
(2000) 12 GAU CK 0006

In the Gauhati High Court

Case No : Writ Appeal No. 467 of 2000 in Civil Rule No. 4462 of 1996

Fakir Chand

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 11-12-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 1 ACC 555 : (2001) 2 ACC 722 : (2002) ACJ 555 : AIR 2002 Guw 84 : (2001) 1 GLT 670

Hon'ble Judges : N.C. Jain, C.J.;Aftab H. Saikia, J

Bench : Division Bench

Advocate : Mr. M.A. Sheikh and Ms. A. Begum, for the Appellant; Mr. N.N. Saikia, for the Respondent

Final Decision : Allowed

Judgement

N.C. Jain, C.J.—This Writ Appeal was has been filed against the Judgment of the learned Single Judge granting compensation in the sum of Rs. 70,000.00 to the appellant, Fakir Chand, on account of the death of his wife, who died of electrocution as she came in contact with a snapped conductor.

2. The Writ Appeal is fixed for admission. We have thought it appropriate to dispose of the same on merits as both the counsel for the parties are present before us.

3. The learned Single Judge recorded a finding that there was negligence on the part of the Assam State Electricity Board (ASEB). The counsel for the appellant has vehemently argued that the woman being aged about 35 years and a housewife, her services were quite useful not only to the husband, but to her children as well and for that reason the compensation amount of Rs. 70,000.00 is on the lower side.

4. Mr. N.N. Saikia, the counsel for the ASEB, on the other hand, while opposing the prayer for enhancement, has with equal vehemence contended that there

being no averment regarding the income of the deceased in the writ petition, the learned Single Judge has granted appropriate compensation. It has further been argued that the appellant should have filed a civil suit in order to prove the damages, because the present case comes under Tort".

5. After giving thoughtful consideration to the arguments of the counsel for the parties, we are of the considered view that the case can be disposed of at the stage of admission. There cannot be two opinions that normally the cases arising out of "tortious liability¹ are filed in a civil court ; but, once the learned Single Judge has entertained the writ petition and asked for the report from the Chief Electrical Inspector and once a finding of negligence has been recorded, there is no obstacle in the way of the writ court to determine proper compensation. The compensation, of course, has to be based upon reasonable guess work.

6. Since the woman died at the prime of her youth when the husband and children needed her company and she was useful to the family, the absence of proof of her income should not be a hindrance in awarding compensation, which is just, fair and reasonable.

7. After taking into consideration the totality of the facts and circumstances of the case, we are of the considered view that ends of justice will be met if the appellant is granted a sum of Rs. 1,00,000.00 (Rupees one lakh only).

8. While fixing the aforementioned compensation, we have thought it appropriate not to place reliance upon one or the other decided case, as no judicial pronouncement has been cited at the bar which is near to the case in hand. The learned counsel for the appellant has cited some judgments where compensation beyond Rs. 1 lakh was granted; but in those cases the victims suffered injuries. The decision of the Hon'ble Supreme Court in Civil Appeal No. 888 of 1992 in the case of Surjya Kanta Talukdar v. Assam State Electricity Board, decided on May 1, 1996, which has been heavily relied upon by Mr. N.N. Saikia, can be of no assistance to the Board for the simple reason that in the case of Surjya Kanta Talukdar (supra), a minor girl died, whereas in the present case a married woman having children died on account of negligence on the part of the ASEB.

9. For the reasons mentioned above, the appeal is allowed to the extent indicated above. The compensation amount is fixed at Rs. 1,00,000.00 (Rupees one lakh only), which has to be deposited with the Registrar General of this court within a period of 3 (three) months, falling which, the ASEB will be liable to pay interest @ 12% per annum after the expiry of 3 (three) months. If any amount has already been deposited, ASEB will be entitled to deduct the same at the time of making the final deposit.