
(2017) 04 OHC CK 0032

In the Orissa High Court

Case No : 419 of 2016

Chief Executive Officer, Central Electrical Supply Utility of
Odisha (CESU), Bhubaneswar & another

APPELLANT

Vs

Anjana Prusty

RESPONDENT

Date of Decision : 05-04-2017

Acts Referred:

Citation : (2017) 04 OHC CK 0032

Hon'ble Judges : Vineet Saran, K. R. Mohapatra

Bench : DIVISION BENCH

Final Decision : Dismissed

Judgement

1. This intra-Court Appeal has been filed assailing the judgment dated 10-8-2016 passed by the learned single Judge in W.P.(C) No. 8977 of 2009 directing the appellants herein to pay the interim compensation of Rs. 1,00,000/- (one lakh) to the respondent (writ petitioner) within a period of two months, and further permitting the petitioner to work out her remedies in the common law forum for higher compensation. 2. Brief statement of facts relevant for adjudication of this appeal is that one Lokanath Prusty (deceased father of the respondent) while returning home after collecting firewood on 4-7-2006 at about 8 a.m., came in contact with 11 KV High Tension overhead line, as a result of which, he died instantaneously. The nephew of the deceased Lokanatha reported the matter before the O.I.C., Tangi Police Station. Accordingly, UD Case No. 12 of 2006 was registered. After inquest, the dead body was sent to S.C.B. Medical College and Hospital, Cuttack for autopsy. Post-mortem report revealed the cause of death to be contact with the electric wire. Accordingly, final form was submitted disclosing the cause of death due to electric shock. It also indicated that there was no suspicion of any play. As the family was in distress, the respondent had represented to the appellant No.1 on 4-1-2008 for payment of compensation, which remained, un-responded. Accordingly, she had filed Writ Petition bearing W.P.(C) No.8977 of 2009 for compensation. The appellants who were opposite

parties in the writ petition filed their counter affidavit denying the averments made in the writ petition and stating that the writ petition was not maintainable as the same involved adjudication of disputed questions of fact. Although the incident occurred in the year 2006, the writ petition was filed after a lapse of four years. The appellants in their counter-affidavit also stated that the respondent had approached this Court with un-clean hands making out a cock and bull story alleging negligence of the appellants. No such representation dated 4-1-2008, as alleged, was ever received by the appellants. The investigation was conducted by the Police without intimating the officials of Central Electricity Supply Utility (CESU). They also denied other averments made in the writ petition. 3. Learned single Judge, taking into consideration the rival contentions of the parties and case laws reported in 2015 (1) OLR 637 : (2015 AAC 578 (Ori)) (T. Bimala v. Cuttack Municipal Corporation, Cuttack and others); AIR 2005 MP 2 (Ramesh Singh Pawar v. Madhya Pradesh Electricity Board and others); AIR 2002 SC 551 (M.P. Electricity Board v. Shail Kumar and others), and 1868 Law Reports (3) HL 330 (Rylands v. Fletcher) held that the opposite parties cannot shirk from their responsibility on trivial grounds. For the lackadaisical attitude exhibited by the opposite parties, a valuable life was lost. Keeping in view the age and avocation of the deceased, learned single Judge directed the appellants (opposite parties in the writ petition) to pay interim compensation of Rs. 1,00,000/- within two months, and further permitted the petitioner to work out her remedies in the common law forum for higher compensation. 4. Mr. Dash, learned counsel for the appellant vehemently submits that the writ petition under Article-226 could only be maintainable if the negligence is admitted. In the instant case, the appellants who were opposite parties in the writ petition had categorically denied their involvement as well as negligence which caused the death of the father of the respondent. He further contends that learned single Judge has given a finding that the appellants were negligent in performing their duties which is based on no evidence. It would also render the appellants defenceless, in the event the respondent files a suit claiming higher compensation. In that view of the matter, he prays for setting aside the impugned judgment. 5. Mr. Mohapatra, learned counsel for the respondent, per contra, submits that the fact that the father of the respondent died due to electrocution by coming in contact with 11 KV live wires, remains unchallenged. It is further submitted that the learned single Judge has not given any finding on facts, which would render the appellants defenceless, in the event a suit for higher compensation is filed by the respondent. Learned single Judge has only awarded an interim compensation of Rs. 1,00,000/- to save the family of the deceased from distress. In that view of the matter, there being no illegality and material irregularity in the impugned judgment, the same needs no interference. 6. We have heard learned counsel for the parties and perused the case record. The cause of death of Lokanatha (the deceased) due to electrocution is not disputed. The appellants are responsible for supply of electricity and to maintain the towers and transmission equipments including the overhead, wires in immaculate condition is also not in dispute. In the case of Shail Kumar : (AIR 2002 SC 551) (supra) as relied upon by the

learned single Judge, in paragraph-7, the Hon"ble Supreme Court held as under:- "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 of 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." (Emphasis supplied) 7. It is thus, well-settled that 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". In the case of Rylands (supra), the doctrine of " strict liability is described as under:- "The rule of law is that the person who, for his own purpose, brings on his land and collects and keeps there anything likely to do mischief if it escapes, must keep it at his peril, and if he does so he is prima facie answerable for all the damage which is the natural consequence of its escape." Learned single Judge on a meticulous reading of the aforesaid case law and the materials available on record, directed the appellants to pay an interim compensation of Rs. 1,00,000/- to the respondent. 8. In view of the discussions made above, more particularly applying the doctrine of strict liability, we do not find any infirmity in the impugned judgment. Thus, the writ appeal being devoid of merit, is accordingly dismissed. Appeal dismissed.