
(2013) 12 GAU CK 0023
In the Gauhati High Court
Case No : Writ Petition (C) No. 502 of 2011

Kichima Kalita

APPELLANT

Vs

Assam State Electricity Board (ASEB) and Others

RESPONDENT

Date of Decision : 05-12-2013

Acts Referred:

Citation : (2014) 2 ACC 454 : (2014) 1 GLT 142

Hon'ble Judges : Ujjal Bhuyan, J

Bench : Single Bench

Advocate : A. Mannaf and Mr. A.K. Ahmed, for the Appellant; Nur Mohammad, G.A. and Mr. D. Bhattacharyya, S.C., A.S.E.B., for the Respondent

Judgement

Ujjal Bhuyan, J.—By way of this petition, under Article 226 of the Constitution of India, petitioner seeks a direction to the respondents to pay compensation of Rs. 7,00,000.00 on account of death of her son due to electrocution. Heard Mr. A Mannaf, learned counsel for the petitioner and Mr. Nur Mohammad, learned Govt. Advocate. Also heard Mr. D Bhattacharyya, learned Standing Counsel, ASEB.

2. Case of the petitioner is that on 24.07.2004 at about 8.30 a.m., petitioner's son, Bijoy Kalita (since deceased) was collecting tree leaves to feed the goats. In the process, he touched the leaves and branch of a nearby tree, whereafter he suffered electric shock leading to his instantaneous death. Uncle of the deceased lodged first information before the Nalbari Police Station regarding death of petitioner's son. On the basis of the aforesaid information, Nalbari P.S. U/D Case No. 7/2004 was registered. Post mortem examination was carried out on the body of the deceased and as per post mortem examination report, the cause of death was due to electric burn.

3. Petitioner also submitted a representation before the authorities of ASEB seeking compensation. According to the petitioner, though the ASEB authorities admitted that death of the deceased occurred because of the negligence of ASEB personnel, no compensation was paid.

4. Deceased was a cycle mechanic by profession and was earning about Rs. 6,000.00 per month. He was the sole bread earner of the family and was about 24 years of age at the time of death. He was unmarried and left behind his widowed mother and unmarried sister.

5. Aggrieved by inaction of the respondents in paying compensation, petitioner has filed the present writ petition seeking the relief as indicated above.

6. Respondent Nos. 1, 4 & 5 have filed a common affidavit. It is stated that on 24.07.2004, the deceased had climbed a jackfruit tree, which was standing within the premises of one Shri Barun Kalita in whose house the deceased was staying. The deceased was cutting down a branch of the tree to collect leaves to feed the goats. The said tree stood at a distance of about 10 meters from the nearest 33KV conductor. As soon as the deceased cut the branch, it touched the 33KV conductor which caused electrocution. No prior information was given either by the deceased or by Sri Barun Kalita to the ASEB authorities about cutting the branches of the said tree. Sri Barun Kalita had in fact resisted efforts of ASEB authorities in the past to cut down the trees growing under or hanging over the 33KV line. Therefore, ASEB and its authorities cannot be held responsible for the unfortunate incident.

7. Senior Electrical Inspector, Govt. of Assam, Guwahati Zone-III in his affidavit filed on 17.08.2012 has stated that an inquiry was conducted regarding the accident pursuant to which inquiry report dated 13.07.2012 was prepared and furnished to the authority. As per the Electrical Accident Report, Bijoy Kalita died due to electrocution which had occurred because of violation of section 68(5) of the Electricity Act, 2003 and Regulations 12, 58(ii) and 103 of the Central Electricity Authority (Measures Relating to Safety and Electric Supply) Regulations, 2010 (2010 Regulations).

8. Learned counsel for the petitioner submits that as per the Electrical Accident Report, it is clear that petitioner's son had died because of negligence on the part of ASEB authorities. Therefore, petitioner should be adequately compensated by the ASEB authorities. In support of his submissions, learned counsel has placed before this Court a number of recent decisions passed by this Court awarding compensation to the dependents of victims of electrocution.

9. The fact that petitioner's son died of electrocution is not disputed. Respondent Nos. 1, 4 & 5 have also not contested the Electrical Accident Report of the Senior Electrical Inspector. In view of above, Court may proceed on the basis of the aforesaid accident report. Relevant portion of the electrical accident report reads as under:--

There is a 33KV Rangia Nalbari feeder. This feeder exists along the Rangia Balilesa Kamarkuchi Road. The accident occurred in the premises of Barun Kalita whose house is on the side of the said road. The 33KV feeder exists in front of the house of Barun Kalita. The tree was very much near the 33KV line. The clearance of the 33KV line from ground was reportedly very low. At the time

of accident there existed a ""Kathal" tree near the 33KV line in the premises of Barun Kalita. The victim late Bijoy Kalita on 24.07.2004 at about 8.30 a.m. climbed the "Kathal" tree to cut branches to feed the leaves to goats. The branches reportedly fell on the live 33KV line. At that moment Bijoy Kalita came in contact with the live line through the cut branch and after some time he shouted and he fell down on the ground. The people who gathered on the spot took him to the Swahid Mukunda Kakoti Hospital at Nalbari where he was declared dead.

From the fact and circumstances of the accident, it appears that Section 68(5) of the Electricity Act, 2003 and regulations 12, 58(ii) and 103 of the Central Electricity Authority (Measures relating to safety and electric supply) Regulations 2010 was violated by ASEB.

The provision of "The Central Electricity Authority (Measures relating to safety and electric supply) Regulations 2010 should be strictly followed by the supplier of electricity"s. The general public should be made aware of the dangers of electricity through wide publicity.

10. The post mortem report states that the cause of death is due to electric burn.

11. Having regard to the above, there can be no second opinion about the cause of death of petitioner"s son.

12. Normally and as a general rule, claims of compensation based on tortious liability are to be decided by the competent Civil Court. But in a case of loss suffered because of admitted negligence in the discharge of statutory duty, there can be no bar for a Writ Court to entertain a claim of compensation for such loss.

13. Even otherwise, considering the public character of the duties carried out by the ASEB and its successor companies, it cannot escape from the adverse consequence which may arise on account of any omission in the discharge of its duties by applying the principle of strict liability. Explaining the concept of strict liability, the Apex Court in the case of Madhya Pradesh Electricity Board Vs. Shail Kumari and Others, held as under

8. Even assuming that all such measures have been adopted, 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". It differs from the liability which arises on account of the negligence or fault in this way i.e. the concept of negligence comprehends that the foreseeable harm could be avoided by taking reasonable precautions. If the defendant did all that which could be done for avoiding the harm he cannot be held liable when the action is based on any negligence attributed. But such consideration is not relevant in cases of strict liability where

the defendant is held liable irrespective of whether he could have avoided the particular harm by taking precautions.

14. Again, this Court in the case of *Mosht. Amena Bewa Vs. Assam State Electricity Board and Others*, held as under:

12. Under the law, a very onerous obligation is cast on the Board in transmitting and supplying electrical energy. Having regard to the nature of the enterprise undertaken, the Board has to be extra vigilant and cautious so much so that the lives and properties of persons are not exposed to any risk or fatal consequences. This makes it incumbent on the Board to be meticulously watchful about the installation for supplying such energy so that any omission in maintaining the same would make it liable for all adverse consequences flowing therefrom following the principle of strict liability.

15. In view of above and considering the inquiry report of the Senior Electrical Inspector, I am of the view that ASEB and its successor company APDCL are liable to pay compensation to the petitioner for the death of her son.

16. Having held so, the next question which arises for determination is the quantum of compensation. In *Mosht. Amena Bewa v. Assam State Electricity Board & Ors. (Supra)*, this Court held that compensation under Article 226 of the Constitution of India is in the nature of a palliative and in determining such compensation, some amount of guess work is inevitable. Of course, the same has to be reasonable.

17. It has been brought to the notice of the Court that ASEB had issued an office memorandum dated 22.12.2008 fixing the amount of compensation in respect of victims (fatal) of electrical accident, who are not in the employment of ASEB. As per the said office memorandum, in the case of death of a person above 20 years and up to 55 years of age, the amount of compensation has been fixed at Rs. 1.50 lakhs. In my opinion, considering the fact that almost 5 years have passed since issuance of the said office memorandum and considering the present financial position prevailing in the country, the aforesaid amount of Rs. 1.50 lakhs is certainly on the lower side.

18. As noticed above, the deceased was a young man of 24 years of age and was working as a cycle mechanic helping the family with his earnings. He has left behind his mother (petitioner) and an unmarried sister at the time of his death to fend for themselves.

19. Considering the above, I am of the view that the petitioner should be paid compensation of Rs. 2.50 lakhs for the death of her son, late Bijoy Kalita. The aforesaid amount shall be deposited by ASEB or APDCL within a period of six (6) weeks from today in the Registry of this Court. The said amount shall be released to the petitioner on proper identification.

20. It is, however, made clear that if the petitioner is not satisfied with the aforesaid amount, it will be open to her to institute appropriate proceeding

before the competent Civil Court for higher compensation. Writ petition is, accordingly, disposed of. No costs.