
(2011) 11 PAT CK 0083
In the Patna High Court
Case No : CWJC No. 12960 of 2006

Lallan Prasad Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 08-11-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Electricity Act, 2003 — Section 161
Motor Vehicles Act, 1988 — Section 166

Citation : AIR 2012 Patna 55 : (2012) 1 PLJR 728

Hon'ble Judges : Ahsanuddin Amanullah, J

Bench : Single Bench

Advocate : Bindhyachal Singh, Prashant Sinha, Umesh Kumar and Sushil Kumar Singh, for the Appellant; Vinay Kirti Singh for No. 4, 5 and 6, for the Respondent

Final Decision : Allowed

Judgement

Ahsanuddin Amanullah, J.—Heard Mr. Bindhyachal Singh, learned counsel for the petitioner and Mr. Vinay Kirti Singh learned counsel appearing for the Bihar State Electricity Board (hereinafter referred to as the "Board") i.e., respondents no. 4, 5 and 6 as well as learned A.C. to G.P.-20 for respondents no. 1 to 3. The present writ application has been filed for seeking compensation of Rs. 5 lacs alongwith 18% interest to the petitioner on account of Electrocution of the father of the petitioner resulting in death due to snapping of electric wire.

2. The brief facts relevant for the disposal of the present writ petition are as under.

3. The petitioner alongwith his father were returning with agricultural produce on their bicycle and on their way, it is alleged that high tension electric wire running overhead fell down upon the petitioner as a result of which the bundle of dried maize plants being carried by the petitioner's father got burnt, he fell down on the ground and was electrocuted on 7.10.2003. This was also reported in the daily newspaper. The F.I.R. was lodged to this effect and it was clearly stated

that the death was due to electrocution and upon the villagers informing the local officials of the electric sub-station, the line was cut before the body could be removed. U.D. case was registered and final form was submitted in which it was stated that death had been due to electrocution as a result of high wire tension snapping and falling on the father of the petitioner. The inquest report as well as post mortem report also states death due to electrocution and the body and skin being burnt substantially. Learned counsel for the petitioner submits that the petitioner, who is the son of the deceased, is entitled to compensation since the high tension wire of the respondent Board fell upon his father causing his death and the law being well settled in these matters. According to him, the respondent Board cannot deny the liability of compensation to the petitioner for such an incident. He emphasized the fact that death due to electrocution has not been denied and also the fact that it is nobody's case that death resulted from the negligence on the part of the deceased or that there was no negligence on the part of the respondent Board. He has submitted that as per the various decisions of the Courts it has been held that where the facts speak for themselves, the strict requirement of proof by leading evidence etc. is not required and the Courts can proceed to pass order on the basis of such apparent facts as emanating from the facts and the records. In fact the doctrine of "res ipsa loquitor" is applicable in the facts and circumstances of the present case.

4. Learned counsel for the petitioner has relied on various decisions including that in the case of-

(i) Ramawati Kuer vs. The State of Bihar & Ors. reported in 2004(4) BBCJ 230 especially paragraphs no. 10, 11, 12 and 13 of the same. [Also reported in 2004 (4) PLJR 307]

(ii) Ram Swaroop Yadav Vs. Bihar State Electricity Board and Others the relevant being at paragraphs no. 6, 7 and 8. The said decision has been affirmed by the decision reported in 2006 (3) BBCJ 192 [: Bihar State Electricity Board and Another Vs. Ramswarup Yadav and Others, .

(iii) Dr. Vishwanath Prasad vs. The State of Bihar & Ors. reported in 2010(1) PLJR 986.

(iv) Md. Kashim Sah & Ors. vs. The State of Bihar & Ors. reported in " 2011(3) PLJR 408.

(v) Madhya Pradesh Electricity Board Vs. Shail Kumari and Others, , relevant being at paragraph no. 7 (Also reported in Madhya Pradesh Electricity Board Vs. Shail Kumari and Others, .

5. Learned counsel submits that in view of the aforesaid decision as well as the present facts of the case the respondent Board cannot shirk its responsibility from paying compensation on account of the death of the father of the petitioner due to electrocution.

6. Learned counsel for the respondents on the other hand has resisted the claim.

According to him the writ petition is not maintainable since it has been filed after much delay and thus there are laches on the part of the petitioner in approaching the Court and on this ground alone the writ petition ought to be dismissed. Secondly, he submits that negligence on the part of the respondent Board has not been proved and this being the major factor for deciding such cases, this Court ought not to pass any order in favour of the petitioner. He also submits that the income of the deceased has not been proved and thus it is difficult for this Court to quantify any amount which can be payable to the petitioner if otherwise proved and found payable in accordance with law. Learned counsel has drawn the attention of this Court to Section 166 of the Motor Vehicles Act (hereinafter referred to as the "M.V. Act") which provides that any person who is either himself aggrieved by any accident or loss can move for compensation or it can be filed by the legal representative or any one of them provided the other legal representatives are also made parties in the proceedings. He states that only one major son of the deceased has filed the writ petition and thus, due to lack of compliance of the statutory requirement under the M.V. Act which is relevant for the purposes for deciding compensation, the writ petition is not maintainable.

7. Learned counsel for the respondents has also drawn the attention of this Court to Section 161 of the Electricity Act, 2003 (hereinafter referred to as the "Act") which in fact says that in any such incident or accident a person has to inform the Electrical Inspector who shall conduct an enquiry and then give a report including the issue as to whether proper care was taken for maintaining the safety of transmission line which affects the general public at large. According to him, in view of the non-compliance of any of this provisions on the part of the petitioner, the writ petition should not be entertained and should be rejected outright. He has drawn attention of this Court to various orders/judgments which are noted hereinbelow:-

(i) Chairman, Grid Corporation of Orissa Ltd. (Gridco) and Others Vs. Smt. Sukamani Das and Another, the relevant being at paragraph no. 6. (Also reported in AIR 1999 SC 3412).

(ii) S.D.O. Grid Corporation of Orissa Ltd. and Others Vs. Timudu Oram, , the relevant being at paragraph no. 6.

(iii) Jacob Mathew vs. State of Punjab and Anr. reported in 2005 (4) PLJR (S.C.) 213, the relevant being at paragraphs no. 10 and 28.

(iv) Sheet Basant Pashwan Vs. The State of Bihar and Others, , order dated 15.5.2008. In the said case the facts were that there was a complaint by the local people that the wire was old and damaged and also that the deceased had come in contact with the line/wire and died. The Court felt that because it was in dispute whether there was negligence on the part of the Board in not maintaining the line, which was even admitted by the petitioner, inasmuch as that the local people had made a complaint, therefore in the absence of appropriate

adjudication proving negligence on the part of the Electricity Board, no order for compensation should be passed. The facts being materially different from the present case, the said decision does not come to the aid of the respondents. This decision not being reported, learned counsel for the respondents has placed" on record a photo copy of the same. Let it be kept on record.

8. The case was filed on 30.10.2006 and was taken up on 6.7.2011, 7.7.2011, 26.7.2011, 18.8.2011, 22.9.2011 and 13.10.2011. In spite of several indulgence no counter affidavit has been filed. The case was heard at length on 4.11.2011 and was posted today for orders. However, this Court had given indulgence that learned counsel may assist if there was anything relevant before the Court passed order on 8.11.2011, that is, today. During the course of argument learned counsel for the respondent Board sought permission to file counter affidavit stating that he has already served a copy on the learned counsel for the petitioner. This Court, in view of the past indulgence and the matter having been finally heard on 4.11.2011 and being posted only for pronouncement of order today, was not inclined to accept the show cause. However, in view of the fact that it has already been affidavited and copy served, this Court for the ends of justice deems it proper to take into consideration such counter affidavit filed on behalf of the respondent Board. The counter affidavit in substance only reiterates the submissions made by learned counsel for the Bihar State Electricity Board inasmuch as it has tried to put the onus on the petitioner that certain formalities as required under law had not been done and specific findings of negligence was not there and also that all legal representatives of the deceased were not on record, and that the language of the F.I.R. and the final form also did not prove that death was due to negligence on the part of the respondent Board.

9. Considering the facts and circumstances of this case, this Court deems it proper to deal with the counter affidavit first. Though the counter affidavit has tried to put the onus on the petitioner but in the pleadings and the statements made in the counter affidavit, the fact of petitioner's father dying due to snapping of high tension electric wire resulting in electrocution has not been denied. It has only been stated that negligence on the part of the respondent Board has not been proved, but there is not even a whisper that in fact there was no negligence on their part or the death was due to the own negligent act on the part of the deceased. Minor technical points are sought to be scored by pointing out certain infirmities and inference which are sought to be drawn out of the language of the F.I.R. as well as the final form submitted by the police.

10. Learned counsel for the petitioner, by way of reply, has submitted that the point of all legal representatives not being on record is a very fine technical objection not worth even considering in the present case, since petitioner is the eldest major son of the deceased and as per Hindu Law, he is karta of the family and in this capacity has filed the writ petition and thus no fault can be attributed on this account affecting the maintainability of the writ petition. However, he submits that in view of the nature of the objection raised, this Court can take

care of the right of all the legal representatives or heirs of the deceased who may be entitled to any amount awarded by way of compensation which the Court may direct which can be distributed as per the share among the claimants in accordance with law. He submits that it is not the case of the respondents that the petitioner's deceased father was responsible for his death as well as the fact that the records or the investigation neither suggests nor proves any such act either on the part of the deceased or the petitioner that would disentitle them from their right to compensation in the present case. He submits that as per the arguments advanced, it is common ground between the parties that the wire which fell was of high tension 11. K.V. and the height of such wire is 36 feet from the ground. Thus there cannot be any contributory negligence on the part of the deceased or the petitioner which could have resulted in the snapping of the wire like hitting it with the bundle of maize plants being carried by the petitioner and his father on the fateful day.

11. Considering the facts and circumstances of the case, this Court feels that at least the fact of the deceased having died of electrocution as a result of snapping of high voltage electric wire has not been controverted or proved otherwise. Coming to the aspect whether in view of this admitted position the petitioner would be entitled to any compensation by the writ Court under Article 226 of the Constitution, this Court is inclined to follow the judgment/order rendered by the Courts which support the case of the petitioner.

12. By a judgment referred to and relied upon by the petitioner, specially with regard to the position that where the facts are so apparent and speak for themselves, there cannot be any question of the petitioner being relegated to the forum where he has to strictly prove the case on facts in a proper proceeding after adducing evidence. This Court is also inclined to accept the ratio of the decision in the case of Ramawati Kuer (supra) for the reason that the facts of the said case are quite similar to the facts of the present case which is apparent from paragraph 11 which is quoted hereinbelow:-

"11. I have already observed that the fact of the death and snapping of the wire have not been denied. The respondents have admitted that after receiving the information they stopped the supply. They have not informed the Court that as to what led to snapping of the wire. They have submitted that in a routine course the wire would not ordinarily snap or fall. If that be so then they were required to give the cause which led to fall of the wire. In the opinion of this Court principles of *res ipsa loquitur* would apply to the facts of this case and I must hold that because of the negligence on the part of the Board the wire snapped, it fell on Shri Ram Awadh Singh and as a result of fall of wire Shri Ram Awadh Singh died of electrocution."

13. In view of the fact that the Court is inclined to accept the proposition of law as propounded in the decisions relied upon by learned counsel for the petitioner, it is obligatory on the part of this Court to state the reasons why the decisions relied upon by the learned counsel for the respondents are being distinguished.

The first decision cited by learned counsel for the respondents in the case of Chairman, Grid Corporation of Orissa Ltd. (supra), the facts were basically different inasmuch as the Corporation had denied its liability on the ground that death had not occurred as a result of its negligence but due to an Act of God or of acts of some other persons. There was a specific case that because of thunderbolts and lightning the line had snapped even though there was proper guarding and thus there was no negligence on the part of the Corporation and compensation ought not to have been allowed by the High Court in exercise of its power under Article 226 of the Constitution without the factual aspects being decided by the Civil Court. Thus, the order of that case would not apply to the present case since it has to be seen in context of the admitted position as well as in the facts and circumstances of the individual case.

14. The facts in the other decision in the case of SDO, Grid Corporation of Orissa Ltd. (supra) are more or less similar in the sense that liability was denied on the ground that the death has not occurred as a result of negligence on the part of the Corporation but because of the negligence of the respondents themselves or of a Act of God or because of an Act of some other persons. In the present case there is neither such counter attack holding that the deceased himself is responsible for his death nor is there in clear terms denial of any liability arising out of any Act of omission or commission on the part of the Board. The last decision relied upon by learned counsel for the respondents in the case of Jacob Mathew (supra), the facts are materially different as it relates to the case of a medical practitioner being at the receiving end for having committed negligence in discharge of his professional duty. Further, in the said case the decision was with regard to holding the respondents liable for criminal negligence as well as the negligence under civil law by professionals under the law of tort and upon contest it was ordered that no liability can be fastened without there being proper adjudication with the parties being given an opportunity to prove their cases. The negligence in such cases has to be more strictly proved. Learned counsel has relied on paragraphs no. 10, 11 and 28 which deals with the components of negligence which have been clearly expounded in paragraph no. 11 having three components. He has tried to emphasis that since the parameters for deciding negligence having been laid down, the ratio of that decision would apply in the present case also. This Court is not inclined to accept such submission of learned counsel for the respondents for the reason that the Court is not deciding the factum of negligence on the part of the Board especially in a case like the present when there has been no specific denial that there was no negligence on the part of the Board or there was negligence on the part of the deceased. The only stand in the counter affidavit is that the petitioner has not been able to prove that there was negligence on the part of the Board. Even otherwise, it is not in dispute that in matters where the facts are seriously contested or there may be grey areas like the one before the Hon"ble Apex Court where a medical practitioner was alleged to have been negligent in treatment, the Hon"ble Apex Court held that mere fact that the patient did not respond or

sometime the unfortunate happened, would not by itself give cause to the affected party or the victim against the said medical practitioner unless it is strictly proved. In the present case this not being the position, the judgment of the Hon''ble Apex Court is not of any help to the respondents.

15. In view of the discussions made hereinabove and also taking cue from the decisions relied upon by learned counsel for the petitioner where compensation has been awarded and quantified, a direction is issued to the respondents to pay a sum of Rs. 3,00,000/- (Rupees three lakhs) to the petitioner. However, in view of the objection raised by learned counsel for the respondents and also in view of the stand taken by learned counsel for the petitioner, the said amount would be released after the Board satisfies itself that the formalities with regard to all the legal representatives coming before the Board and either agreeing to payment to the petitioner or any other person or with a formula as to how the said amount should be distributed, which the Board shall take into account and make payment accordingly.

16. However, the Board may take a bond from the person/persons receiving the amounts that if any dispute arises in future they shall be liable to make good the amount which the Electricity Board may have to pay to any other person or persons on account of such compensation for the deceased.

17. This Court also grants liberty to the petitioner to move before the Court of competent jurisdiction for any enhancement of compensation which according to him would be more appropriate in the present case. Since the award of compensation has been decided by this Court today, the limitation for deciding any compensation would start from today and the said Court would only decide whether the amount should be enhanced and not whether it is payable. In that view of the matter, the Court concerned shall proceed on the merits with regard to the quantification of compensation amount, if the petitioner or any of the legal representatives feel that it is not in accordance with the amount which is legally due to them. The writ petition is accordingly allowed to the extent indicated above. The said exercise should be taken to its logical conclusion by making payment within three months from the date of receipt/production of a copy of this order upon the Secretary of the Bihar State Electricity Board.