
(1994) 01 SHI CK 0011
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 279 of 1992

Kumari Seemu alias Seema	Vs	APPELLANT
Himachal Pradesh State Electricity Board and Others		RESPONDENT

Date of Decision : 10-01-1994

Acts Referred:

Constitution of India, 1950 — Article 226
Electricity Act, 1910 — Section 33

Citation : (1995) 1 ACC 88 : (1994) ACJ 623 : AIR 1994 HP 139 : (1994) 2 ShimLC 1

Hon'ble Judges : Bhawani Singh, Acting C.J.; D.P. Sood, J

Bench : Division Bench

Advocate : G.D. Sharma, for the Appellant; K.D. Sood and M.S. Guleria, Dy. A.G., for the Respondent

Judgement

Bhawani Singh, Ag. C.J.

1. Kumari Seemu alias Seema (minor) has preferred this petition through her father seeking compensation of rupees five lacs from the respondents for the permanent physical disability suffered by her on account of the negligence in the maintenance of 22 KV transmission line resulting in an electric shock necessitating amputation of her forearm. The facts of the case be stated now in order to understand and appreciate the matter properly.

2. The petitioner submits that installation, maintenance and control of entire electric system in the State is vested with the respondents. It is managed by it through its employees. 22KV supply line to Kui and Kangteri Panchayats passes through Bachhoch transformer to Saras transformer. The respondents were negligent in the maintenance of the line. One of the live wire was unscrewed and loose from the poles as a result of which it was only three feet above the ground level and hardly 30 meters away from the house of the petitioner. While collecting green vegetables from the fields, the petitioner came in contact with this live wire and suffered severe burn injuries on her head, right hand, stomach

and eyes. She was admitted in civil hospital, Rohru, on 20-2-1991 (Annexure P-1). First Information Report was also lodged with police station, Rohru, on the same day (Annexure P-2). The petitioner was referred to Indira Gandhi Medical College, Shimla, where she remained admitted from 21-2-1991 to 10-4-1991 (Annexure P-3). Her right hand developed gangrene and it was amputated from below the elbow. Besides suffering severe bodily pain at the age of 11 years while studying in 6th class, approximately rupees five thousand were spent on medicines and rupees twenty thousand towards special wards and other miscellaneous expenditure during this time (Annexure P-4). Disability Certificate, pointing out 70 per cent permanent physical disability was issued by Professor of Surgery Dr. D. C. Marwaha of Indira Gandhi Medical College, Shimla (Annexure P-5). Even after her discharge from the Indira Gandhi Medical College, Shimla, the petitioner is under continuous treatment. She has to visit Medical College, Shimla, as well as P.G.I. Chandigarh.

3. A legal notice (Annexure P-6) was served upon the respondents claiming rupees five lac by way of damages for causing physical injuries to the petitioner making her whole life totally miserable. The respondents replied to the said notice on 1-7-1991 (Annexure P-7). When the respondents failed to decide the matter, the present petition has been filed.

4. Respondent No. 3 (Er. A. K. Vij, Electrical Inspector, H.P., Shimla) has filed affidavit in this case. He has submitted that Section 33 of the Indian Electricity Act, 1910 empowers the Electrical Inspector to enquire into the cause of an electrical accident after receipt of information. The investigation was carried out by the Assistant Electrical Inspector at site on 14-6-1991. The related documents were asked for and the evidence was summoned. The investigation report was released by the Assistant Electrical Inspector on 20-6-1992. It is recorded in this report that :

"The 22 KV HT line from Macheoti (Bachhonch) to Khangteri crosses through the fields at village Dhara. There is a wooden three pole structure (say Po) erected at Dhara from where H. T. spur has been taken out for Sub-Station at Barla located just half K.M. away from the tapping structure.

The maintenance of this H.T. line up to Barla Sub-Station and from Dhara to Khangteri has been entrusted with the fields technical staff under Rohru and Baghi Sub-Divisions respectively. Towards Khangteri there has been a wooden single pole (say P. 1) erected in the fields next to the three pole structure and this span is short. The next (second) wooden pole (say P.2) of the line has been erected across the road and nullah crossings resulting abnormality in span and ground clearances between these two poles (P.1 and P.2).

Ten days prior to this accident, Sh. Sohan Lal T. Mate did maintenance work on the H. T. line towards Khangteri after the three pole structure with inadequate material and labour, which was damaged due to heavy storm and snow and left some work unattended for want of poles and extra labour. He proceeded on leave

w.e.f. 11-2-91 and on resuming duty on 18-2-1991 intimated his Junior Engineer incharge Sh. Het Singh at Khadralla that ground clearance of the span between poles P. 1 and P.2 has been about 10 to 12 feet and he should be given pole and labour so that by providing a new pole in between, the ground clearance could be improved. The requisite material and labour could not be provided to him in time, since 22 KV Deoli feeder too, was stated to have failed and the field technical staff of the section was busy attending it. The T. Mate was assured of needy material and labour after 4-5 days. Sh. Sohan Lal left for village Fista with Sh. Dhani Ram beldar for repairing of damaged L.T. lines. After working for two days there, he noticed on 21-2-1991 that power supply to Khangteri Sub-Station was cut off. He patrolled the H.T. line up to village Dhara where he was informed by Sh. Yog Raj Beldar that G.O. Switch of the line was lying isolated because a girl of village Barla met with accident under the H.T. Line.

On 22-2-91 Sh. Sohan Lal T. Mate informed Sh. Met Singh J. E. at Khadralla about the occurrence of accident and position of the H.T. line conductors. Next day on 23-2-91 the T. Mate along with two other beldars S/Shri Dhani Ram and Raj Kumar arranged one wooden L.T. pole from Sh. Ram Saran panch at village Dhara and erected it in the fields between poles P.1 and P.2 and resagged the H.T. conductor, but ground clearance of the span was still inadequate at the site of accident for want of proper length H.T. pole, despite of lapse of about 1 1/4 years after the occurrence of this accident.

On 10-2-91, when field technical staff finished maintenance work on the H.T. line, all the three conductors of the span between poles P.1 and P.2 were already loose with inadequate ground clearances. The bindings of conductors on Pin Insulators at Pole P.1 were also not proper. With heavy storm and snow, the conductors slipped from the Pin Insulators. Two conductors rested on wooden cross arm at Pole PI making the ground clearances about 7 to 8 feet. The third conductor came out even of the cross arm at P.1 and hanged between the structures, P.1 and P.2 with ground clearance of about 3 feet. Power supply on the feeder did not trip from the controlling sub-station since all the three conductors hanged in air.

In the afternoon of 20-2-91 Miss Seema was collecting vegetables in the fields nearby along with with her mother and sister. In the process, she came very close to the hanging live H.T. conductor. The sickle (Darati) caught in her right hand for plucking vegetables etc. by chance touched the H.T. wire and she experienced severe shock with electric burns on her body. She was hospitalised at Rohru on 20-2-91 from where she was referred to I.G.M.C. Hospital at Shimla. She remained under treatment there w.e.f. 21-2-91 to 10-4-91 where her right hand was amputated below the elbow. As per disability certificate issued by the Associate Prof. Of Surgery IGMC Shimla, percentage disability to the tune of 70% has been evaluated in this case. Executive Engineer (E) Jubbal should submit compensation case to the authority concerned immediately.

This accident could be averted if timely action to provide needy material and

labour would have been taken by the Junior Engineer concerned. Also he or the Sub-Divisional Officer (E) Baghi did not feel it necessary to visit the site of accident immediately and to get the repair and maintenance work done on the H.T. line in their presence which is a matter of concern. Instead, instructions were passed on to lower field technical staff, who were incompetent to arrange men and material at their level. It is, therefore, recommended that responsibility is fixed and disciplinary action taken against defaulting officers/officials for negligent act in this accident case."

5. The probable cause of accident, according to the Assistant Electrical Inspector, is recorded as under :

"Sudden contact of victim's body through sickle with live H.T. conductor has led to this accident."

6. Respondents Nos. 1, 2, 4 and 5 have filed their reply through Er. P. C. Sharma, Superintending Engineer (OP) Circle. Claim preferred by the petitioner for rupees five lacs for receiving burn injuries as a result of touch of live wire has been admitted. However, it has been submitted that the petitioner has not selected proper forum to seek the remedy by approaching this Court under Articles: 226/227 of the Constitution of India. Negligence on the part of the respondents in the maintenance and up-keep of the line has been denied. The conductor of 22 KV HT line got loosened due to bad weather and high velocity of wind on the night intervening 19-2-91 and 20-2-1991. It was an act of God beyond the control of the replying respondents and, therefore, no responsibility can be put on their shoulders. Further, no legal and vested right of the petitioner has been violated in any way and the accident had not taken place due to any fault of the respondents. The petitioner herself was responsible for the happening. It is admitted that the 22 KV HT line was under their control and maintenance. However, the accident took place in circumstances over which they had no control. No negligence is attributable to the replying respondents.

7. The petitioner has filed the rejoinder opposing the plea taken by these respondents. It has been denied that there was bad weather during the night intervening 19-2-91 and 20-2-91. As a matter of fact, the weather was absolutely clear and there was no snow fall or rains etc. This fact is clear from the report of Roznamcha of Patwari Halqua Bachhonch (Annexure P-8). The contention that it was an act of God has been seriously contested and it has been asserted that the accident has taken place on account of the negligence of these respondents in the maintenance of this line which fact is clear from the photographs placed on the file and the report of the Assistant Electrical Inspector.

8. The doctors of PGI, Chandigarh, have advised the petitioner for further amputation of the arm and this operation is likely to take place shortly. The petitioner has every right to maintain the present petition in this Court and claim damages from the respondents. There being clear evidence about the negligence of the respondents, the matter can be conveniently and effectively decided by

this Court. It does not require any further evidence. These are some of the essential pleas taken by the parties in this case.

9. So far as the maintainability of this petition in this Court is concerned, Shri K. D. Sood, learned counsel for respondents Nos. 1 and 2, frankly admitted that this Court has jurisdiction to entertain the petition and grant damages. We are of the opinion that there is sufficient evidence on the case file to examine and decide this matter in this Court. We would have thought of awarding interim damages and left the parties to agitate the matter before the Civil Court in case of lack of evidence to appreciate the matter. This is not so in the present case.

By now, it has been held in large number of cases that this Court can entertain such like petitions(See : S.P. Gupta Vs. President of India and Others, ; Rudul Sah Vs. State of Bihar and Another, ; Bandhua Mukti Morcha Vs. Union of India (UOI) and Others, ; Bhim Singh, MLA Vs. State of Jammu & Kashmir and Others, ; M.C. Mehta and another Vs. Union of India and others, ; Jaram Singh Vs. State of H.P. and Others, . Smt. Kalawati and Others Vs. State of Himachal Pradesh and Another, ; Thressia Vs. K.S.E.B., ; A.S. Mittal and Another Vs. State of U.P. and Others, ; Saheli, A Women's Resources center, Through Ms Nalini Bhanot and Others Vs. Commissioner of Police Delhi Police Headquarters and Others, ; Assam Sillimanite Ltd. and another Vs. Union of India and others, Govt. of Tamil Nadu and another Vs. R. Thillaivillalan, ; Supreme Court Legal Aid Committee Vs. State of Bihar and Others, ; University of Kerala and Others Vs. Sandhya P. Pai and Others, ; Smt. Kumari Vs. State of Tamil Nadu and others, ; Padma Behari Lal Vs. Orissa State Electricity Board and Another, ; Rabindra Nath Ghosal Vs. University of Calcutta and others, ; Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others, and 1993 (1) S LC 340, Mohan Lal v. State of Himachal Pradesh).

10. Turning to the crucial question in this case, the most important evidence in this case is the report of the Assistant Electrical Inspector. It is a statutory report u/s 33 of the Indian Electricity Act, 1910. We have reproduced the essential parts of this report in the preceding part of this judgment in order to appreciate the matter correctly. It is apparent from this report that it was on account of the serious lapse on the part of respondents 1, 2, 4 and 5 in not maintaining the line properly that the accident had taken place. The report of the Assistant Electrical Inspector is supported by large number of photographs placed on the case file by the petitioner and the first Information Report.

11. The defence of vis-major setup by the respondents is completely without any satisfactory evidence. It stands demolished by the report of the Patwari of the area. The respondents Nos. 1,2,4 and 5 have also not assailed the report of Assistant Electrical Inspector placed on the case file. The result, therefore, is that negligence of respondents Nos. 1, 2, 4 and 5 has been established completely and they are responsible for the accident in question.

12. Sh. K. D. Sood, learned counsel for respondents Nos. 1 and 2, submitted that

looking to the nature of the injury received by the petitioner, the compensation payable should be between Rs. 60,000/- to Rupees 1,00,000/-. Decisions like 1984 A CJ 559 Pushpa Thakur v. Union of India; M/s. Azad Nakodar Bus Service (P) Ltd. and another Vs. Harbans Singh and others, and U.P. State Road Transport Corporation Vs. Km. Sarita, were cited in this connection. From the opposite side, reliance was placed on Kumari Alka Vs. Union of India and others, where for lack of good management in running motor of water pump a tender age girl (6) lost two fingers of her right hand and she was awarded compensation of Rupees 1,50,000/- with interest at the rate of 12 per cent.

3. It was further contended by the learned counsel for the petitioner that the petitioner is of quite young age and her life has become miserable on account of the negligence of respondents Nos. 1, 2, 4 and 5. She had to undergo two operations and her right arm has been amputated. Not only this, she had received severe burn injuries on other parts of her body on account of this accident. In the circumstances, it would be most reasonable to award her rupees five lac by way of compensation so that she is able to sustain her life in future. We have considered the matter carefully. It is our considered opinion that the respondents were completely negligent in the maintenance of the electricity line in question. It was a supply line of 22 KV. obviously, extra care should have been taken by the respondents in looking after this line. Facts disclosed by the Assistant Electrical Inspector in his report clearly demonstrate gross negligence on the part of respondents Nos. 1, 2, 4 and 5 in maintaining this line. In face of the evidence available in this case, the defence of vis-major taken by these respondents is to avoid the responsibility without any sound footing. In our opinion, such a defence should not have been taken.

14. It is undeniable that the petitioner suffered large number of injuries on her body on account of this accident. She remained in the hospitals at Rohru, Shimla and Chandigarh for long time. One amputation has been undertaken. Further amputation of the arm has also been advised. She has suffered gravely all through physically and mentally. More she is likely to suffer in future. She is a teen-ager studying in the 6th class for the present. Obviously, future for her appears to be quite bleak. In order to compensate her for the injuries sustained by her and to enable her to sustain life, some reasonable compensation has to be awarded. We think, in the aforesaid background, it would be most reasonable to award her rupees two lac by way of compensation, putting end to the controversy once for all.

15. Accordingly, this writ petition is allowed. Respondents Nos. 1, 2, 4 and 5 are directed to pay rupees two lac by way of compensation to the petitioner.

16. The balance amount of compensation be deposited in the Registry of this Court within one month from today. The total amount of compensation be put in two fixed deposits, one of which would be of rupees fifty thousand. The fixed deposit of Rs. 50,000/- would be for a period of one year and the other till the petitioner attains majority. The petitioner is given liberty to apply for the release

or reasonable amount(s) for meeting the medical and educational expenses. The writ petition is decided in the aforesaid terms with no order as to costs.