
(2014) 06 GAU CK 0006
In the Gauhati High Court
Case No : W.A. No. 141 of 2014

Kiron Das

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 09-06-2014

Acts Referred:

Railways Act, 1989 — Section 123(c)

Citation : (2015) 1 GLT 52

Hon'ble Judges : Abhay Manohar Sapre, C.J.;Ujjal Bhuyan, J

Bench : Division Bench

Advocate : B. Chakraborty and A. Chakraborty, Advocates for the Appellant

Judgement

Ujjal Bhuyan, J.—Heard Mr. B. Chakraborty, learned counsel for the appellant and Mr. D. Bhattacharjee, learned Standing Counsel, Assam State Electricity Board (ASEB). By way of this writ appeal, appellant has sought for enhancement of the quantum of compensation awarded by the learned Single Judge in the writ petition filed by the appellant as the petitioner on account of death of his minor son in an electrical accident.

2. Facts lie on a narrow compass and are not disputed. In fact, order of the learned Single Judge has summed up the lis between the parties. Therefore, the order of the learned Single Judge dated 30.07.2013 passed in WP(C) No. 4300/2011 is quoted hereunder in its entirety:-

"Heard Mr. B. Chakraborty, learned counsel for the petitioner. Also heard Mr. D. Bhattacharyya, learned Standing Counsel, ASEB, I have also heard Mrs. H.M. Phukan, learned State Counsel. By means of this writ petition, the petitioner who is the father of late Sumon Das, has prayed for a direction to the respondents to pay adequate compensation for causing death of his son, who was aged about 9 years.

As stated in the writ petition, the son of the petitioner, late Sumon Das while was going to school accompanied by his younger sister Ms. Mamoni Das, met with an

accident on 24.5.2002. The accident occurred at a place called Dakshin Golaghatia Basti at about 9.30 a.m. when the deceased son of the petitioner came in contact with a live wire hanging from the electric pole. After the accident, he was taken to hospital at Hojai and thereafter he was also treated at Guwahati Medical College and Hospital. However, he died in the night of 30.5.2002/31.5.2002. An FIR was lodged with the Police Station on the basis of which UD case No. 15/2002 was registered. Post-mortem etc. was carried out and as per the report the death was due to electrocution.

In the report furnished by the Chief Electrical Inspector, it has been stated that the death of the victim was due to non-compliance of the provisions of the Central Electricity Authority (Measures Relating to Safety and Electric Supply) Regulations, 2010, for lack of checking and corrective maintenance works. The report further reveals that a day before the accident, a goat was also electrocuted in the same place. After the incident, the people of the area had informed the staff/maintenance group of Hojai Electrical Sub-division verbally. Had the appropriate and proper maintenance measures being taken and had the line being regularly and properly checked by the concerned field officials of the Sub-division, the incident could not have taken place, the report has opined.

In the counter affidavit filed by the ASEB, it has been stated that no intimation regarding falling of the line from the pole had been furnished. The ASEB has also raised the question of delay in filing the writ petition.

It is on record that earlier the petitioner had approached the State Human Rights Commission but due to non-availability of the Chairman, the matter could not process. It is submitted that the said proceeding has been withdrawn and thereafter the instant writ petition was filed in 2011. It is really unfortunate that the ASEB authority has raised the question of delay on the part of the petitioner unmindful of their own negligence which caused the death of a minor son.

In view of the above, the writ petition is allowed directing the ASEB authority to pay compensation of Rs. 1,50,000/- (Rupees one lakh fifty thousand) only. The amount shall, be deposited with the Registry enabling the petitioner to withdraw the same upon proper identification. Let the amount be deposited with the Registry as early as possible, but at any rate not later than 31.8.2013."

3. Question for consideration is entitlement of the petitioner to receive higher compensation for the death of his son, who was aged about 9 years, due to electrical accident.

4. The fact that the deceased was the son of the petitioner and was aged about 9 years at the time of his death is not disputed. It is also not disputed that the death occurred due to an electrical accident. Report of the Chief Electrical Inspector, a statutory authority, indicates that death was due to noncompliance of statutory provisions of Central Electricity Authority (Measures Relating to Safety and Electric Supply) Regulations, 2010, by the electricity supplier. As per his report, had the electricity supplier taken appropriate and proper maintenance

measures, the unfortunate incident would not have taken place. In the circumstances, learned Single Judge directed the ASEB authority to pay compensation of Rs. 1,50,000.00.

5. In the course of hearing, learned counsel for the respondents has produced an office memorandum dated 18.12.2013 of the Assam Power Distribution Company Ltd. (APDCL), a successor company of ASEB, whereby quantum of compensation to be paid to victims (fatal) of electrical accident and who are not in the employment of the company have been fixed. In a case of death of a person upto the age of 20 years, compensation fixed is Rs. 1.50 lakhs. He, therefore, submits that compensation granted by the learned Single Judge is justified. On the other hand, learned counsel for the appellant submits that considering the tender age of the victim, compensation granted cannot be said to be adequate. He has also referred to two decisions of the Hon''ble Apex Court, namely, 2009 SAR (Civil) 818, Kishan Gopal and Another Vs. Lala and Others, , Kishan Gopal & Anr. Vs. Lala & Ors.

6. Since the decision of the learned Single Judge has not been questioned on merit regarding justifiability or other wise of directing payment of compensation, we need not go into that aspect of the matter and confine ourselves to the issue as to whether the quantum of compensation awarded by the learned Single Judge can be said to be adequate in the facts and the circumstances of the case, and whether a case of higher compensation is made out.

7. Notwithstanding the above, we would like to point out that normally, as a general rule, claims of compensation based on tortious liability are decided by way of private law remedy in the Civil Court of competent jurisdiction. But in a case of loss suffered because of admitted negligence in the discharge of statutory duty by a public authority, there can be no bar to invoke the public law remedy and for a writ court to entertain a claim of compensation for such loss.

8. Even otherwise, considering the public character of the duties carried out by ASEB and its successor companies, it cannot escape from the adverse consequence which may arise or occur in the discharge of its duties by applying the principle of strict liability.

9. The concept of strict liability, also called no fault liability, is now being increasingly applied by the Indian courts. The above doctrine is an exception to the general law of torts which is based on the principle that there can be no liability without fault. The Hon''ble Supreme Court in the case of Union of India (UOI) Vs. Prabhakaran Vijaya Kumar and Others, , examined the concept of strict liability. That was a case where the Hon''ble Supreme Court was considering the death of a railway passenger due to accidental falling from a train, in the context of section 123(c) of the Railways Act, 1989. Examining the above concept, it was held that strict liability focuses on the nature of the defendant's activity rather than on any negligence. There are many activities which are so hazardous that they may constitute a danger to the person or property of another. The principle

of strict liability is based on the proposition that the one who undertakes such activities has to compensate for the damage caused by him irrespective of any fault on his part. Thus, in a case where the principle of strict liability applies, the defendant has to pay damages for the injury caused to the plaintiff even though the defendant may not have been at any fault.

10. The principle of strict liability has found recognition in various statutes, such as, Workmen's Compensation Act, 1923, Motor Vehicles Act, 1988, Railways Act, 1989, the Public Liability Insurance Act, 1991 etc.

11. Various facets of compensation as a public law remedy were gone into by the Hon'ble Supreme Court in the case of Municipal Corporation of Delhi, Delhi Vs. Association of Victims of Uphaar Tragedy and Others, . The aforesaid decision was rendered in the context of the Uphaar Cinema tragedy in Delhi, which led to the death to the 59 cinegoers and injury to 103 others. The Apex Court referred to various earlier decisions starting from Rudul Sah Vs. State of Bihar and Another, and Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others, to buttress the point that award of compensation against the State is an appropriate and effective remedy for redressal of an established infringement of a fundamental right under Article 21 by a public servant. It was held that what can be awarded as compensation by way of public law remedy need not only be a nominal palliative amount, but something more. While determining the quantum of compensation, it was held that guidance may be had or reliance may be placed on the schedule of compensation fixed under various statutes, such as, the Motor Vehicles Act or the Workmen's Compensation Act. In the above case, reliance was placed on the decision of the Hon'ble Supreme Court in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, to determine the quantum of compensation. Justice Radhakrishnan in his separate judgment referred to the case of Prabhakaran Vijaya Kumar & Ors. (Supra) and held that the principle of strict liability covers public utilities like railways, electricity distribution companies, public corporations etc., which may be social utility undertakings not working for private profit. In such a case, the highest degree of care is expected from private and public bodies especially when the conduct causes physical injury or harm to persons.

12. In the case of Kishan Gopal & Anr. (Supra), the Apex Court referred to its decision in Lata Wadhwa and Others Vs. State of Bihar and Others, , where the view was taken that in case of death of children in the age group of 5 to 10 years, the amount of compensation should be around Rs. 1,50,000.00 lakhs to which under the conventional heads a sum of Rs. 50,000.00 should be added and, thus, total amount in each case would be Rs. 2,00,000.00. In the case of R.K. Malik & Anr. (Supra), the Apex Court took the view that in case of death of children, future prospects should also be taken into consideration, but observing at the same time that there is no yardstick to measure the loss of future prospects of such children. However taking the view that denying compensation towards future prospects would be unjustified, the Apex Court following the

decision in *Lata Wadhwa (Supra)*, granted additional compensation of Rs. 75,000.00 as compensation for the future prospects of the child. Having regard to the facts and circumstances of the case and keeping in mind the legal principles noticed above, we are of the view that it would meet the ends of justice if the quantum of compensation awarded to the petitioner is enhanced by further sums of Rs. 50,000.00 under conventional heads and Rs. 75,000.00 on account of future prospects (total Rs. 1,25,000.00). This amount will be in addition to the amount of Rs. 1,50,000.00 awarded by the learned Single Judge. Respondents shall deposit the additional amount of Rs. 1,25,000.00 in the Registry of this Court within a period of eight (8) weeks from today and the said amount shall be released to the appellant on proper identification. Writ appeal is accordingly allowed to the extent indicated above. No costs.