

(2016) 01 MAD CK 0011

In the Madras High Court

Case No : W.P. No. 32722 of 2014 and M.P. No. 1 of 2015

K. Sumathi

APPELLANT

Vs

The Government of Tamil Nadu and Others

RESPONDENT

Date of Decision : 04-01-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 174

Citation : (2016) 01 MAD CK 0011

Hon'ble Judges : T.S. Sivagnanam, J.

Bench : Single Bench

Advocate : M.R. Thangavel, for the Appellant; R. Lakshmi Narayanan, Additional Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

T.S. Sivagnanam, J.—1. Heard the learned counsel for the petitioner; Mr. R. Lakshmi Narayanan, learned counsel for the 1st respondent and Mr. M. Varunkumar, learned counsel for the 2nd respondent and with their consent, the writ petition is taken up for final disposal.

2. The petitioner, who is the wife of late G. Kannan, who died due to electrocution, has filed this writ petition claiming a sum of Rs. 30,00,000/- by way of compensation for a death of her husband. The petitioner is a young widow with two minor children aged about 13 years and 8 years.

3. The petitioner's husband is stated to have been a Real Estate Dealer and he was travelling in his motorcycle along with his son in the route from Kolagur to their farm land at Kannappadi while he was crossing Kanavaiputhur Main Road, the High Tension electric line attached to an electric pole got snapped and fell on the petitioner's husband, as a result of which, he was electrocuted and died on the spot. The petitioner's son, who was also travelling along with her husband, was thrown away from the motorcycle but however, he survived. A criminal case has been registered in Crime No. 223 of 2013 on the file of Deevattipatti Police

Station, Salem under Section 174 Cr.P.C. and the matter is under investigation. The petitioner has claimed compensation for the death of her husband due to electrocution on the ground of negligence committed by the respondent Board. The representation submitted by the petitioner claiming compensation was not considered and therefore, the petitioner approached this Court and filed W.P. No. 12786 of 2014 which was disposed of, by order dated 30.04.2014, directing the respondents to consider the representation of the petitioner on merits and in accordance with law after issuing notice to the petitioner and after conducting enquiry, orders to be passed within a period of twelve weeks. Thereafter, an order has been passed on 15.07.2014 sanctioning a sum of Rs. 2,00,000/- as ex gratia payment. This has been accepted by the petitioner without prejudice to her rights and after submitting representation to the authorities claiming compensation for the death of her husband, the petitioner has approached this Court by way of this writ petition.

4. The respondent Board have filed their counter affidavit contending that disputed questions of fact cannot be gone into in a writ petition and the petitioner has to necessarily approach the Civil Court for payment of compensation. Further, it is submitted that the snapping of electric wire was on account of natural causes and that would not amount to negligence. It is submitted that the Board has paid a sum of Rs. 2,00,000/- to the petitioner being an ex gratia amount in terms of the Board Proceedings No. 5 dated 29.04.2013.

5. After hearing the learned counsel for the parties and perusing the materials placed on record, it is seen that the case of death of the petitioner's husband is not in dispute. The petitioner's husband died due to electrocution on account of the High Tension electric wire getting snapped and falling on the petitioner's husband. The petitioner's son, who was also travelling in the motorcycle, was thrown away and he sustained injuries and was an inpatient. In the light of the above facts that the respondents cannot dispute the cause of death of the petitioner's husband and the respondent Board is liable for payment of compensation. Though the respondent will submit that the electric wire got snapped on account of natural causes, the same cannot be a reason to absolve them from payment of compensation, since the respondent Board is bound to maintain the High Tension wire in proper condition and if the wire got snapped for certain reasons, obviously, the Board would be responsible for the consequences. Therefore, the plea raised in the counter affidavit filed by the 2nd respondent stating that the Board is not negligent, cannot be accepted. This leaves us with the only issue, as what would be the just and fair compensation payable to the petitioner for the death of her husband. The amount of Rs. 2,00,000/- which has been paid to the petitioner is not compensation for the death of her husband but it is an ex gratia amount which is paid to all cases of electrocution deaths. Therefore, the amount of Rs. 2,00,000/- paid by the Board, pursuant to the order dated 15.07.2014, cannot be reckoned as a compensation and that is a separate payment as an ex gratia amount, sanctioned at the

discretion of the Board. Therefore, the said amount cannot be taken into consideration while computing the compensation.

6. The petitioner's husband is said to be engaged in Real Estate business but however, there is no document available to substantiate such claim. Furthermore, nothing has been placed on record to show as to whether the petitioner's husband was an Income Tax Assessee. The incident occurred while the petitioner's husband was travelling in his motorcycle along with his son to their farm land. The petitioner's husband is said to be the owner of the two wheeler which was driven by him on the fateful day. Therefore, this Court is constrained to determine the compensation by fixing a notional income and considering the overall circumstances, the notional income can safely be fixed at Rs. 6000/- per month and after deducting 1/3rd amount towards personal expenses of the petitioner's husband, Rs. 4,500/- could be arrived at the monthly loss of income. With regard to loss of consortium, loss of love and affection towards the petitioner and two minor children, the petitioner is entitled to reasonable compensation, more particularly when they are minor children and the petitioner is a young widow who is not employed. Therefore, this Court determines the amount payable towards loss of consortium, loss of love and affection at Rs. 2,00,000/-. Since the petitioner's son also was an inpatient in the hospital as could be seen from the FIR and the petitioner would have incurred expenses for transportation, treatment etc., apart from funeral expenses for her husband which is computed as Rs. 20,000/-. Thus, considering the overall circumstances, this Court is of the view that a sum of Rs. 10,00,000/- as compensation, would meet the ends of Justice and accordingly, the said sum is awarded as compensation for the death of the petitioner's husband as full and final settlement.

7. It is submitted by the learned counsel for the petitioner that when receiving the ex gratia payment of Rs. 2,00,000/-, the petitioner's mother-in-law (mother of the deceased) has given No Objection Certificate to enable the petitioner to receive the entire amount. This No Objection Certificate would equally apply to the compensation payable pursuant to this order. Thus, out of the amount of Rs. 10,00,000/- awarded as compensation, the 2nd respondent shall pay a sum of Rs. 5,00,000/- to the petitioner and the remaining amount of Rs. 5,00,000/- shall be deposited in the names of the minor children in equal proportion in a Nationalised Bank in an interest bearing account showing the petitioner as mother and natural guardian and the children on attaining majority, they would be entitled to withdraw the same together with accrued interest from the Bank without reference to the 2nd respondent. As observed earlier, the above amount of compensation of Rs. 10,00,000/- is over and above the ex gratia amount of Rs. 2,00,000/- already paid.

8. The Writ Petition is allowed on the above terms. No costs. Consequently, connected Miscellaneous Petition is closed.