

(2023) 10 J&K CK 0022

In the Jammu And Kashmir High Court

Case No : Others Writ Petition No. 1117 Of 2007

Bharat Bhushan

APPELLANT

Vs

State Of Jammu & Kashmir And Others

RESPONDENT

Date of Decision : 07-10-2023

Acts Referred:

Citation : (2023) 10 J&K CK 0022

Hon'ble Judges : MA Chowdhary, J

Bench : Single Bench

Advocate : Surinder Kour, Akash Choudhary, Amit Gupta

Final Decision : Disposed Of

Judgement

Ma Chowdhary, J

1. This writ petition was filed by the petitioner as a minor through his father, seeking a writ of mandamus directing Respondents to pay a compensation of Rs. 20.00 lacs, as the petitioner was disabled with 60% permanent disability due to electric shock with disconnected live electric High Tension wire.

2. The case of the petitioner is that he on the fateful day i.e. 11.11.2004 came in contact with High Tension wire from roof top of Police Hospital where his father used to work as cook, and suffered severe electric shock. The petitioner was admitted in Police Hospital and thereafter in GMC, Jammu for treatment and a report in this regard was allegedly got registered at police Station Nehru Market, Jammu. In view of severe burn injuries, the left arm of the petitioner had to be amputated and he was made to suffer excruciating mental and physical pain with 60% permanent disability which is attributed by the petitioner, to the negligence on the part of the respondents.

3. It is contended that the electric shock to the petitioner was caused due to non-maintenance of high intensity electric line and this negligence of the respondents has resulted in this electrical accident. The petitioner, thus, seeks compensation

from the respondents for the permanent disability caused due to electric shock.

4. The learned counsel for the Petitioner has vehemently argued that the son of the petitioner has suffered permanent disability due to the negligent acts attributable to Respondents who failed to maintain the electric wires as provided under the provisions of the Electricity Act and Rules framed thereunder and thus, the State is under legal obligation to compensate the Petitioner because due to their negligent Act, a precious human life is crippled.

5. Learned counsel for the petitioner has placed on record a policy for grant of ex-gratia relief to the departmental or non-departmental persons who are killed/grievously incapacitated on account of electrocution and related accidents. Same are governed under Government Order No.328-PDD of 2011 dated 24.11.2011 and subsequently Government Order No. 454-F of 2019 dated 24.10.2019 and according to them, compensation to be paid to the petitioner would be only in terms of these Government orders.

6. In support of his contentions, learned senior counsel has placed reliance on the judgment of this court in OWP No.902/2010 titled Radha Sharma v. State of JK & Ors. passed on 01.03.2023 and judgment of the Division Bench of this court in LPA No.87/2021 titled Union Territory of

7. Per contra, learned AAG appearing on behalf of the Respondents, Mr. Amit Gupta, submits that the Respondents have not committed any act which would warrant payment of compensation and the petitioner by no stretch of imagination can claim compensation as a matter of right.

8. The respondents question the maintainability of this writ petition on the ground that it involves disputed question of facts which cannot be considered by this Court in exercise of its writ jurisdiction.

9. Learned counsel for the Respondents has placed reliance on a judgment rendered by Hon'ble Apex Court in a case titled Chairman, Grid Corporation of Orissa Ltd. (GRIDCO) & Ors. v. Sukamani Das & Anr. "1999 AIR (SC) 3412.

10. Heard learned counsel for the parties at length.

11. In this case, though it is argued on the side of the respondents that the writ petition is not maintainable, when the facts are disputed, this court is not inclined to accept the same. As the petitioner has been crippled as a result of the negligence on the part of the officials, they are bound to pay compensation to him.

12. The judgment relied upon by learned AAG for the respondents is not applicable to the present case as the distinguishable factor in that case is that there was no negligence and the incident was on account of the act of God, but in the present case, it is clear cut case of negligence on part of the Respondents.

13. The next question to be considered is that, what would be the amount of compensation, the petitioner would be entitled to on account of his being

incapacitated due to amputation of his left arm. The Government Order No.454-F of 2019 dated 24.10.2019 providing the amount of compensation to be paid to various categories of persons who are electrocuted and die, or are rendered fully/partially disabled due to the negligence of the PDD reads as:

S. No.

Nature of Power

To

whom delegated

Extent

123-A

1) To grant Ex-gratia Relief in favour of the employees of the PDD, other persons or their heir and to the owners of Domestic Animals, who are electrocuted and died, or are rendered fully/partially disabled due to the negligence of the PDD, subject to the condition that:

(i) All the employees of the PDD, whether regular, DRW/casual labour, Work Charged, Contingent paid etc, engaged in the generation, transmission or supply of electrical energy in the Department, who are killed, incapacitated, wholly or partially, during the course of discharging their bonafide and legitimate duties;

DCP

Full powers within the Budget Provisions with the following scales:

A. Human Beings:

I. In case of Death= Rs. 10.00 lacs.

II. Total Disability= Rs. 7.50 lacs.

III. Partial Disability = Rs.2.00 lacs.

In case of death of any employee, the Ex-gratia relief shall be paid to the legal heirs of the deceased. The payment shall be subject to the condition that the relief, granted by the Government under the

Workman's Compensation Act, shall be adjusted while making payment of the Ex-gratia relief.

B. Domestic Animals

i. Cow, bull, horse = Rs.20,000

ii. Sheep/Goat = Rs.5,000.

(ii) Civilians, killed or injured, resulting in their partial or total disability, subject to the explicit condition that the accident is not attributable to them, but to the

lapses, attributable to the PDD, as verified by the Director, TTI & C;

(iii) Domestic animals killed by electrocution, caused due to lapses, attributable to the Department and verified by the Director, TTI & C.

14. Since the Government has already framed a policy vis-à-vis the injury caused due to electric shock by virtue of the aforesaid Government Order, this Court need not to go to into the parameters prescribed for awarding of compensation in case of death/injuries arising out of the motor vehicles accidents under the Motor Vehicles Act. The case of the permanent disability of the petitioner is fully covered by the aforesaid policy as the accident is not attributable to the injured but to the lapses attributable to PDD as per the pleadings discussed hereinabove.

15. In view of the above, the writ petition is maintainable for award of compensation and the respondent State is under obligation/duty to see that electric installations are properly fenced and are placed in a position and height so that these are not accessible to the general public and the children in particular. The State cannot claim immunity by pleading negligence on the part of the injured, who was a minor child of 16 years of age at the time of the electrical accident.

16. Petitioner's case for compensation needs to be considered for assessment of compensation on the basis of policy promulgated, vide Government Order NO.454-F of 2019 dated 24.10.2019.

17. In the circumstances and keeping in view the fact that the victim has to live whole life with his crippling state, an amount of Rs.7.50 lakhs would be in my view, appropriate, just and fair compensation for the petitioner for the damage which has been caused to the quality of his life as well as in conformity with the policy of payment of ex-gratia relief to civilians and departmental employees who have died or injured due to electricity related incidents promulgated vide order No.454-F of 2019 dated 24.10.2019.

18. In view of the aforesaid discussion and in the facts and circumstances of the case, this petition is allowed and the respondents are directed to pay the petitioner a sum of Rs. 7.50 lakhs alongwith simple interest @ 6% per annum throughout, as compensation to the petitioner within a period of two months, starting from the date of passing of this judgment.

19. Disposed of accordingly along with connected application(s).