
(2009) 12 OHC CK 0061
In the Orissa High Court

Khetramani Jena and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 10-12-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 109 CLT 499 : (2010) 1 OLR 934 Supp

Hon'ble Judges : M.M. Das, J

Bench : Single Bench

Final Decision : Allowed

Judgement

M.M. Das, J.—The Petitioners in the aforesaid Writ Petitions have prayed for issuance of a direction in the nature of writ of mandamus directing the Opp. Parties to pay a sum of Rs. 3,00,000 to the Petitioners in each-of the cases as compensation for the lose of the life of the only bread-winner of the respective families of the Petitioners, who died due to electrocution on account of alleged negligence on the part of the Opp Parties. Statements as made in both the Writ Petitions show that almost at the same time on 21.9.2004, the husbands of the Petitioner No. 1 in each of the Writ Petitions were electrocuted by a live wire while they were proceeding to attend the funeral ceremony of one of their relations, namely, Sankarsan Jena. It has been stated in the Writ Petitions that on the fateful day, while both the deceased persons were proceeding to attend the funeral ceremony found a small branch of a tree had fallen on the telephone were to an extent that the same was touching the ground on the road. They, while attempting to remove the said telephone wire from the road, got electrocuted as the said wire was charged with electricity. It was found that the nearby electric pole has been uprooted resulting in live wire coming in contact with the telephone wire & due to the breaking of the branch of a tree, the said telephone wire snapped & was falling on the ground with which the deceased persons came in contact. Even the persons who attempted to rescue the deceased persons sustained injury due to electrocution. An U.D. Case was registered by the police & autopsy was conducted on the dead bodies of the said

deceased persons. It is further alleged by the Petitioners that death of the said deceased persons was caused solely due to the negligence & carelessness on the part of the electricity supply authorities.

2. Counter affidavits have been filed by the Gpp. Parties 2, 3 and 4 in each of the Writ Petitions.

In W.P. (C) No. 980 of 2005, counter affidavit has been filed by the said Opp. Parties 2, 3 and 4, inter alia, stating that the case involves disputed questions of fact, which cannot be gone into in an application Under Articles 226 of the Constitution of India. It has been further stated in the counter affidavit that the facts alleged in the Writ Petition are denied. No where in the counter affidavit, it has been refuted that both the deceased persons died due to electrocution as described in the Writ Petitions except stating that the same are not admitted. The Opp. Parties have further stated in the counter affidavits that neither the Petitioner No. 1 in both the Writ Petitions nor the villagers have ever made any representation before the NESCO authorities with regard to the alleged negligence. It was only after receipt of the notice of this Writ Petition, the Opp. Parties 2, 3 and 4 came to know about this incident & thereafter, the concerned Junior Engineer (Electrical) & the Sub-Divisional Officer (Electrical) went to the spot & came to know from the villagers that the deceased persons had been to a Neem tree beside the road & cut the branches of the said tree for collection of the wood for funeral ceremony. One of the branches of the Neem tree fell on the telephone line as a result, one telephone wire snapped & sprang up, as a result of which, it came in contact with the L.T. line. The deceased Bhagaban Sial tried to remove the green branches from the telephone wire & got electrocuted. The villagers thereafter removed the telephone wire from the L.T. line by the help of the telephone department.

In the counter affidavit filed in W.P. (C) No. 978 of 2005, the Opp. Parties 2, 3 and 4 have stated that two wire L.T. line runs on the western side of the road to Sial Sahi, whereas the telephone line was/is on the eastern side of the said road. Due to some reason, best known to the Telephone Department, one of the telephone wires/conductors snapped at the Sial Sahi Chhak and sprang up & came in contact with the existing L.T. line. There was no electrical L.T. line drawn to the village Sial Sahi towards the accident spot. Thereafter, exact statement has been made in the counter affidavit as has been made in the counter affidavit filed in, W.P. (C) No. 980 of 2005, but instead of the deceased "Bhagaban Sial", the same has been substituted by the name of "Ekadasi Jena". Such verbatim statement in both the counter affidavits not being supported by any document with regard to the enquiry conducted by the Junior Engineer (Electrical) & the Sub-Divisional Officer (Electrical) at the spot, appears to have been made only for the purpose of this case without any basis. It, therefore, cannot be construed that the allegation of negligence made by the Petitioners in both the Writ Petitions have been controverted by the Opp. Parties.

3. Learned Counsel for the parties have relied upon various case laws of the Apex

Court in support of their respective cases.

4. Mr. Lenka, Learned Counsel for the Petitioners in both the Writ Petitions relied upon the decisions in the cases of Parvati Devi v. Commissioner of Police, Delhi, 2000 (3) SCC 754 and H.S.E.B. and Ors. v. Ram Nath and Ors. : 2004)5 SCC 793.

In the case of Pravati Devi and Ors. (supra), the Supreme Court, while considering the order of rejection by the Delhi High Court in which the Petitioners therein claimed compensation on account of the death of the husband of the Appellant No. 1 by electrocution while walking on the road, observed that the death was on account of electric shock is established in view of the report submitted. But as the Appellants could not produce the relevant materials indicating the negligence of any particular officer of the authority, the High Court refused to award compensation. Once it is established that the death occurred on account of electrocution while walking on the road, necessarily the authorities concerned must be held to be negligent. Holding thus, the Supreme Court assessed the compensation to the tune of Rs. 1.00 lakh & directed the N.D.M.C. to pay the said amount.

In the case of H.S.E.B. and Ors. (supra), the Supreme Court was in an appeal against the order of the High Court which applying the principle of *res ipsa loquitor* directed payment of Rs. 1.00 lakh as compensation due to the death of a five year old child as a result of coming into contact with high tension wire which passed over the roof of her house. Considering the Judgment in the case of Chairman, Grid Corporation of Orissa Ltd. (GRIDCO) and Ors. (supra), the Supreme Court held that in order to consider the question, one has to look at the averments made in the petition & the reply to those averments. Quoting a portion of the averments made in paragraph-2 of the petition & finding that there is no denial to the said averments except that all that is claimed is that the entire colony was an unauthorized colony & that unauthorizedly the height of the house had been raised & the wires were on at the prescribed height of 20ft. from the ground level, which was as per the standard prescribed under the Rules, did not accept the submission made by the Appellant therein that the questions were disputed questions of fact. The Supreme Court further observed as follows:

The Appellants are carrying on a business which is inherently dangerous. If a person were to come into contract with a high-tension wire, he is bound to receive serious injury and/or die. As they are carrying on a business which is inherently dangerous, the Appellants would have to ensure that no injury results from their activities. If they find that unauthorized constructions have been put up close to their wires, it is their duty to ensure that construction is got demolished by moving the appropriate authorities & if necessary, by moving a Court of law. Otherwise, they would take the consequences of their inaction. If there are complaints that these wires are drooping & almost touching houses, they have to ensure that the required distance is kept between the houses & the wires, even though the houses be unauthorized. In this case, we do not find any

disputed question of fact.

Ultimately, in the said case, the Supreme Court refused to interfere with the order passed by the High Court granting compensation of Rs. 1.00 lakh.

5. Mr. Mohanty, Learned Counsel for the Opp. Parties relied upon a decision of the Supreme Court in the case of S.D.O. Grid Corporation of Orissa Ltd. and Others Vs. Timudu Oram, , wherein, the Supreme Court while deciding a batch of three appeals considered the question as to whether the High Court was justified in exercising its power Under Article 226 of the Constitution of India & awarding compensation to the Respondents-Writ Petitioners, even though the Appellants, who were the Opp. Parties in the Writ Petition had denied the liability on the ground that the death has not occurred as a result of their negligence but because of the negligence of the Writ Petitioners themselves or of an act of God or because of an act of some other persons. Considering the said questions & referring to various earlier decisions of the Supreme Court, the Supreme Court analyzing the facts of the said case where the Appellants had disputed the negligence attributed to it & no finding was recorded by the High Court that the GRIDCO was in any way negligent in the performance of its duty & considering that the case was covered by the decision in the case of Chairman, Grid Corporation of Orissa Ltd. (Gridco) and Others Vs. Smt. Sukamani Das and Another, held that the High Court erred in exercising power under Article 226 of the Constitution. Holding thus, the Supreme Court added that the Writ Petition was filed after lapse of ten years & no reason has been given for such an inordinate delay. The High Court, therefore, erred in entertaining the Writ Petition after lapse of ten years & in such case, awarding of compensation in exercise of its jurisdiction Under Article 226 of the Constitution cannot be justified.

6. Considering the pleadings of the parties in both the Writ Petitions, as already narrated above, it can be safely concluded that the Opp. Parties, in order to counter the allegation of negligence, have made out exactly similar case in the counter affidavits in both the Writ Petitions which, if read together, lead to the conclusion that the denial is, in effect, totally vague. It is true that if the facts are genuinely disputed, the jurisdiction Under Article 226 of the Constitution cannot be exercised to decide such disputed questions of fact. But, however, in the instant case, as has been held by the Supreme Court in the case of H.S.E.B. and Ors. (supra), this Court also finds that as the Opp. Parties are carrying on a business, which is inherently dangerous, it was required that they are to ensure that no injury results from their activities. The deceased persons, as stated in the Writ Petitions being ignorant of the fact that the telephone line, which was snapped & fallen on the ground, was carrying electricity having been electrocuted with the live wire drawn by the Opp. Parties, prima facie, negligence on the part of the Opp. Parties has been established. In both the aforesaid Writ Petitions, it has been averred that the deceased persons were the only bread-winner of their respective families & were at the age of youth. It has been also stated that they were labourers.

7. Testing the facts of both the cases in the light of the decisions of the Apex Court cited above, this Court is of the view that the Petitioners in each of the cases should be awarded compensation for the death of the deceased persons by electrocution.

8. This Court assesses the just compensation to be paid to the Petitioners in each of the cases on, account of the death of the deceased persons by the Opp. Parties 2 to 4 to be Rs. 2,00,000. The Opp. Parties 2 to 4 are, therefore, directed to pay Rs. 2,00,000 to the Petitioners in each of the Writ Petitions as compensation within a period of 3 months from the date of communication of this order.

9. With the aforesaid directions, both the Writ Petitions are allowed, but in the circumstances, without cost.