

(2010) 07 J&K CK 0011

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 808 of 2006, CMP No's. 1378 of 2008 and 268 of 2009

Hanifa Begum and Others

APPELLANT

Vs

State of Jammu & Kashmir and Others

RESPONDENT

Date of Decision : 01-07-2010

Acts Referred:

Constitution of India, 1950 — Article 21
Motor Vehicles Act, 1988 — Section 163(A)

Citation : (2010) 4 JKJ 750

Hon'ble Judges : Jai Pal Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

J.P. Singh, Judge

1. Abdul Aziz Wani, aged 40 years, a Carpenter by profession, was working on 22.05.2006 in his field, located on the right side of the National

Highway at Banihal, when on coming in contact with an Electric Pole used by the State-respondents for suspending 11 KV High Tension Aerial

Line, he was electrocuted.

2. FIR No.93 /2006 was registered in this respect at: Police Station, Banihal u/s 304-A R.P.C.

3. Hanifa Begum, aged 38 years, the widow, Javaid Ahmed, aged 27 years, the son and Mahajabeen, aged 20 years, Samida, aged 18 years,

Shahida, aged 14 years, the daughters of Abdul Aziz Wani, have approached this Court seeking issuance of directions to the respondents to pay

them Rs.54.00 lac as compensation for the electrocution of Abdul Aziz Wani, besides employment to petitioner No.2 against a suitable Class-IV

Post in the State Government service.

4. Not denying the electrocution of Abdul Aziz Wani on 22.05.2006 at Banihal the State-respondents have contested their liability to pay

compensation (sic) petitioners, urging that the electrocution was not because of any negligence on their part and that electric current had escaped

into the Pole for malfunctioning of the Electronic Device employed by them at 38/11 KV Banihal.

5. Abdul Aziz Wani's Status as Carpenter and the dependency of the petitioners on him' has been denied for want of knowledge.

6. To support their case, the petitioners have produced certified copy of the Final Police Report laid in the competent Court of jurisdiction by the

Police against Arshad Hussain and Abdul Shuban, the employees of the Power Development Department, besides the Income Certificate issued

by Tehsildar Banihal, certifying that Abdul Aziz Wani was a Carpenter by profession with monthly income of Rs.9500/-.

7. The facts revealed by the documents placed on records by the petitioners have not been denied by the learned State counsel.

8. Petitioners' learned counsel presses in the principles of the Law of Torts, besides the provisions of Article-21 of the Constitution of India, to

justify the petitioners' claim to compensation for the death of their Predecessor-in-interest, foregoing the relief of employment to one of the

petitioners. According to him, the petitioners would be satisfied with such amount of compensation, which the Court may consider just and proper,

in the facts and circumstances of the case to compensate the damage done to them by the State-respondents.

9. Learned State counsel, on the other hand, submitted that Abdul Aziz Wani's electrocution had taken place despite requisite preventive steps

taken by the State to ensure that the electric energy did not escape to harm anyone, and the State may not, thus, be liable to compensate for Abdul

Aziz Wani's death. He further submitted that the petitioners'- claim to compensation was unsustainable being unconscionable, irrational and

otherwise excessive.

10. Submissions made by learned counsel for the parties have been considered in the light of the documents forming part of the records.

11. Petitioners' plea that Abdul Aziz Wani was electrocuted on 22.05.2006 on

coming in contact with an Electric Pole at Banihal, has not been denied by the respondents and all that they urge to contest the petitioners' claim to compensation is that the death had not taken place because of any negligence on their part, as they had taken requisite measures to prevent the flow of electric energy into the Pole.

12. The first question that therefore falls for consideration is:- whether the respondents are liable to compensate the petitioners for the electrocution of Abdul Aziz Wani ?

13. Any one generating, transmitting, supplying or using electric energy of a high voltage like 11 KV, which is a hazardous and inherently dangerous activity, is required to ensure that no such energy was transmitted or discharged, unless requisite measures had been taken to prevent its uncontrolled escape, which may injure, impair or take away life.

14. Any omission in preventing the discharge of high voltage electric energy by anyone engaged in the activity of supplying such electric energy is, under Law of Torts, liable to compensate for the damage caused because of such energy.

15. The basis of such liability is a foreseeable risk, inherent in the very nature of such activity. The liability to compensate for the damage caused, is known, in law, as ""Strict Liability"". It differs from the liability which arises on account of negligence or fault in this way i.e, the concept of negligence comprehends that the foreseeable harm could be avoided by taking reasonable precautions. If the operator of such high voltage electric energy had done all that which could be done to avoid harm, it may not be held liable when the action is based on any negligence attributed; But such consideration may be wholly irrelevant in the case of ""Strict Liability"", where the operator of the activity is held liable irrespective of its having taken precautions to avoid harm.

16. Under the Jammu and Kashmir Electricity Act (Svt.) 1997, the State is licensed to deal in electric energy. While so doing, it is required to take such requisite preventive measures, as prescribed in this behalf by the Jammu and Kashmir Electricity Act and rules framed thereunder, so that the electric energy does not cause any damage to life and property.

17. Failure of the State-respondents, in this case, to take requisite measures to ensure that there was no uncontrolled discharge of high voltage 11

KV electric energy, thus makes them liable to compensate for the damage which the escape of the high voltage electric energy has caused in taking the life of Abdul Aziz Wani. Malfunctioning of the Electronic Device employed by the State to prevent such discharge, is no defence to avoid the Strict Liability", referred to herein above.

18. The State is, thus, vicariously liable to compensate the petitioners for the electrocution of Abdul Aziz Wani, which had occasioned because of the negligence of its officials, who were negligent in discharging their official duty, to ensure that there was no discharge of uncontrolled electric energy.

19. The issue as to the liability of the State and its functionaries to compensate the petitioners for the death of Predecessor-in-interest needs to be looked from yet another angle.

20. State's omission to take requisite preventive and safety measures while dealing in the transmission of electric energy has resulted in deprivation of Abdul Aziz Wani's life, thereby violating his fundamental Right to Life.

21. Loss of life of Abdul Aziz Wani has affected adversely, the quality of the life of the petitioners as well, who have been deprived of their protection and sustenance besides love, affection, emotional feelings and company of the deceased for rest of their life.

22. Fundamental Right to Life, encompasses enjoyment of life to the fullest. The enjoyment contemplated may not be conceived with injured and wounded mental state, for all enjoyments are primarily perceived, conceived and planned at the mental plane. Deprivation of the company and emotional feelings attached to the nears and dears, disturbs the mental balance, which in case of loss of spouses, sons and daughters, may last long effecting adversely, one's quality of life, in that, with the disturbed mental state, one would be disabled to enjoy life to the fullest as contemplated by Article 21 of the Constitution of India, for optimum enjoyment may be achieved when the mind is calm, composed and peaceful.

23. While dealing with the hazardous and dangerous electric energy of high voltage, in the discharge of its statutory and public duty of transmitting electric energy to the public, the State, because of the negligence of its functionaries, has deprived not only Abdul Aziz Wani but also the petitioners of their fundamental Right to Life, in injuring their emotions,

wounding their feelings, depriving them of the company of the deceased and disturbing their peace of mind thus disabling them to enjoy life contemplated by Article 21 of the Constitution of India.

24. It is, therefore, liable to compensate the petitioners not only for deprivation of Abdul Aziz Wani's life but also for the damage, which has been caused to them in reducing the quality of their life because they may not be able to enjoy life the way, they would have so done in the company and under the patronage, love and affection of Abdul Aziz Wani.

25. The State and its functionaries are, therefore, liable to compensate the petitioners for affecting adversely the quality of their life and for deprivation of the life of Abdul Aziz Wani, so as to repair the damage done to the petitioners' Fundamental Right to Life.

26. The next question to be determined is as to what should be the appropriate compensation for the damage, which the State and its functionaries have done to the petitioners.

27. The State counsel's plea that the compensation claimed by the petitioners was highly excessive, irrational and unconscionable needs to be examined in this regard.

28. According to the learned State counsel, the compensation claimed by the petitioners has to be judged, keeping in view the parameters prescribed for award of compensation in cases of death/injuries arising out of the Motor Vehicular Accidents under the Motor Vehicles Act, 1988 and when considered in this respect, the quantum of compensation claimed by the petitioners, being irrational can not be granted to them.

29. Learned State counsel is right in saying that if the formulae for assessment of compensation in Fatal Accident Cases, as indicated in the second Schedule issued u/s 163(A) of the Motor Vehicles Act, 1988, had to be applied, to assess the compensation payable to the petitioners, taking monthly income of the deceased/Carpenter at Rs.6,000/-, by deducting the amount, which he would have spent on himself had he been alive, the compensation awardable to the petitioners would be around Rs.5.00 lac, in view of the Status and Standard of the life, which they and their Predecessor, are stated to have been leading in a Village at Banihal.

30. But that principle for assessment of compensation may not be wholly applicable in this case, as the petitioners have been held entitled to

compensation not only for loss of Abdul Aziz Wani's life but also for reducing the quality of their own life

31. The compensation which would have been payable to them under the Motor Vehicles Act, may therefore need suitable increase to

appropriately compensate them for deprivation of their fundamental Right to Life too.

32. In the circumstances and keeping in view the fact that the deceased has left behind a large family, including three unmarried daughters and a

widow, who were wholly dependent on the earning of the deceased and will have to lead rest of their life in the absence of the company, love and

affection of the deceased and his income, an amount of Rs.6.00 lac in total would be, in my view, appropriate and just compensation to the

petitioners for deprivation of Abdul Aziz Wani's life and for the damage which has been caused to the quality of their life as well. The quantum of

compensation, if kept in a Fixed Deposit, and the interest generated thereon, would take care of the petitioners' sustenance and the damage caused

to them because of the death of Abdul Aziz Wani, and would thus satisfy the concept of restitutio in integrum to enable total recompense and

exemplary damages.

33. The respondents are, therefore, held liable to pay Rs.6.00 lac to the petitioners as compensation, in the following ratio:

- i) Hanifa Begum : Rs. 4,00,000/- (Rs. Four Lac.)
- ii) Javaid Ahmed : Rs. 50,000/- (Rs. Fifty thousand)
- iii) Mahajabeen : Rs. 50,000/- (Rs. Fifty thousand)
- iv) Samida : Rs. 50,000/- (Rs. Fifty thousand)
- v) Shahida : Rs. 50,000/- (Rs. Fifty thousand)

34. This Petition, therefore, succeeds and is, accordingly, allowed. A direction shall issue to the respondents to pay Rs.6.00 lac to the petitioners,

as indicated above, along with interest at the rate of 7.5% per annum from the date of the filing of the Petition till its realization, within a period of

three months.