

(2002) 05 PAT CK 0071
In the Patna High Court
Case No : C.W.J.C. No. 5528 of 2000

Kanti Devi

APPELLANT

Vs

The Bihar State Electricity Board and Others

RESPONDENT

Date of Decision : 23-05-2002

Acts Referred:

Workmens Compensation Act, 1923 — Section 10, 10(1)

Citation : (2002) 3 PLJR 263

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Advocate : Choudhary Shyam Nandan, Chakrapani and P.K. Jha, for the Appellant; R.K. Dutta and Piyush Lall, for the Respondent

Judgement

Aftab Alam, J.—The husband of the Petitioner was an employee of the Bihar State Electricity Board and worked as Switch Board Operator (Class II) at the Power Sub-Station, Ram Chandpur under the Electric Supply Division (Urban), Bihar Sharif. He died at about eight in the morning on 8.10.1993. According to the Petitioner, her husband died due to electric shock received by him in an accident arising out of and in the course of his employment and in the discharge of the duty assigned to him.

2. It appears that one Lala Ram who was on duty along with the husband of the Petitioner reported the matter to Syed Ali Imam, Additional Assistant Engineer who in turn gave a written report to the police on the basis of which a case of unnatural death being Case No. 3/1993 was instituted at Deepnagar police station. In the written report, forming the basis of the police case, the death was stated to have been caused due to electric shock received by the workman in an accident arising out of and in the course of employment. The post mortem report also found that the Petitioner's husband died "due to shock caused by electricity". Apart from the above the Petitioner relies upon other materials, documentary and oral, in support of her claim that her husband died in an accident arising out of and in the course of his employment. But having regard to

the order proposed to be passed in this case, it is not required to go into the details of the evidences on the issue.

3. Suffice it to note that the Board by its resolution No. 13, dated 30.6.1988 had framed a scheme called, "the Accident Compensation Scheme, 1988" inter alia for payment of compensation to heirs of an employee dying in an accident in the discharge of duty assigned to him. The Petitioner made an application for compensation in terms of the aforesaid scheme. According to her case, after a number of reminders all that she received from the Board was, a copy of the office order No. 325, dated 22.12.1999 issued by the Director (Personnel), a copy of which is at Annexure 10. It is a brief order stating that the Petitioner's claim on being reviewed was rejected at the level of the Board. Hence, there was no need for any further consideration on that matter.

4. She then filed this writ petition challenging the office order, dated 22.12.1999.

5. On notice being issued counter Affidavits were filed on behalf of the Board and the materials coming to light present the Board and its officials in a rather poor light. It appears that the claim of the Petitioner, along with other similar claims, was taken up for consideration five years after the death of her husband and on 22.12.1998 a letter was issued by the Director (Personnel) to the General Manager-cum-Chief Engineer of the Central Area Electricity Board, Patna. Along with the letter, a tabular statement was also appended giving the relevant details of the claims under consideration. The contents of the letter and the remarks made in the tabular statement are slightly inconsistent. In respect of the claims from Nalanda Electric Subdivision, Bihar Sharif it was stated in that letter that the claims at serial Nos. 1 to 6, 7 and 11 had become more than two years old and the relevant materials in connection with those claims were still not available. Hence, those claims were liable to be rejected. The claim of the Petitioner was at serial No. 5 and thus her claim too was rejected. However, in the remarks column in the tabular statement appended to the letter it was stated in respect of the Petitioner's claim that the documents had been received and the matter was under enquiry. The manner in which the compensation claims were disposed of under the letter, dated 22.12.1998 appears to this Court to be highly unsatisfactory and the officials of the Board must be held responsible for abdication of duty and for displaying an indifferent and callous attitude towards claims for compensation for death or serious injuries suffered by its employees. In the first place keeping a claim for compensation for the death of an employee, undecided for five years is in itself a matter of grave concern; secondly if the relevant documents were not available even after five years of the death the failure was of the Board's administration and not of the claimant. The officials responsible for the default should have been taken to task rather than rejecting the claim on that ground. The manner in which the claim of the Petitioner and others was disposed of defeats the very object and purpose of the Accident Compensation Scheme and renders the Scheme quite ineffectual.

6. Be that as it may it appears that in so far as the present Petitioner is

concerned, the matter did not stop with the letter, dated 22.12.1998. Presumably, on some further petitions/representations filed by her, the matter was reviewed and further details were sought for from the General Manager-cum-Chief Engineer of the Area Board. It appears that in response to a letter from the Board the General Manager of the Central Bihar Area Electricity Board wrote a letter, dated 4.12.1999, a copy of which is at Annexure-C, to the Director (Personnel). In this letter he disputed the very claim of the Petitioner that the accident causing the death of her husband had arisen out of and in course of his employment. It was stated that from the official records it appeared that at 8 in the morning on 8.10.1993 there was no supply of energy in the power subdivision, Ram Chandpur and hence, no accident as stated on behalf of the Petitioner could have possibly taken place. He stated some other facts and circumstances which according to him, falsified the Petitioner's version regarding the death of her husband.

7. Again one can only presume that it was on the basis of this letter from the General Manager-cum-Chief Engineer that the order, dated 22.12.1999 was passed, a copy of which was sent to the Petitioner. It may be noted here that the Petitioner was never made aware of all these developments and all these materials have come to light only through the counter affidavits filed on behalf of the Board in this case

8. From the facts and circumstances stated above, one thing is clear that the parties are in dispute regarding the manner in which the death of the husband of the Petitioner took place. According to the Petitioner, her husband died as a result of receiving electric shocks in an accident arising out of and in course of his employment and in discharge of the duty assigned to him. On the other hand, the Board maintains that he could not have possibly died in the manner stated by the Petitioner and that his death did not take place in discharge of the duty assigned to him or in course of his employment. It is purely a dispute of fact which can be resolved only on taking evidence and an appropriate authority for adjudicating on a dispute of this nature is naturally the Commissioner under the Workmens' Compensation Act, 1923. As the parties are in dispute, the matter will have to go not before the Deputy Labour Commissioner but before the Presiding Officer, Labour Court, Patna-cum-Commissioner under the Act. But before sending the matter to the Commissioner under the Act one or two things need to be clarified.

9. Section 10 of the Act provides for a period of limitation of two years from the date of death but the 5th proviso to Sub-section (1) of Section 10 also makes provision for condoning the delay for sufficient reasons and in appropriate cases.

10. In the facts and circumstances of the case, as narrated above, the causes of delay lie almost entirely at the doors of the Board and, therefore, the Petitioner's claim before the Commissioner must not be rejected on the grounds of limitation alone. Under the circumstances and in order to remove all doubts this Court in exercise of its supervisory jurisdiction condones the limitation in filing the claim

and directs the Commissioner to dispose of the Petitioner's claim on merits in the manner and following the schedule as indicated below.

11. Apart from condoning the delay, this Court is also of the view that the Board must also provide to the Petitioner the basic cost of litigation before the Commissioner. The Board is accordingly directed to pay a cost of Rs. 7,000/- to the Petitioner. A bank draft drawn in the name of the Petitioner may be handed over either to the Petitioner's Advocate-on-record or to the Registrar (General) of this Court from whom the Petitioner's Advocate will obtain it on giving written receipt. The Board must give the bank draft as indicated by July 29, 2002.

12. The Petitioner is directed to file her claim petition along with the list of documents and witnesses before the Presiding Officer, Labour Court, Patna-cum-Commissioner under the Act by July 31, 2002. The Board shall file its written statement alongwith the list of documents and witnesses by August 19, 2002. The Labour Court will take up the hearing of the case from September 2, 2002 so that after recording evidences and hearing arguments of the parties, a final order may be pronounced by November 30, 2002. The rights of the parties will abide by the order passed by the Labour Court-cum-Commissioner under the Act, read with the provisions of Accident Compensation Scheme, 1988 of the Bihar State Electricity Board.

13. This writ petition stands disposed of with the above observations and directions.

14. Let a copy of the order be handed over each to the Counsel for the Board and the Petitioner.