
(2013) 07 MP CK 0069
In the Madhya Pradesh High Court
Case No : Writ Petition No. 3401 of 2005

Kheru Prajapati

APPELLANT

Vs

M.P.E.B. and Others

RESPONDENT

Date of Decision : 02-07-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 07 MP CK 0069

Hon'ble Judges : S.K. Gangele, J

Bench : Single Bench

Advocate : Suresh Agrawal, for the Appellant; Vivek Jain, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Gangele, J.—Heard. The petitioner has filed this petition in regard to award of compensation on the ground of death of his son Golu aged about six years.

2. It is submitted that when son of the petitioner had been playing he came into contact with live electric wire due to which, son of the petitioner died.

3. The respondents-MPEB in the reply submitted that the son of the petitioner at the time of playing slipped in a nearby drainage and other person, namely, Kitta S/o. Ramdas Khatik had been taking unauthorized connection from the electric poll. The son of the petitioner came into contact with electric wire which had been installed by Kitta S/o. Ramdas Khatik by taking illegal and unauthorized electricity connection, due to which the son of the petitioner was died.

4. The petitioner did not controvert the aforesaid fact. Along-with the petition documents have been filed by the petitioner to substantiate the claim that his son was died due to negligence of the respondents-MPEB. Copy of the report lodged at the police station has been filed. In the aforesaid report, it is mentioned that son of the petitioner was died due to electrocution.

5. Hon"ble the Supreme Court in the case of Chairman, Grid Corporation of

Orissa Ltd. (Gridco) and Others Vs. Smt. Sukamani Das and Another, , has held in paragraph 6 as under:-

In our opinion, the High Court committed an error in entertaining the writ petitions even though they were not fit cases for exercising power under Article 226 of the Constitution. The High Court went wrong in proceeding on the basis that as the deaths had taken place because of electrocution as a result of the deceased coming into contact with snapped live wires of the electric transmission lines of the appellants, that "admittedly/prima facie amounted to negligence on the part of the appellants". The High failed to appreciate that all these cases were actions in tort and negligence was required to be established firstly by the claimants. The mere fact that the wire of the electric transmission line belonging to Appellant 1 had snapped and the deceased had come in contact with it and had died was not by itself sufficient for awarding compensation. It also required to be examined whether the wire had snapped as a result of any negligence of the appellants and under which circumstances the deceased had come in contact with the wire. In view of the specific defences raised by the appellants in each of these cases they deserved an opportunity to prove that proper care and precautions were taken in maintaining the transmission lines and yet the wires had snapped because of circumstances beyond their control or unauthorized intervention of third parties or that the deceased had not died in the manner stated by the petitioners. These questions could not have been decided properly on the basis of affidavits only. It is the settled legal position that where disputed questions of facts are involved a petition under Article 226 of the Constitution is not a proper remedy. The High Court has not and could not have held that the disputes in these cases were raised for the sake of raising them and that there was no substance therein. The High Court should have directed the writ petitioners to approach the civil court as it was done in OJC No. 5229 of 1995.

6. Further Hon"ble the Supreme Court in the case of 2002 ACJ 337 (SC) has held as under:-

The only grievance of the petitioners relates to an observation in the impugned judgment that two victims had died because of the negligence of the petitioner State Electricity Board. Looking to the fact that the two victims were electrocuted because of an illegal hooking for the purpose of theft of electricity, the petitioners cannot be held guilty of negligence although they may have stated that there is a need for conducting dehooking raids more frequently.

7. The judgment delivered by Hon"ble Supreme Court in the case of W.B. SEB (supra) is relevant in the present case. Hon"ble the Supreme Court has held that when the victim was electrocuted because of an illegal hooking for the purpose of theft of electricity, the Electricity Board could not be held guilty of negligence. For the purpose of granting compensation, it has to be held that the Electricity Department was negligent in maintaining the electric line.

8. Similar view has been taken by Hon"ble the Supreme Court in the case of

S.D.O. Grid Corporation of Orissa Ltd. and Others Vs. Timudu Oram,

9. In this view of the matter, in my opinion, the petitioner has failed to substantiate the claim to the effect that the respondents-MPEB was negligent in maintaining the electric line. Consequently, the respondents-MPEB could not be held liable for payment of compensation on the basis of torts. Hence, I do not find any merit in this writ petition. It is hereby dismissed. The petitioner is at liberty to file Civil Suit in accordance with law. No order as to costs.