

(1997) 12 OHC CK 0006
In the Orissa High Court

Bajru Khadi and Others

APPELLANT

Vs

The Orissa Grid Corporation and Others

RESPONDENT

Date of Decision : 24-12-1997

Acts Referred:

Citation : (1998) 1 ACC 486

Hon'ble Judges : P.K. Mishra, J;D.M. Patnaik, J

Bench : Division Bench

Judgement

D.M. Patnaik, J.—One Shiba Khadia and his wife Sushila having died of accidental electrocution, their dependents who are minors invoke the extraordinary jurisdiction of this Court to direct the Grid Corporation of Orissa (for short, "the Grid Co.") for payment of compensation for loss of lives.

2. The case of the petitioners is, on 30.11.1993 about 4.30 p.m. both husband and wife with the petitioners 2 and 3 were going from their Village Nuapada (a hamlet of Shankar Mouza) to the bus-stand to board a bus. While passing through the paddy field Shiba Khadia came in contact with a live 11 K.V. high tension electric wire and fell down. His wife, Sushila in order to save her husband suddenly caught hold of him, but she also died of the contact.

3. The opposite party Orissa State Electricity Board (and after it, the Grid Co.) filed a counter-affidavit in which they admitted the accidental death by electrocution but pleaded absence of negligence on the part of the organisation by stating that a bird sat on the 12th pole and thus there was a splash at the point of contact for which the wire on the top conductor snapped and fell on the paddy field though did not touch the ground.

4. Mr. B.M. Patnaik, learned Counsel for the petitioners though referred to several decisions but mainly relying on the decisions reported in the cases of Padma Behari Lal Vs. Orissa State Electricity Board and Another, ; Ramesh Kumar Nayak Vs. Union of India (UOI) and Others, ; and Uttam Sahoo Vs. Chairman, Orissa State Electricity Board of Another, , strenuously urged that the theory of res ipsa

loquitur would aptly apply to the present case and the negligence on the part of the authorities being apparent, the petitioners are entitled to compensation to the extent of rupees six lakhs claimed by them. Mr. B.R. Sarangi, learned Counsel for the Grid Co. on the other hand strenuously urged that since the case of the high tension line falling down from its top conductor is on account of the same having come in contact with a bird, no negligence can be attributed to any of the functionaries of the Grid Co.

5. Having heard learned Counsel for the parties and on going through the counter-affidavit and materials on record we are not satisfied with the plea taken by the opposite parties that a bird sat on the pole which resulted in snapping of the live electric wire.

6. The Investigating Officer, as it seems from the xerox copy of his spot visit report (Annexure 3), visited the spot on 30.11.1993 at 10.30 p.m. But nothing is mentioned about the bird at the spot though admittedly he found two persons lying dead. Except taking this plea in the counter, no corroborative materials are placed before this Court to support this plea. Absence of negligence on the part of the functionaries of the Grid Co. is also pleaded by stating that the said bird sat on the pole at about 4.30 p.m. and the accident occurred at about 5.00 p.m. and therefore this half an hour time-gap was too short a time for the authorities to have the knowledge/information about the incident and to take steps to prevent any unforeseen accident.

7. To this we may point out that this plea of non-availability of sufficient time to take recourse to any preventive measure before an accident could have been accepted, but for the fact that there is no corroborative material to support this plea that a bird sat at the precise time at 4.30 p.m. Once such a plea is taken, it was for the opposite party to establish this since the onus lay on them to prove absence of negligence, this being a case in which the principle of *res ipsa loquitur* can be made applicable. The snapping of a high tension 11 K.V. live line after being detached from a firmly fixed heavy conductor is itself a factor which *prima facie* shows negligence on the part of the authorities. Therefore, it has been rightly held by this Court in the case of *Padma Behari* (*supra*) referred by Mr. Patnaik that the accident speaks for itself and therefore the authorities of the opposite parties were under legal obligation to discharge the onus that they were not negligent or that they had taken adequate steps to prevent such an accident. There is no dispute to the fact that the proximate cause of death of the two persons was because of electric shock.

8. There is another material on record, i.e. the xerox copy of the report of the Chief Electrical Inspector, Orissa, Annexure C/2 from which it is found that after an enquiry he reached the following conclusion:

... This accident could have been avoided in case guarding had been provided below the line linking pole No. 20 and No. 21 as the passage for villagers are crossing the line at the spot as per Rule 91 of I.E. Rule, 1956. Wide publicity on

the danger of touching snapped conductor should be made at regular interval to educate villagers about the dangerous consequences. Feeder H.G. fuse rods which are damaged should be replaced in Shankar S/S.

9. It was strenuously urged by the learned Counsel for the Grid Co. that there was no record with the authorities that the path used by the two deceased persons was a recorded path for which the over heading protective guard should have been provided.

10. We are unable to accept this submission for the simple reason that we can hardly conceive that part used by the two deceased persons was found to be an untrodden path which even other villagers did not use. This fact also needed to be proved by the opposite parties. This having not been done, the petitioners cannot escape the liability. For such type of cases reliance is placed in the case of Uttam Sahu (supra).

11. Keeping in view the principles accepted in calculating the compensation and mode of fixation and considering that the unfortunate accident had taken away the two valuable lives of bread earners for petitioners 2 and 3, who are minors and having been rendered parentless and deprived of filial love and affection, we feel it just and proper to award a consolidated compensation of rupees one lakh and sixty thousand in all.

12. In the result, the writ petition is allowed. The opposite party Grid Corporation is directed to make payment of rupees one lakh and sixty thousand to the petitioners within a period of three months from today failing which the whole amount shall carry an interest " 18 percent per annum after three months till payment.

13. Out of the aforesaid amount, a sum of Rs. 67,500/- (rupees sixty-seven thousand and five hundred) each shall be kept in fixed deposit separately in any Nationalised Bank in the names of petitioners 2 and 3 for a period of seven years and ten years respectively. Both the petitioners, if they so like will be at liberty to withdraw the quarterly interest accrued on such deposits to meet their day-to-day expenses. It would be open for them to withdraw any amount from out of the principal amount before the stipulated period from their respective deposits in order to meet the expenses for their treatment of any prolonged illness if any and for the marriage of petitioner No. 3 and this shall be with the permission of this Court. The balance amount of Rs. 25,000/- (rupees twenty five thousand) be paid to petitioner No. 1 to meet his as well as that of petitioners 2 and 3 present expenses.

P.K. Mishra, J.

14. I agree.