

(2015) 01 PAT CK 0081
In the Patna High Court
Case No : LPA No. 470 of 2013

Bihar State Electricity Board and Others	APPELLANT
Vs	
Vijay Singh and Others	RESPONDENT

Date of Decision : 23-01-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 287, 304-A

Citation : (2015) 1 PLJR 962

Hon'ble Judges : L. Narasimha Reddy, C.J.;Gopal Prasad, J.

Bench : Division Bench

Advocate : Akhileshwar Singh, for the Appellant; Ajay Kumar, Advocates for the Respondent

Final Decision : Disposed off

Judgement

L. Narasimha Reddy, C.J.—I.A. No. 2737 of 2013 is filed with a prayer to condone the delay of 86 days in preferring the Letters Patent Appeal. In the petition it is stated that the delay occurred in the process of obtaining legal opinion and taking administrative decision. No counter affidavit is filed by the respondents to the application. We are satisfied with the reasons mentioned in the application. Delay is condoned.

Letters Patent Appeal

2. This Letters Patent Appeal is preferred against the order dated 2.12.2011, passed by the learned Single Judge in C.W.J.C. No. 2436/05 Ed.--Reported in 2012 (2) PLJR 771.

3. The respondents 1 and 2 herein filed the writ petition claiming compensation at the rate of Rs. 5,00,000/- each, in their favour. It was pleaded that both the writ petitioners/respondents are residents of village-Puri, P.S. Giriak of Nalanda District. The 1st respondent and his wife had a son by name Nitish, aged about 13 years in the year 2004. The 2nd respondent and her husband, by name Anil Kumar Anal, had a son, by name Chandan, who aged about 12 years in the year

2004. Both the children died on 7.11.2004, on account of a high tension wire falling upon them. The Giryak Police Station registered Giryak P.S. Case No. 116/04 under Sections 287 and 304-A of I.P.C. against the appellants.

4. Respondents 1 and 2 claimed compensation at the rate of Rs. 5,00,000/- each, on account of the death of their respective sons. On earlier occasion they had also moved Human Rights Commission. It was pleaded in the writ petition that the death of the children occurred only on account of the lack of proper care, and due to negligence, on the part of the appellants.

5. The writ petition was opposed by the appellants by raising several grounds.

6. Through the judgment dated 2.12.2011, the learned Single Judge awarded compensation at the rate of 2,50,000/- in respect of each of the children. However, it was left open to the respondents 1 and 2, to institute proceedings in a Civil Court to claim compensation, over and above what was granted in the writ petition. The said order is challenged in the present Appeal.

7. Heard Mr. Vinay Kirti Singh and Mr. Akhileshwar Singh, learned counsel for the appellants and Mr. Surendra Kishore Thakur and Mr. Ajay Kumar, learned counsel for the respondents.

8. The fact that the children referred to above died on 7.11.2004, due to electrocution, is not disputed. A criminal case was instituted and other proceedings were initiated. The respondents were certainly justified in claiming compensation on account of the death of their children. However, the proper forum would have been a Civil Court where the issues pertaining to negligence, the quantum of compensation, the persons entitled for compensation can be adjudicated, on the basis of evidence. For one reason or the other, respondents 1 and 2 did not institute such proceedings and straightaway, they filed the writ petition.

9. Learned Single Judge has, no doubt, undertaken some discussion taking into account, certain precedents. At one place it was mentioned that the award of compensation payable to a person of the age of the children of the respondents, would have been Rs. 2,00,000/- had it been claimed under the Motor Vehicles Act. However, by taking certain other aspects into account, the compensation was awarded at Rs. 2,50,000/-. Reliance was placed upon the judgment of this Court in C.W.J.C. No. 12960/06 Reported in 2012 (1) PLJR 728 dated 8.11.2011 wherein compensation of Rs. 3,00,000/- was awarded, leaving it open to the claimants thereunder to institute proceedings for any additional amount. It is relevant to mention that against the order passed in C.W.J.C. No. 12960/06 Ed.-- Reported in (2012)(1) PLJR 728., L.P.A. is pending before this Court, in which an order of stay was also granted.

10. Though the proper course is to require the respondents to approach the Civil Court for determination of their rights, we find that at this length of time, such a course may not be advisable.

11. Two aspects become relevant in this context. The 1st is about the quantum and the 2nd is about the direction issued by the learned Single Judge that it shall be open to the respondents to institute proceedings for claiming compensation over and above what was awarded by him.

12. If one takes into account, the age of the deceased children, the figure of Rs. 2,00,000/- would be reasonable, whether one goes by the parameters stipulated under the Motor Vehicles Act or the general law of tort. We desist from elaborating the 1st aspect further since there was no evidence on record. So far as the 2nd aspect is concerned, we find it difficult to sustain it. If it is the opinion of the Court that the matter must be adjudicated by a Civil Court, it must be left to the parties to pursue those remedies. Having awarded certain amount of compensation, the matter cannot be left open.

13. We therefore partly allow the writ appeal with the following directions: (a) the appellants shall pay a sum of Rs. 2,00,000/- each as compensation on account of the death of the deceased Nitish and Chandan; (b) compensation payable in respect of Nitish shall be deposited in the bank account of his father, the 1st respondent namely Vijay Singh, and his mother who is not made a party to the writ petition, in equal shares as and when they submit the necessary pass books pertaining to bank account; (c) the compensation payable on account of the death of Chandan shall be deposited into the account of the 2nd respondent Smt. Phulmani Sharma and her husband Shri Anil Kumar Anal, in equal shares within a period of four weeks from the date that they submit the pass books after obtaining the pass books; (d) the observation made by the learned Single Judge that it shall be open to the respondents 1 and 2 to claim further compensation by instituting proceedings is set aside.

14. Interlocutory application, if any, stands disposed of. There shall be no order as to costs.