

(2014) 09 TP CK 0010
In the Tripura High Court
Case No : W.P.(C) No. 222 of 2008

Bhakti Acharjee VsThe State of Tripura

Date of Decision : 12-09-2014

Acts Referred:

Constitution of India, 1950 — Article 136, 21, 226
Criminal Procedure Code, 1973 (CrPC) — Section 174
Fatal Accidents Act, 1855 — Section 1, 1(A)

Citation : (2014) 09 TP CK 0010

Hon'ble Judges : S. Talapatra, J

Bench : Single Bench

Advocate : M. Kar Bhowmik, Sr. Advocate R.R. Datta, Advocate for the Appellant; A. Sengupta and J. Majumder, Advocate for the Respondent

Final Decision : Partly Allowed

Judgement

S. Talapatra, J.—By means of this writ petition, the petitioners who lost their only earning member in their family have approached this Court for adequate compensation to the extent of Rs. 4,05,820/- (Rupees four lacs Eight Hundred Twenty) along with interest for his death by way of electrocution from a electrical transformer, set up in the paddy field admittedly by the respondents. According to the petitioners, for sheer negligence of the respondents No. 2, 3, 4 and their officers, the said transformer conducted electricity in the unassuming part of the transformer. When the deceased namely, Shyamal Acharjee, husband of the petitioner No. 1, father of the petitioner No. 2, son of the petitioner No. 3 went to bring a harrow from his own land he got electrocuted from the said transformer installed in the northeast corner of his land. He died on the spot on 29.04.2007 in the early morning at about 5.30/6.00 am.

2. The petitioners have appended with the writ petition the death certificate dated 21.05.2007 and the post-mortem examination report wherefrom it appears that the deceased died for cardiac respiratory failure following electrocution, accidental in nature. The petitioners have also filed the police report, filed in the U.D. case No. 04/2007 u/s 174 of the Cr.P.C.

3. The respondents have denied any negligence from their part. They have stated that it is for the negligence of the deceased, he got electrocuted. The respondents conducted an enquiry by one Electrical Inspector, Government of Tripura and the report of enquiry has been appended with the counter affidavit. According to the said report, Shyamal Acharjee, since deceased, climbed by a ladder which was found lying beneath the poles mounted Sub-station. The ladder is used for operating G.O. switch system. While he attempted for replacement/operating fuse element/G.O. switch suddenly he fell down on the earth due to electrocution. A flushing spot was observed at the connecting point of the G.O. switch connecting pipe and the transformer base channel.

It has been further observed in the said report, he had no knowledge about supply of disturbing Sub-Station. He did not intimate to the concerned department and did not take any precautionary measure before attending the job. As a result, he had received electric shock and died due to electrocution. Thus the respondents have asserted that the victim had breached the provisions of Rule 36 of the Indian Electricity Rules, 1956 whereby without safety measures, no person is has been permitted to work on any live electric supply line or apparatus, unless authorised or safety measures are approved by the Inspector.

4. By also raised serious objection regarding maintainability of the writ petition inasmuch as an appropriate remedy is available under the provisions of Fatal Accident Act. In existence of such efficacious remedy this Court may not adjudicate the highly disputed facts as referred in the writ petition.

5. Mr. M. Kar Bhowmik, learned senior counsel assisted by Mr. R.R. Dutta, learned counsel appearing for the petitioners while responding to the preliminary objection as to the maintainability of the writ petition has referred a decision of the apex court in Dhampur Sugar Mills Ltd. Vs. State of U.P. and Others, where it has been held:

As to the alternative remedy available to the writ petitioner, a finding has been recorded by the High Court in favour of the writ petitioner and the same has not been challenged by the State before us. Even otherwise, from the record, it is clear that the decision has been taken by the Government. Obviously in such cases, remedy of appeal cannot be termed as "alternative" or "equally efficacious". Once a policy decision has been taken by the Government, filing of appeal is virtually from "Caesar to Caesar's wife", an "empty formality" or "futile attempt". The High Court was, therefore, right in overruling the preliminary objection raised by the respondents.

6. Mr. Kar Bhowmik, learned senior counsel having relied another decision of the apex court in State of U.P. and others vs. M/s. Indian Hume Pipe Company Ltd., reported in (1977) 2 SCC 74 has contended that there is no rule of law that the High Court should not entertain a writ petition wherein alternative remedy is available to a party. It is always a matter of discretion with the court and if the

discretion has been exercised by the High Court not unreasonably or perversely, it is the settled practice not to interfere with the exercise of discretion by the High Court. It has further observed in M/s. Indian Hume Pipe Company Ltd. that:

"It is the settled practice of this Court not to interfere with the exercise of discretion by the High Court. The High Court in the present case entertained the writ petition and decided the question of law arising in it and in our opinion rightly. In these circumstances, therefore, we would not be justified in the interest of justice in interfering in our jurisdiction under Article 136 of the Constitution to quash the order of the High Court merely on this ground after having found that the order is legally correct. We are, therefore, unable to accept this contention."

7. Mr. Kar Bhowmik, learned senior counsel has submitted that there is no dispute as to the death of Shyamal Acharjee that he died out of the electrocution from the electrical transformer installed in the northeast corner of his land on 29.04.2004 in the early morning. The deceased used to earn Rs. 4,000/- per month from his paddy field and considering the dependency, the damage quantified to the extent of Rs. 4,05,820/- is quite reasonable.

8. From the other side, Mr. A. Sengupta, learned counsel appearing for the respondents No. 2, 3 & 4 has submitted that on the face of the disputed facts the decision of the apex court as cited by Mr. Kar Bhowmik, learned senior counsel cannot have any application in the case in hand. According to him, none from the family of the petitioners had informed the police that for negligence of the respondents No. 2, 3, 4 and their officers, Shyamal Acharjee died out of electrocution. When he was taken to Mohanpur CHC, Dr. Samar Das, the Medical-in-Charge of the said hospital reported the death of Shyamal Acharjee, aged 33 years, to the Officers-in-Charge of Sidhai Police Station. The said information is reproduced hereunder:

This is to inform you that one dead body namely, Shyamal Acharjee, 33 yrs, son of Sri Nani Gopal Acharjee of vill-South Taranagar, P.O. Dighalia, brought to Mohanpur CHC by deceased's elder brother Sri Sankar Acharjee on 29.04.2007 at 6.30 am.

On the basis of the said information, the UD case No. 04/2007 was registered by Sidhai Police Station. Apart this no information was furnished to the police about the death of Shyamal Acharjee.

9. On 05.05.2007, the petitioner No. 1 had claimed for compensation for death of her husband due to electrocution to the Chairman-cum-Managing Director, Tripura State Electricity Corporation Ltd. disclosing that "for some latches of Electricity Department" at the base of the pillar of the transformer, the electricity was conducted to. Her husband had no knowledge of that. A harrow was kept nearby the transformer and when her husband went to bring the harrow, he was electrocuted.

10. Mr. Sengupta, learned counsel has submitted further that the police by their final report dated 31.05.2007 in the said U.D. case has observed that:

"During investigation it revealed that from the statement of witnesses that on 29.04.2007 morning at about 0530 hrs deceased Shyamal Acharjee with his elder brother Sankar Acharjee went to paddy field for plucking at paddy field. One eclectic transformer install on the open paddy field from that transformer some electric line connected with L/I Scheme. Somehow electric line touch with the electric poll of that transformer the deceased went to bring one ladder which kept near the electric transformer from which deceased Shyamal Acharjee electriculate from there he brought to Mohanpur CHC for treatment at Mohanpur CHC he died."

11. Mr. Sengupta, learned counsel referring all those divergent observations has contended that that the writ petition be dismissed without deference to the submissions made by Mr. Kar Bhowmik, learned senior counsel appearing for the petitioners and in this regard, he has relied on a decision of the Gauhati High Court in Smt. S.K. Shangring Lamkang and Another Vs. State of Manipur and Others, In that case, a live wire getting snapped and falling on public road had led to death of the husband of the petitioner. The High Court in exercise of power as conferred under Article 226 of the Constitution of India awarded compensation in addition to any other remedy as may be available to them in law. When there is no dispute as to negligence and obligation, Mr. Sengupta, learned counsel has contended, the High Court may exercise their discussion, but not in the case where the facts are highly disputed.

12. Having regard to the contentions advanced by the learned counsel for the parties and scrutinized the records, this Court finds that the writ petition has been filed without taking recourse to the provisions of Sections 1 & 1(A) of the Fatal Accident Act. The writ petition has been filed on 31.07.2008, the writ petitioners could have filed the suit for damages for death of Shyamal Acharjee in the appropriate Civil Court under Sections 1 and 1(A) of the Fatal Accident Act but they have preferred to approach this Court. What Mr. Kar Bhowmik, learned senior counsel has submitted that the plenary power of the High Court is not restricted by any law to pass the appropriate compensation for death in the case of electrocution cannot on the face of it be brushed aside. But at the same time if the circumstances leading to death by electrocution are highly contested and disputed usually the writ court would prefer no to exercise its extra ordinary jurisdiction as conferred under Article 226 of the Constitution of India. In Tamil Nadu Electricity Board Vs. Sumathi and Others, the apex court has held as under:

"In view of the clear proposition of law laid by this Court in Sukamani Das case when a disputed question of fact arises and there is clear denial of any tortuous liability, remedy under Article 226 of the Constitution may not be proper. However, it cannot be understood as laying a law that in every case of tortuous liability recourse must be had to a suit. When there is negligence on the face of it and infringement of Article 21 is there, it cannot be said that there will be any

bar to proceed under Article 226 of the Constitution. Right of life is one of the basic human rights guaranteed under Article 21 of the Constitution."

In *Madhya Pradesh Electricity Board Vs. Shail Kumari and Others*, the apex court held the State Electricity Board liable to pay compensation in connection with the death of a person due to electrocution on the principle of strict liability. In the said case, the live wire snapped and fell on the public road which was partially inundated with rain water. Not noticing that wire, a cyclist while returning home at night rode over the wire which twitched and snatched him and he was instantaneously electrocuted. The claim for damages made by the dependants of the deceased was resisted by the appellant State Electricity Board on the ground that the electrocution was due to a clandestine pilferage committed by a stranger unauthorisedly siphoning the energy from the supply line. The High Court directed the Board to pay compensation of Rs. 4.34 lakhs to the claimants. While dealing with the appeal filed against the Chairman against the decision of the High Court, the Hon"ble Supreme Court held at paragraphs 7 and 8 as follows:

7. It is an admitted fact that the responsibility to supply electric energy in the particular locality was statutorily conferred on the Board. If the energy so transmitted causes injury or death of a human being, who gets unknowingly trapped into it the primary liability to compensate the sufferer is that of the supplier of the electric energy. So long as the voltage of electricity transmitted through the wires is potentially of dangerous dimension the managers of its supply have the added duty to take all safety measures to prevent escape of such energy or to see that the wire snapped would not remain live on the road as users of such road would be under peril. It is no defence on the part of the management of the Board that somebody committed mischief by siphoning such energy to his private property and that the electrocution was from such diverted line. It is the look out of the managers of the supply system to prevent such pilferage by installing necessary devices. At any rate, if any live wire got snapped and fell on the public road the electric current thereon should automatically have been disrupted. Authorities manning such dangerous commodities have extra duty to chalk out measures to prevent such mishaps.

8. Even assuming that all such measures have been adopted, a person undertaking an activity involving hazardous or risky exposure to human life, is liable under law of torts to compensate for the injury suffered by any other person, irrespective of any negligence or carelessness on the part of the managers of such undertakings. The basis of such liability is the foreseeable risk inherent in the very nature of such activity. The liability cast on such person is known, in law, as "strict liability". It differs from the liability which arises on account of the negligence or fault in this way i.e. the concept of negligence comprehends that the foreseeable harm could be avoided by taking reasonable precautions. If the defendant did all that which could be done for avoiding the harm he cannot be held liable when the action is based on any negligence attributed. But such consideration is not relevant in cases of strict liability where

the defendant is held liable irrespective of whether he could have avoided the particular harm by taking precautions.

[Emphasis added]

13. This Court taken serious note of the divergence that appeared between the police report and the report filed by the Electrical Inspector vis-a-vis the statement made by the petitioner No. 1. What has surfaced without any dispute is that Shyamal Acharjee since deceased had died out of electrocution from the electrical transformer installed in the open paddy field. Nowhere it has been stated by the Electrical Inspector that the installation is secured by safety fencing so that no one can ride to do any mischief or can endanger their own life. The electrical transformer as it appears was kept without safety measures. It may be so that the deceased climbed up for curiosity or for changing the GO switch connecting the pipe and the transformer base channel. If the report of the Electrical Inspector is entirely believed it has to be held that for the electrocution the deceased had also contributed but the respondents No. 3, 4 & 5 cannot disown their responsibility by installing an electrical transformer in the paddy field without any safety netting or safety measures. The two other versions may or may not be correct.

14. Having held so and on taking into consideration the contributory negligence on the part of the deceased and the negligence of the respondents No. 2, 3 & 4 for keeping the electrical installation namely the electrical transformer without safety netting in the paddy field, the respondents No. 2, 3 & 4 are hereby directed to pay the petitioners a sum of Rs. 3,00,000/- within a period of 3(three) months from today else the said amount shall carry interest @12% from 29.04.2007 when Shyamal Acharjee died out of electrocution. The petitioners would get equal share out of the said compensation. If the petitioner No. 2 is still minor, his share has to be kept in term deposit till he attained the majority.

With these observations and directions, this writ petition stands allowed to the extent as indicated above.