

(2015) 04 OHC CK 0057

In the Orissa High Court

Case No : Writ Petition (C) No. 1243 of 2003

Gandra Tiga and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 15-04-2015

Acts Referred:

Constitution of India, 1950 — Article 21, 226, 32

Citation : (2016) ACJ 376 : (2015) 120 CLT 493

Hon'ble Judges : Akshaya Kumar Rath, J

Bench : Single Bench

Advocate : S. Nanda, for the Appellant; P.K. Muduli, A.G.A., Advocates for the Respondent

Final Decision : Allowed

Judgement

Dr. Akshaya Kumar Rath, J.—In this writ application under Article 226 of the Constitution of India, the petitioners have prayed, inter alia, for a direction to the opposite parties to pay an amount of Rs. 1,50,000/- towards compensation for death of Madini Tiga, wife of Gandra Tiga-petitioner No. 1 and mother of petitioners No. 2 to 7 and Rajesh Tiga son of petitioner No. 1.

2. Shorn of unnecessary details, the short facts of the case of the petitioners are that on 29.7.2002 at about 6 A.M., while Madini Tiga was proceeding to work in her paddy field with her infant son Rajesh Tiga, they came in contact with a snapped live wire, as a result of which, both of them died due to electrocution. The said occurrence was reported in the Kutra Police Station, whereafter Kutra P.S. U.D. Case No. 3 of 2002 was registered. Inquest was conducted on the body of Madini Tiga and Rajesh Tiga. Thereafter, dead bodies were sent for postmortem. It is further stated that after receiving information about the death of Madini Tiga and Rajesh Tiga, the petitioners were shocked and the family received a serious set back.

3. Pursuant to issuance of notice, a counter affidavit has been filed by one

Ranjan Kumar Dey, Officer-in-Charge of Kutra Police Station. It is stated that on 29.7.2002 at about 7.50 A.M. the petitioner No. 1 came to the police station and reported that on that day at about 5 A.M. while his wife Madini Tiga with her baby went to his field for work, they came in contact with a snapped electric wire and died. On receiving this report, Kutra P.S. U.D. Case No. 3 dated 29.7.2002 was registered. During investigation, the Investigating Officer conducted inquest over the dead bodies of Madini Tiga and Rajesh Tiga and sent the dead bodies for postmortem examination on the same day. The Medical Officer, Government Hospital Rajgangapur, who conducted the postmortem examination, opined that the death was caused possibly due to passage of high voltage A.C. through the body. After completion of investigation, final form was submitted on 30.7.2002 declaring the cause of death of the deceased was due to electric shock.

4. The opposite parties 2 and 3 have also filed their counter affidavit. The sum and substance of the case of the opposite parties 2 and 3 is that since the disputed facts are involved, the writ petition is not maintainable. Opposite party No. 3 had no knowledge about registration of F.I.R. At the time of accident, no information was given by the informant before the local electrical section or before the opposite parties. During course of investigation, the Investigating Officer had not interrogated the local electrical authority about the alleged incident on 29.7.2002. After receipt of notice from this Court, opposite party No. 3 had enquired about the matter and came to know that due to electrocution, Rajesh Tiga and Madini Tiga died by coming into contact with high voltage electric line at electric pillar No. 65A/4 in village Ritibeda in the district of Sundargarh. It is further stated that the accident was caused due to sole negligence of the deceased. The villagers of Dhangriduka had clandestinely taken electric line through narrow wire to their Tola and using the same unauthorizedly. In the night of 28/29.7.2002, there was rain and storm, as a result of which, the electric line snapped and was lying on the paddy field, which was not clearly visible in the eye. On 29.7.2002 early morning at about 5.00 A.M. while the deceased Madini Tiga was proceeding to the paddy field, she could not able to see the electrical wire and came in contact with the same.

5. Heard Mr. Nanda, learned counsel for the petitioners, Mr. P.K. Muduli, learned counsel for opposite party No. 1 and Mr. R. Acharya, learned counsel for the opposite parties 2 and 3.

6. Mr. Nanda, submits that due to negligence on part of the opposite parties, Madini Tiga and Rajesh Tiga died due to electrocution. Had sufficient care been taken by the opposite parties 2 and 3, life of two persons could have been saved. In view of the same, the opposite parties 2 and 3 are liable to pay compensation.

7. Per contra, Mr. Acharya, submits that since disputed question of facts are involved in the writ petition, the same is not maintainable. He relies on two decisions of the apex Court in the case of Chairman, Grid Corporation of Orissa Ltd. (Gridco) and Others Vs. Smt. Sukamani Das and Another, (1999) 2 ACC 432 : (1999) 7 JT 109 : (1999) 123 PLR 569 : (1999) 5 SCALE 539 : (1999) 7

SCC 298 : (1999) 2 SCR 458 Supp : (1999) 2 UJ 1557 : (2000) WritLR 331 and S.D.O. Grid Corporation of Orissa Ltd. and others v. Timudu Oram, AIR 2005 SC 3971.

8. On the rival pleadings and contentions advanced by the learned counsel for the parties, really two points fall for consideration of this Court.

1) Whether a writ application under Article 226 of the Constitution of India is maintainable for payment of compensation when death is caused due to electrocution?

2) Whether opposite party Nos. 2 and 3 can deny the liability on the ground that the death of Madini Tiga and Rajesh Tiga were due to act of a third party.

Point Nos. 1 and 2.

9. An identical matter came up for consideration before a Division Bench of this Court in the case of T. Bimala Vs. Cuttack Municipal Corporation , where Dr. A.K. Rath, J. was a party. It was held as follows:-

"9. The language of Article 226 of the Constitution does not admit of any limitation on the powers of the High Court for the exercise of jurisdiction thereunder. The power conferred upon the High Courts under Article 226 of the Constitution is wide enough to reach injustice wherever it is found. The apex Court in catena of the decisions laid down certain guidelines and self-imposed limitations have been put there subject to which the High Courts would exercise jurisdiction. Those guidelines cannot be mandatory in all circumstances. When a citizen approaches the High Court in writ petition that a wrong is caused, the High Court will step into protect him, whether that wrong was done by the State or an instrumentality of the State. The High Court cannot pull down the shutters.

10. In M.S. Grewal and Another Vs. Deep Chand Sood and Others, (2001) 2 ACC 540 : (2001) ACJ 1719 : AIR 2001 SC 3660 : (2001) 7 JT 159 : (2001) 5 SCALE 610 : (2001) 8 SCC 151 : (2001) AIRSCW 3430 : (2001) AIRSCW 4075 : (2001) 6 Supreme 655 : (2001) 7 Supreme 341 , the apex Court observed as under:

"Next is the issue of "maintainability of the writ petition" before the High Court under Article 226 of the Constitution. The appellants though initially very strongly contended that while the negligence aspect has been dealt with under penal laws already, the claim for compensation cannot but be left to be adjudicated by the civil laws and thus the Civil Court's jurisdiction ought to have been invoked rather than by way of a writ petition under Article 226 of the Constitution. This plea of non-maintainability of the writ petition though advanced at the initial stage of the submissions but subsequently the same was not pressed and as such we need not detain ourselves on that score, excepting however recording that the law Courts exist for the society and they have an obligation to meet the social aspirations of citizens since law Courts must also respond to the needs of the people. In this context, reference may be made to two decisions of this Court : the first in line is the decision in Smt. Nilabati

Behera alias Lalita Behera Vs. State of Orissa and others, (1993) ACJ 787 : AIR 1993 SC 1960 : (1993) 76 CLT 98 : (1993) CriLJ 2899 : (1993) 2 JT 503 : (1993) 2 SCALE 309 : (1993) 2 SCC 746 : (1993) 2 SCR 581 wherein this Court relying upon the decision in Rudal Sah (Rudal Sah v. State of Bihar), Rudul Sah Vs. State of Bihar and Another, AIR 1983 SC 1086 : (1983) CriLJ 1644 : (1983) 2 SCALE 103 : (1983) 4 SCC 141 : (1983) 3 SCR 508 decried the illegality and impropriety in awarding compensation in a proceeding in which the Court's power under Articles 32 and 226 of the Constitution stands involved and thus observed that it was a clear case for award of compensation to the petitioner for custodial death of her son. It is undoubtedly true, however, that in the present context, there is no infringement of the State's obligation, unless of course the State can also be termed to be joint tortfeasor, but since the case of the parties stands restricted and without imparting any liability on the State, we do not deem it expedient to deal with the issue any further except noting the two decisions of this Court as above and without expression of any opinion in regard thereto."

11. In this connection, we would like to profitably quote a paragraph from a decision of Madhya Pradesh High Court in the case of Ramesh Singh Pawar Vs. M.P. Electricity Board and Others, (2005) ACJ 894 : AIR 2005 MP 2 : (2004) 2 JLJ 384 : (2004) 3 MPHT 237 : (2004) 1 MPJR 554 : (2004) 2 MPLJ 506 . It is held as follows:

"Currently judicial attitude has taken a shift from the old doctrine concept and the traditional jurisprudential system - affection of the people has been taken note of rather serious and the judicial concern thus stands on a footing to provide expeditious relief to an individual when needed rather than taking recourse to the old conservative doctrine of the Civil Court's obligation to award damages. As a matter of fact the decision in D.K. Basu has not only dealt with the issue in a manner apposite to the social need of the "Country but the learned Judge with his usual felicity of expression firmly established the current trend of justice-oriented approach". Law Courts will lose their efficacy if they cannot possibly respond to the need of the society - technicalities their might be many but the justice-oriented approach ought not to be thwarted on the basis of such technicality since technicality cannot and ought not to outweigh the course of justice."

12. Thus we hold that a writ application for payment of compensation for the death of a person in electrocution is maintainable when the undisputed facts clearly reveal the same."

13. 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".

14. The doctrine of strict liability has its origin in English Common Law when it was propounded in the celebrated case of *Rylands v. Fletcher*, 1868 Law Reports (3) HL 330, Justice Blackburn had observed thus:

"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."

15. There are seven exceptions formulated by means of case law to the said doctrine. One of the exceptions is that "Act of stranger i.e. if the escape was caused by the unforeseeable act of a stranger, the rule does not apply". (Winfield on Tort, 15th Edn. Page 535).

16. The rule of strict liability has been approved and followed in many subsequent decisions in England and decisions of the apex Court are a legion to that effect. A Constitution Bench of the apex Court in *Charan Lal Sahu Vs. Union of India*, AIR 1990 SC 1480 : (1990) 1 CompLJ 125 : (1989) 4 JT 582 : (1991) 2 SCALE 841 : (1990) 1 SCC 613 : (1989) 2 SCR 597 Supp and a Division Bench in *Gujarat State Road Transport Corporation, Ahmedabad Vs. Ramanbhai Prabhatbhai and Another*, (1987) ACJ 561 : AIR 1987 SC 1690 : (1987) 62 CompCas 609 : (1987) 2 JT 384 : (1987) 1 SCALE 1027 : (1987) 3 SCC 234 : (1987) 3 SCR 404 had followed with approval the principle in *Rylands* (supra). The same principle was reiterated in *Smt. Kaushnuma Begum and Others Vs. The New India Assurance Co. Ltd. and Others*, (2001) 1 ACC 152 : (2001) ACJ 428 : AIR 2001 SC 485 : (2001) 1 JT 375 : (2001) 1 SCALE 1 : (2001) 2 SCC 9 : (2001) 1 SCR 8 : (2001) 1 UJ 464 : (2001) AIRSCW 85 : (2001) 1 Supreme 5 .

17. *Sukamani Das* (supra), *Timudu Oram* (supra) on which reliance has been placed, the question of a strict liability was not taken up in those cases.

18. *Sukamani* cannot be understood as laying a law that in every case of tortious 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, since right of life is one the basic human rights guaranteed under Article 21 of the Constitution.

19. In *Madhya Pradesh Electricity Board Vs. Shail Kumari and Others*, (2002) 1 ACC 526 : (2002) ACJ 526 : AIR 2002 SC 551 : (2002) 1 JT 50 : (2002) 1 SCALE 119 : (2002) 2 SCC 162 : (2002) 1 SCR 164 : (2002) 1 UJ 390 : (2002) AIRSCW 129 : (2002) 1 Supreme 98 , one Jogendra Singh, a workman in a factory, was returning from his factory on the night of 23.8.1997 riding on a bicycle. There was rain and hence the road was partially inundated with water. The cyclist did not notice the live wire on the road and hence he rode the vehicle over the wire which twitched and snatched him and he was instantaneously electrocuted. He fell down and died within minutes. When the action was brought by his widow and minor son, a plea was taken by the Board that one Hari Gaikwad had taken a wire from the main supply line in order to siphon the energy for his own use and

the said act of pilferage was done clandestinely without even the notice of the Board and that the line got unfastened from the hook and it fell on the road over which the cycle ridden by the deceased slid resulting in the instantaneous electrocution. In paragraph 7, the apex Court held as follows:

"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 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."

20. The principle of *res ipsa loquitur* is well known. It is explained in a very illustrative passage in Clerk and Lindsell on Torts, 16th Edn., pp. 568-569, which reads as follows:

"Doctrine of *res ipsa loquitur*. The onus of proof, which lies on a party alleging negligence is, as pointed out, that he should establish his case by a preponderance of probabilities. This he will normally have to do by proving that the other party acted carelessly. Such evidence is not always forthcoming. It is possible, however, in certain cases for him to rely on the mere fact that something happened as affording *prima facie* evidence of want of due care on the other's part: "*res ipsa loquitur* is a principle which helps him to do so". In effect, therefore, reliance on it is a confession by the plaintiff that he has no affirmative evidence of negligence. The classic statement of the circumstances in which he is able to do so is by Erle, C.J.:

"There must be reasonable evidence of negligence. But where the thing is shown to be under the management of the defendant or his servants, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of explanation by the defendants, that the accident arose from want of care."

It is no more than a rule of evidence and states no principle of law. "This convenient and succinct formula", said Morris, L.J., "possesses no magic qualities; nor has it any added virtue, other than that of brevity, merely because it is expressed in Latin". It is only a convenient label to apply to a set of

circumstances in which a plaintiff proves a case so as to call for a rebuttal from the defendant, without having to allege and prove any specific act or omission on the part of the defendant. He merely proves a result, not any particular act or omission producing the result. The court hears only the plaintiff's side of the story, and if this makes it more probable than not that the occurrence was caused by the negligence of the defendant, the doctrine *res ipsa loquitur* is said to apply, and the plaintiff will be entitled to succeed unless the defendant by evidence rebuts that probability. It is not necessary for *res ipsa loquitur* to be specifically pleaded."

10. The affidavit filed by Officer-in-Charge of the Kutra Police Station shows that on 29.8.2002, the petitioner No. 1 went to the police station and reported that while his wife Madini Tiga and minor son Rajesh Tiga went to his paddy field came in contact with electric wire and succumbed to the injuries. Thereafter, Kutra P.S. U.D. Case No. 3 of 2002 was registered. Inquest on the body of the deceased was conducted. Thereafter, the dead bodies were sent to postmortem examination. The doctor, who conducted postmortem examination, opined that the death was caused due to passage of high voltage A.C. through the body. In course of investigation, it was found that the cause of death was due to electric shock. After completion of the investigation, final form was submitted on 30.7.2002 stating therein that death was caused due to electric shock. In paragraph-8 of the counter affidavit filed by the opposite parties 2 and 3, it is stated that Madini Tiga and Rajesh Tiga died on 29.7.2002 by coming into contact with high voltage electric line at Electric Pillar No. 65 A/4 in the village Ritibeda in the district of Sundagarah. But the opposite parties 2 and 3 denied the liability on the ground that the villagers had clandestinely taken electric line throw narrow wire to their tola and were using the same unauthorisedly. In the night of 28/29.7.2002 there was rain and storm, for which the said electric line was snapped and was lying in the paddy field. The same was not clearly visible in the eye. On 29.7.2002 at about 5.00 A.M. while the deceased Madini Tiga was proceeding to the paddy field, she could not see the electric wire and came in contact with the same.

11. Thus, in view of the undisputed facts, the writ petition is maintainable. Further the opposite parties 2 and 3 cannot deny their liability on the ground that death of Madini Tiga and Rajesh Tiga was due to act of third party.

12. Applying the principles of strict liability and *res ipsa loquitur*, this Court directs the opposite parties 2 and 3 to pay interim compensation of Rs. 1,50,000/- (One Lakhs Fifty Thousand) as claimed by the petitioners within a period of two months leaving the petitioners to workout their remedies in the common law forum for higher compensation.

13. The writ petition is allowed.