be payable to the respondent no.2, for the death of her son due to electrocution under Regulation 20 of the 2019 Regulations, w.e.f. 01.10.2009, i.e. the date of death of the son of the respondent no.2.

13. On a reading of the judgment and order dated 22.08.2023 passed in WP(C) 1296/2016, this Court finds that the issue as to whether Regulation 20 would have retrospective effect, i.e prior to the coming into force of the 2019 Regulations on 09.08.2019 had not been gone into. Further, the Coordinate Bench had also not been made aware of the judgment of the Supreme Court in NTPC Ltd. Vs. M.P. SEB (supra). This Court is of the view that in terms of the judgment of the Supreme Court in NTPC Ltd. Vs. M.P. SEB (supra), grant of interest in terms of Regulation 20, prior to the coming into force of Regulation 20 of the 2019 Regulations, was not correct.

14. In the case of Abdul Khaleque vs. State of Assam & Others, reported in 2022 (2) GLT 321, a Coordinate Bench of this Court directed that interest under Regulation 20 should be paid w.e.f. 02.09.2016, i.e. from the date of submission of the electrical accident inquiry report by the Chief Electrical Inspector, though the accident resulting in the death of the petitioner's son therein had occurred on 16.07.2015. This Court is of the view that the above decision is not applicable

and cannot be followed by this Court, in view of the judgment of the Supreme Court in NTPC Ltd. Vs. M.P. SEB (supra), which was not brought to it's notice and the fact that Regulation 20 came into existence only on 09.08.2019.

15. A perusal of the Regulations 13, 14 & 15 of the 2019 Regulations shows that whenever there is an occurrence of an electrical accident, leading to a loss of human or animal life or injury, the same has to be reported to the Electrical Inspector by the concerned officer of the licensee under Section 161 of the Electricity Act, 2003, read with Intimation of Accidents (Form and Time of Service of Notice) Rules, 2005 within 24 hours of the electrical accident. Copy of the accident report has to be submitted to the Secretary of the Assam Electricity Regulatory Commission and also to the Officer-in-Charge of the concerned police station, in addition to the higher authorities of the Licensee/Generating Company/Captive Power Plant (CPP). The Chief Executive Officer of the concerned Electrical Circle or the Station Head of the Generating Company/CPP is to conduct an inquiry within 15 days from the date of receipt of a report of the electrical accident and submit a detailed report of the same to the Managing Director/Chief Executive of the concerned licensee. The claim for compensation by the dependents of the person who dies or is injured by the accident is to be sent to the Chief Executive Officer of the concerned circle of the licensee and he is to cause such claim to be enquired into and determined in accordance with the 2019 Regulations. The claim is to be then forwarded for further processing and the Licensee/Generating Company/CPP are to determine the quantum of compensation on it's own, in case an electrical accident comes to it's notice and pay compensation to the persons entitled for the same in accordance with the 2019 Regulations. All claims are to be finally settled within a period of 120 days from the date of occurrence of the electrical accident.

16. As can be seen from the provisions stated above, it was the duty of the licensee to immediately take note of the electrical accident and to cause an inquiry and come to a decision as to whether the accident was attributable to the licensee. In case a claim was made by the dependents of the deceased or injured, the claims were to be settled within a period of 120 days from the date of occurrence of the electrical accident.

17. However, in the present case no claim was made by the petitioner within 120 days of the accident. The claim was made by the petitioner only on 11.03.2013 though the death of the petitioner's husband occurred on 16.05.2011. Be that as it may, it was the duty of the APDCL to initiate an inquiry on it's own, in terms of Regulations 13, 14 & 15 and come to a finding as to whether the accident was attributable to the licensee. The petitioner had to file the present writ petition in the year 2017 and the Chief Electrical Inspector was impleaded as respondent no.5 in the year 2020. The report of the Chief Electrical Inspector dated 19.01.2021 has not been denied by the licensee/APDCL. In terms of Regulation 20, the compensation was to be paid within 120 days from the date of the accident. The same not being done, the petitioner is liable to be paid interest

@12% p.a. on the compensation amount till final payment. However, as the 2019 Regulation came into effect only from 09.08.2019 and as the Supreme Court has, in the case of NTPC Ltd. Vs. M.P. SEB (supra), held that the provision for grant of interest could not be made retrospectively from the date prior to the said provision coming into existence, this Court is of the view that the petitioner would be entitled to payment of interest @ 12% p.a. in terms of Regulation 20 w.e.f. the date when the 2019 Regulations came into existence, i.e. 09.08.2019. Accordingly, the respondents APDCL are directed to pay the petitioner the compensation amount of Rs.4,00,000/- along with interest @ 12% p.a. w.e.f. 09.08.2019 till final payment within a period of two months from the date a copy of this order is furnished to them. The petitioner shall submit a certified copy of this order to the Managing Director, APDCL within 1 (one) week from today and shall also submit the Bank Account Number to which the compensation and interest is to be deposited by the APDCL.

18. The writ petition is accordingly disposed of.