

(2020) 01 BOM CK 0149
In the Bombay High Court
Case No : Writ Petition No. 3212 Of 2016

Laxmibai

APPELLANT

Vs

Maharashtra State Electricity Distribution Co. Ltd. Estrella
Batteries Expansion Building And Anr

RESPONDENT

Date of Decision : 29-01-2020

Acts Referred:

Electricity Act, 2003 — Section 161
Interest Act, 1978 — Section 3
Code Of Civil Procedure, 1908 — Section 34
Constitution Of India, 1950 — Article 226

Citation : (2020) 01 BOM CK 0149

Hon'ble Judges : Sunil P. Deshmukh, J; B.U. Debadwar, J

Bench : Division Bench

Advocate : V.B. Dhage, A.M. Gaikwad

Final Decision : Partly Allowed

Judgement

B.U. Debadwar, J

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties.

2. Present petition under Article 226 of the Constitution of India is filed for issuing writ of mandamus directing respondents to pay compensation of Rs. 5.00 lakhs with interest @ 18% p.a. on account of death of petitioner's husband due to electrocution.

3. Facts giving rise to the petition, in nutshell, are as under : -

Mr. Sainath Mahadu Danekar, R/o. Village Dhanora (Kh.), Tq. Dharmabad, Dist. Nanded, was an agriculturist by profession. On 21.09.2011, at evening time, after completion of agriculture work, when he was returning to the house along with a plow on his shoulder, on the way, near the field of Mr. Narhari Kulkarni, came in contact with live electric cable which was in hanging position, sustained

severe electric shock and died due to electrocution, soon after falling on the earth. The villagers gathered at the spot, informed the incident to the police officials of the Karkheli Police Station, Tq. Dharmabad. Upon that, police officials of the said police station rushed to the spot, shifted dead body of Mr. Sainath Danekar to the PHC, Karkheli, Tq. Dharmabad, with a report to conduct post-mortem. Then, they drew spot panchanama, conducted inquest of the dead body and registered A.D. Case No. 25/2011. The Medical Officer, who conducted the post-mortem, opined that the cause of death of Mr. Sainath was due to electric shock. Upon that, petitioner who is the widow of Mr. Sainath Danekar, the deceased, approached the respondents with a claim of compensation, in view of the circulars issued by MSEDCL, from time to time, but in vain. Therefore, she approached this Court and filed present writ petition.

4. Respondents by filing affidavit-in-reply resisted the claim raised in the petition only on the ground of delay. According to the respondents, after about four years of the fatal accident in question, the petitioner moved the application claiming compensation. Though informed to collect the compensation amount of Rs. 2.00 lakhs as per the circular of 2008 after submitting heirship certificate, she did not turn up to collect the same with heirship certificate. The amount of compensation which she has claimed is not liable to be paid. The interest claimed by the petitioner is baseless. There is no provision in circulars regarding payment of interest in fatal accident case. Therefore, the petition is liable to be dismissed.

5. Following are the facts which are not in dispute.

(i) A fatal accident took place on 21.09.2011 at evening time near the field of Mr. Narhari Kulkarni, situated at village Dhanora (Kh.).

(ii) Mr. Sainath Danekar died due to electrocution on coming into contact of high-voltage live electric wire which was hanging there.

(iii) A.D. Case No. 25/2011 came to be registered in pursuance of the information provided by villagers.

(iv) During the course of inquiry of A.D. case, spot panchanama and inquest panchanama were drawn and then post-mortem was conducted on the dead body of Mr. Sainath at PHC Karkheli, Dharmabad.

6. Upon scrutiny of police papers in A.D. Case No. 25/2011 registered at Dharmabad Police Station, copies of which are annexed to the petition viz. spot panchanama, inquest panchanama and memo of post-mortem examination, it becomes clear that, Mr. Sainath Danekar, while returning to the home from the field, on the road near agriculture land belonging to Mr. Narhari Kulkarni, came in contact with high voltage wire/cable, sustained electric shock and died instantly due to electrocution.

7. Affidavit-in-reply submitted by the respondents speaks volumes that, on 23.09.2011, Assistant Engineer working in Maharashtra State Electricity Distribution Company Limited (MSEDCL), Dharmabad, visited the spot,

conducted the inquiry and forwarded his report to the Assistant Electrical Inspector, I. E. Department, Workshop Road, Nanded, on 30.09.2011 in annexure 'XII'. On receiving report, Electrical Inspector, Electric Inspection Division, Nanded, conducted the inquiry as contemplated in Section 161 of the Electricity Act, 2003 and forwarded the report to the Executive Engineer, MSEDCL, Rural Division, Dist. Nanded stating that, while passing through the road along with iron plow, late Mr. Sainath Danekar, husband of the petitioner, came into contact with live electric wire and died on the spot due to electrocution. The papers annexed to the affidavit-in-reply not only speak about death of Sainath due to electrocution, but also speak about sanctioning of compensation of Rs. 2.00 lakhs to the petitioner in pursuance of the Administrative Circular No. 192, dt. 20.11.2008 by Superintending Engineer, MSEDCL, Nanded, on 02.06.2017.

8. Shri. V. B. Dhage, learned counsel appearing for the petitioner submitted that, though fatal accident took place in the year 2011 when Circular No. 333 dt. 22.03.2011 was in operation, petitioner is entitled for enhanced compensation of Rs. 4.00 lakhs as, revised Circular came in operation before the payment of compensation. Mr. Dhage also argued that the petitioner is also entitled for interest @ 18% p.a. on revised compensation of Rs. 4.00 lakhs from the date of accident till realization of the entire amount. To substantiate his aforesaid submissions, he has placed reliance on the decisions rendered by the Hon'ble Apex Court viz. Rathi Menon vs. Union of India [AIR 2001 SC 1333], N. Parameswaran Pillai vs. Union of India & another [AIR 2002 SC 1834], Thazhathe Purayil Sarabi and Ors. vs. Union of India and Anr., [AIR 2009 SC 3098] and Union of India vs. Rina Devi [AIR 2018 SC 2362].

9. Per contra, Shri. A. M. Gaikwad, learned Counsel for the respondents argued that, when fatal accident took place in the year 2011, the Administrative Circular No. 192 dt. 20.11.2008 was in operation, therefore, claim of compensation made by the petitioner is governed by that Circular and not by the Administrative Circular No. 533 dt. 09.03.2016 came into operation after about four years of fatal accident. As per the Administrative Circular No. 192 dt. 20.11.2008, at the most, petitioner is entitled for the compensation of Rs. 2.00 lakhs and not more than that. As far as interest is concerned, Mr. Gaikwad, learned advocate for the respondents argued that, none of the circulars issued by the respondents speak about payment of interest on the compensation amount to be paid. In the absence of provision, claim of the petitioner about the interest on compensation from the date of accident is not sustainable. Besides, learned counsel for the respondents argued that, though compensation of Rs. 2.00 lakhs as per Administrative Circular No. 192 dt. 20.11.2008 sanctioned and intimation about the same was given, petitioner did not turn up to the office of respondent No. 2 to collect that amount after furnishing the heirship certificate, therefore, she is not entitled for any interest on the compensation amount to which she is entitled to.

10. Administrative Circular No. 533 dt. 09.03.2016 runs as under:

ADMINISTRATIVE CIRCULAR NO. 533 DATED 09/03/2016

Sub : Enhancement of financial aid towards fatal accidents to human beings (other than MSEDCL employees).

Read: 1) Administrative Circular No. 192 dated 20/11/2008 2) Administrative Circular No. 332 dated 22/03/2011

The issue regarding enhancement of the financial aid towards fatal accidents to human beings (other than MSEDCL employee) was under consideration of the Company sometime in the past.

2. Now, the Board of Directors vide Resolution No. 590 dated 12/01/2016 has accorded approval to enhance the financial aid towards fatal accidents to human beings (other than MSEDCL employee) from Rs. 2,00,000/- (Rs. Two lakhs only) to Rs. 4,00,000/- (Rs. Four lakhs only) at par with that of Government of Maharashtra.

3. The Board further directed that the compensation shall be claimed from State Disaster Relief Fund by LM Section, Corporate Office in case the Company loses its own assets in natural calamity. The powers to finalize the compensation payable towards the crops and property damaged in other than fatal/non fatal accidents shall remain with Corporate Office as hitherto before.

4. The other provisions laid down in Adm. Cir. No. 192 dt. 20/11/2008 shall remain unchanged.

5. The instructions given in the Administrative Circular No. 532 dated 25/02/2016 stands cancelled.

6. This Administrative Circular shall come into force with immediate effect.

7. This Administrative Circular is available on Company's R-APDRP Portal.

Sd/-

[Sandesh E. Hake]

Chief General Manager

(HR)

11. From the contents of the aforesaid Administrative Circular No. 533, it is clear that, financial aid towards fatal accident to human beings (other than MSEDCL employees) was raised to Rs.4.00 lakhs from Rs. 2.00 lakhs from 09.03.2016 onwards, so as to be on a par with the circular of Government of Maharashtra. Admittedly, Mr. Sainath Danekar, husband of petitioner died due to electrocution prior to enhancing the compensation vide Administrative Circular No. 533 dt. 09.03.2016, but that itself would not preclude the petitioner from claiming

enhanced compensation.

12. In the matter of Smt. Shashikalabai v/s. State of Maharashtra and another [AIR 1999 SC 706], the Hon'ble Apex Court held that, the claimant will be entitled to get the benefit of additional compensation in view of the new Circular came in operation when claim for compensation is pending.

. In the matter of Rathi Menon Vs. Union of India [AIR 2001 SC 1333], the Supreme Court held that, the compensation must be fixed as per rules prescribed at the time of making the order for payment of compensation and not in terms of money value which prevailed on the date of accident.

. In the matter of N. Parameswaran Pillai Vs. Union of India & another [AIR 2002 SC 1834], the Hon'ble Supreme Court has held that, in view of the authoritative pronouncement made in Rathi Menon's case (supra), the appellants were entitled to enhancement in the compensation.

13. The facts of the case at hand are identical with the facts of the cases wherein the Hon'ble Supreme Court laid down the aforesaid ratios, therefore, they are squarely applicable to the case at hand.

14. In case at hand also, amount of financial aid towards fatal accident to human beings enhanced from Rs. 2.00 lakhs to Rs. 4.00 lakhs prior to payment of the same. Therefore, the petitioner is entitled for enhanced compensation of Rs. 4.00 lakhs covered by Administrative Circular No. 533 dt. 09.03.2016 and not for Rs. 2.00 lakhs as per the earlier Administrative Circular No. 192 dt. 20.11.2008, as contended by the respondents.

15. As far as claim of interest is concerned, it is true that, neither Administrative Circular No. 533 dt. 09.03.2016 nor Administrative Circular No. 332 dt. 22.03.2011 or Administrative Circular No. 192 dt. 20.11.2008 speaks about the same, but merely for that reason, claim of interest cannot be rejected, as respondents failed to pay the compensation soon after fatal accident.

16. In the case of Thazhathe Purayil Sarabi and Ors. Vs. Union of India and Anr., [AIR 2009 SC 3098], the Hon'ble Apex Court held as under:

"Though, there are two divergent views, one indicating that interest is payable from the date when claim for the principal sum is made, namely, the date of institution of the proceedings for the recovery of the amount, the other view is that such interest is payable only when a determination is made and order is passed for recovery of the dues. However, the more consistent view has been the former and in rare cases interest has been awarded for periods even prior to the institution of proceedings for recovery of the dues, where the same is provided for by the terms of the agreement entered into between the parties or where the same is permissible by statute. Accordingly, the order of the Railway Claims Tribunal directing payment of interest on default of the payment of the principal sum within a period of 45 days would not be sustainable. When there is no specific provision for grant of interest on any amount due, the Court and even

Tribunals have been held to be entitled to award interest in their discretion, under the provisions of Section 3 of the Interest Act and Section 34 of the Civil P.C."

17. In the case of Union of India vs. Radha Yada [AIR 2019 SC 1410], the Hon'ble Apex Court has held as under:

"The issue raised in the matter does not really require any elaboration as in our view, the judgment of this Court in the case of Rina Devi (AIR 2018 SC 2362) is very clear. What this Court has laid down is that the amount of compensation payable on the date of accident with reasonable rate of interest shall first be calculated. If the amount so calculated is less than the amount prescribed as on the date of the award, the claimant would be entitled to higher of these two amounts. Therefore, if the liability had arisen before the amendment was brought in, the basic figure would be as per the Schedule as was in existence before the amendment and on such basic figure reasonable rate of interest would be calculated. If there be any difference between the amount so calculated and the amount prescribed in the Schedule as on the date of the award, the higher of two figures would be the measure of compensation. For instance, in case of a death in an accident which occurred before amendment, the basic figure would be Rs.4,00,000/-. If, after applying reasonable rate of interest, the final figure were to be less than Rs.8,00,000/-, which was brought in by way of amendment, the claimant would be entitled to Rs.8,00,000/-. If, however, the amount of original compensation with rate of interest were to exceed the sum of Rs.8,00,000/- the compensation would be in terms of figure in excess of Rs.8,00,000/-. The idea is to afford the benefit of the amendment, to the extent possible. Thus, according to us, the matter is crystal clear. The issue does not need any further clarification or elaboration.

18. From the aforesaid ratios laid down by the Hon'ble Supreme Court, it is clear that in case of fatal accident, interest on compensation is liable to be paid from the date of accident with reasonable rate of interest and claim of the interest cannot be rejected merely for the reason that the Administrative Circular regarding payment of compensation is silent on that aspect.

19. Affidavit-in-reply submitted by the respondents demonstrates that, immediately after forwarding necessary report in respect of fatal accident in question to the Electrical Inspector, an amount of Rs. 20,000/- (Rupees Twenty Thousand only) has been paid to the next kin of the deceased by way of an interim measure. Petitioner has not disputed the same by filing rejoinder. Thus, an amount of Rs.20,000/- (Rupees Twenty Thousand only) already paid by the respondents needs to be deducted from compensation of Rs.4,00,000/- (Rupees Four Lakhs only), to which the petitioner is entitled to receive and the respondents are liable to pay. After deducting Rs. 20,000/- from Rs. 4,00,000/-, compensation payable to the petitioner comes to Rs. 3,80,000/- (Rupees Three Lakhs Eighty Thousand only).

20. Thus, taking into consideration totality of the facts and circumstances and the ratios laid down by the Hon'ble Apex Court, we hold that the petitioner is entitled for compensation of Rs.3,80,000/- on account of death of her husband - Mr. Sainath Mahadu Danekar due to electrocution, with interest @ 9% p.a. from the date of accident till realization of the entire amount not on enhanced compensation of Rs. 4,00,000/- but on compensation of Rs.2,30,000/- covered by Administrative Circular No. 332, dated 22.03.2011, for which she was entitled, had there been no enhancement in compensation subsequently. Thus, writ petition deserves to be allowed partly. Hence, we pass the following order.

ORDER

(i) Writ Petition is allowed partly.

(ii) Respondents are directed to pay Rs. 3,80,000/- (Rupees Three Lakhs Eighty Thousand only) together with interest @ 9% p.a. on the amount of Rs. 2,30,000/- (Rupees Two Lakhs Thirty Thousand only) from 21.09.2011 (date of death of husband of petitioner) till realization of entire amount, to the petitioner.

21. Rule is made absolute in the above terms.