

(1994) 04 SHI CK 0007
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 916 of 1993

Hari Dass and Others

APPELLANT

Vs

H.P. State Electricity Board and Others

RESPONDENT

Date of Decision : 19-04-1994

Acts Referred:

Constitution of India, 1950 — Article 226
Limitation Act, 1963 — Section 14, 5

Citation : (1994) 2 ShimLC 329

Hon'ble Judges : V. Ratnam, C.J.; A.L. Vaidya, J

Bench : Division Bench

Advocate : Bimal Gupta, for the Appellant; K.D. Sood, for Respondents 1 and 2, for the Respondent

Judgement

V. Ratnam, C.J.—In this writ petition, the Petitioners have prayed that the Respondents should be directed to pay a sum of Rs. 3.75 lacs as compensation in respect of the death of Smt. Kadsı Devi on 13-8-1992. The basis, upon which the Petitioners have approached this Court, is that the Respondents were negligent in the running and maintenance of the 11 K.V. Line, running from village Sarlı to Ghammerpur, via village Jalang, and that the Respondents had also acted negligently in the process of converting/repairing the 11 K.V. electric line and that had resulted in the death of Smt. Kadsı Devi, the wife of the first Petitioner, and the mOrs. of Petitioner Nos. 2 and 3, on 13-8-1992. In the reply filed by Respondent Nos. 1 and 2, in paragraph-5, it had been stated that Respondent Nos. 1 and 2 cannot be held responsible, in any way, or in any manner, for the accident that took place on 13-8-1992. According to Respondent Nos. 1 and 2, they had taken every reasonable precaution and had also fully adopted all safety devices, as required under the Rules, and there was no negligence, whatever, on their part. In addition, Respondent Nos. 1 and 2 also stated that on account of bad weather and high velocity winds on 13-8-1992, the electric-line got snapped and it was an act of God beyond the control of Respondent Nos. 1 and 2. Yet, anOrs. plea put forward by Respondent Nos. 1 and 2 was that deceased, Kadsı

Devi, tried to pull the electric-wire, while crossing the conductor and fell on the conductor and touched the service wire and that had caused her death, which was on account of her own negligence.

2. Though learned Counsel for the Petitioners strenuously contended that even on the materials available, the Petitioners have succeeded in establishing negligence on the part of Respondent Nos. 1 and 2 in the running and maintenance of the 11 K.V. electric-line, we are unable to accept this argument. A careful consideration of the contents of the writ petition and also the reply filed by Respondent Nos. 1 and 2, clearly establishes that while the Petitioners have attributed negligence to the Respondents, they, in turn, have not only disputed the negligence attributed to them, but have also pleaded an act of God, as well as, the negligence of the deceased herself for her death on 13-8-1992. In Ors. words, in the state of record as it is, it is not possible to arrive at a definite conclusion, in regard to the negligence of the deceased or the Respondents in this case and in the absence of a conclusion in favour of the Petitioners in that regard, they cannot be given or awarded any compensation in these proceedings. The question, as to who was negligent, is one of fact and has to be decided only after the parties are given an opportunity to lead evidence in that regard and, it would not be proper or desirable to embark upon a consideration of a seriously disputed question of fact in proceedings under Article 226 of the Constitution and that too, on the basis of very scanty material that has been made available to this Court.

3. Learned Counsel for the Petitioner invited our attention to various decisions to support a claim for compensation from the Respondents. Even so, we find that most of those cases arose out of the proceedings in civil suits and by way of appeals from such decrees. However, learned Counsel very strongly relied upon a judgment of this Court in Kumari Seemu alias Seems v. H.P. State Electricity Board and Ors. C.W.P. No. 279 of 1992, decided on 10-1-1994. Even that decision, in our view, does not support the Petitioners, for, it is seen that in that case, the Court felt that though, normally, the parties would be directed to agitate the matter before the Civil Court, there was sufficient evidence to examine and decide that matter even in this Court. It was under those peculiar circumstances that this Court proceeded to award the compensation on the facts and circumstances of that particular case. However, in this case, as pointed out earlier, the very fact of negligence is under serious dispute and it cannot be just assumed that the Respondents were negligent or that the deceased was not negligent, for the purposes of the present proceedings, in the absence of the material in that regard. Under those circumstances, we are inclined to feel that the Petitioners are not entitled to any relief in this writ petition and at this stage. The writ petition is, therefore, dismissed.

4. Pending admission of the writ petition, by orders dated 6-7-1993 and 1-11-1993, the Respondents were directed to deposit a sum of Rs. One lac. The actual amount, however, now available is Rs. 99,840 after deduction of Rs. 160

by way of collection charges and that amount has been invested as a fixed deposit with the United Commercial Bank and the deposit matures for payment on 7-12-1994. In the view we have taken on the writ petition, it follows that it would be open to the Petitioners to approach the Civil Court and pray for the relief of award of compensation in respect of the death of Smt, Kadsi Devi. The Petitioners are directed to so approach the Civil Court within three months from today. On such approach by the Petitioners, it would be also open to the Civil Court to consider the availability to the Petitioners of the benefits of Sections 5 and 14 of the Limitation Act, as the case may be. Till such time as the Petitioners approach the Civil Court, the amount, now invested as fixed deposit, will be retained till 19-7-1994, as such, as in any event it has to be so retained till 7-12-1994, the date of maturity. If the Petitioners do not take steps before the Civil Court asking for appropriate reliefs as directed above, it would be open to the Respondents to take back the amount together with interest, if any, on the maturity of the fixed deposit on 7-12-1994.