

(2016) 07 OHC CK 0048

In the Orissa High Court

Case No : Writ Petition (C) No. 29197 of 2011.

**Kanchan Behera and Others - Petitioners @HASH Managing Director,
CESU and Others - Opposite parties**

Date of Decision : 01-07-2016

Acts Referred:

Fatal Accidents Act, 1855 — Section 1A

Citation : (2016) AAC 2238

Hon'ble Judges : Dr. A.K. Rath, J.

Bench : Single Bench

Advocate : Mr. Susanta Ku. Pradhan-2, Advocate, for the Petitioners; Mr. Radharaman Das Nayak, Advocate on behalf of Mr. S.C Panda, Advocate, for the Opposite Parties

Final Decision : Allowed

Judgement

Dr. A.K. Rath, J. - In this writ petition 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. 7,50,000/- with 12% interest per anum towards compensation for the death of Daitary Behera and four

cattle in electrocution.

2. Shorn of unnecessary details, the short facts of the case of the petitioners are that on 5.10.2006 at about 5 P.M while the deceased Daitary

Behera was returning from his field with four cattle, he came in contact with 11 K.V live wire, which was lying in Pandua canal being detached

from the electric pole, as a result of which he along with the cattle died at the spot. U.D.G.R Case No.42 of 2006 was registered at Parjang Police

Station. Inquest was done by the concerned police. Thereafter, the dead body was sent for post-mortem to C.H.C Parajang. The I.O after

completion of the investigation submitted the final form by stating therein that

the death of the deceased was due to electric shock. The doctor, who conducted the post-mortem, opined that the cause of death of Daitary Behera was due to electrocution. Be it noted that the post-mortem was also conducted on the dead bodies of two cows, one calf and one bullock by the Veterinary Assistant Surgeon, Parjong, Dhenkanal, who submitted the reports, vide Annexure-4 series. The Veterinary Assistant Surgeon opined that the death was due to electric shock.

3. Pursuant to issuance of notice, a counter affidavit has been filed by the opposite parties stating therein that no H.T line was drawn at the place of occurrence. Only L.T lines were drawn at the place of occurrence and it was being maintained regularly. No written intimation was made by the villagers regarding non-maintenance of electric lines running over the place of occurrence. It is further stated that due to thunder shower and high speed wind occurred before the accident, the conductor was snapped for which the said unfortunate accident occurred. The same was an act of God. It is further stated the opposite parties were no way responsible for the said accident and, as such, not liable for the payment of compensation to the petitioners.

4. Heard Mr. Pradhan, learned counsel for the petitioners and Mr. Das Nayak, learned counsel for the opposite parties.

5. Really two points arise 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 parties can deny the liability on the ground that the death of Daitary Behera was due to act of a third party ?

Point Nos.1 and 2.

6. An identical matter came up for consideration before a Division Bench of this Court in the case of T. Bimala v. Cuttack Municipal

Corporation, Cuttack and others, 2015 (1) OLR-637. 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 selfimposed 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 v. Deep Chand Sood*, (2001) 8 SCC 151, 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 *Nilabati Behera v. State of*

Orissa, (AIR 1993 SC 1960) wherein this Court relying upon the decision in *Rudal Sah v. State of Bihar*, AIR 1983 SC 1086 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 v. Madhya Pradesh Electricity Board and others, AIR 2005 MP 2. 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 there 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 v. Union of India, AIR 1990 SC 1480 and a Division Bench

in Gujarat State Road Transport Corpn. v. Ramanbhai Prabhatbhai, AIR 1987 SC 1690 had followed with approval the principle in

Rylands (supra). The same principle was reiterated in Kaushnuma Begum v. New India Assurance Co. Ltd., AIR 2001 SC 485.

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.(emphasis laid)

19. In M.P. Electricity Board v. Shail Kumar and others, AIR 2002 SC 551, 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 if 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 of 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.

(emphasis laid)

20. The principle of *res ipsa loquitur* is well known. It is explained in a very illustrative passage in Clerk & 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 pre-ponderance 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.

7. On the anvil of the decisions cited *supra*, the case of the petitioners may be examined. Immediately after the occurrence, the matter was

reported to the police station. The doctor conducted post mortem on the dead body of the deceased. The post mortem report reveals that the

cause of death of Daitary Behera was due to electrocution. The Veterinary Assistant Surgeon, who conducted postmortem on two cows, one calf

and one bullock also opined that death of the animals were due to electric shock. In view of the clinching material on record, the conclusion is

irresistible that Daitary Behera and four cattle died due to electrocution. As held above, 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. Authorities manning such dangerous commodities have extra duty to chalk out measures to prevent such mishaps. The opposite parties can

not shirk their responsibility on trivial grounds. The deceased was the bread earner of his family. He eked out his livelihood by selling milk. For the

death of Daitary Behera, this Court is of the considered opinion that a reasonable

amount of Rs. 2,00,000/- ought to be awarded to the petitioners. Similarly, the petitioners are entitled to an amount of Rs. 25,000/- each for the death of two cows, Rs. 5,000/- for calf and Rs. 30,000/- for bullock. Therefore, this Court directs the opposite parties to pay interim compensation of Rs. 2,85,000/-(rupees two lakhs eighty five thousand) to the petitioners within two months leaving the petitioners to work out their remedies in the common law forum for higher compensation.

8. The writ petition is allowed. No costs.