

(2008) 02 MAD CK 0233

In the Madras High Court

Case No : Writ Petition No. 10954 of 1997

Lilly Stanislaus

APPELLANT

Vs

The Chairman, T.N.E.B., The Chief Engineer, T.N.E.B. and The
Assistant Engineer, T.N.E.B.

RESPONDENT

Date of Decision : 11-02-2008

Acts Referred:

Constitution of India, 1950 — Article 21, 226, 236, 32, 367
General Clauses Act, 1897 — Section 2(42)

Citation : (2008) 3 MLJ 160 : (2008) WritLR 278

Hon'ble Judges : P. Jyothimani, J

Bench : Single Bench

Advocate : I. Arokiasamy, for the Appellant; R. Subbaih, for the Respondent

Judgement

P. Jyothimani, J.—The writ petition is filed for direction against the respondents to pay an amount of Rs. 3 lakhs by way of compensation to the petitioner for the death of her husband.

2. The petitioner is the wife of one Stanislaus, who was working in Sri Kutchi Milan (Madras) Charitable Trust, Purasawalkam and they have a married daughter apart from one un-married son Ruben and un-married daughter Jaculine. On 14.06.1996, in the early morning at 5.00 a.m. the petitioner's husband went to procure milk from the nearby Aavin Milk Booth. On the night there was heavy rain and when her husband was passing in Anna Street, near the tea shop, he had to step on the live wire, snapped from electrical post No. 146 and he was thrown down due to electrocution. One boy by name Nataraj, tried to pull him and he was also electrocuted and it was after two hours electric - supply was disconnected and in the meantime, the petitioner's husband died on the spot.

2(a). A complaint was lodged to the Sub-Inspector of Police, 6-1, Madhavaram Police Station, Madhavaram and First Information Report was registered in Crime No. 559/96 dated 17.06.1996. In the post-mortem conducted on 17.06.1996, it

was found that the area of 2nd degree burns on the sacral region 45 x 20 cms. with blackening and charring of the skin and the cause of death as per the said certificate consistent with the history of death was due to electrocution.

2(b). It is the case of the petitioner that due to the negligence, carelessness and failure to perform the duty on the part of the respondents in maintaining the electric poles properly, the accident has occurred, resulting the death of the petitioner's husband. It is also the case of the petitioner that it was because of the respondent's negligence in not maintaining the electric poles with automatic fuse, which were not actually functioning, the petitioner has lost the only breadwinner of the family. The petitioner has also stated that there is violation of various provisions of the Indian Electricity Act. The petitioner has made many representations to the respondents and since there was no reply, ultimately issued a legal notice on 17.06.1996. It is the case of the petitioner that her husband was aged 50 years at the time of death and he was physically healthy and has claimed an amount of Rs. 3 lakhs by way of compensation for the death of her husband.

3. The respondents have filed counter affidavit. While it is admitted that the petitioner's husband died due to electrocution on the road on 14.06.1996 at 5.38 hours in the morning, it is the case of the respondent Electricity Board that immediately on receiving such information over phone, a representative of the Board went to the spot and at that time the third respondent was informed that the victim was admitted in the hospital for treatment. On enquiry, the respondent Board found that a person aged about 55 years was snapped by the live conductor and his name was Stanislaus. It is also admitted that the electrocution took place on the road when the said Stanislaus was proceeding from his house to nearby milk booth. It is also the case of the respondent Board that it was due to heavy storm and rain on 14.06.1996, the accident has taken place. However, it is the case of the respondent Board that the Board has been maintaining the poles and wires in good condition. It is also the further case of the respondent Board that the accident took place due to heavy rain and it is an act of God beyond the control of Electricity Board and there was no negligence on the part of the respondent Board. The allegation of the petitioner that the accident took place due to the carelessness of the Board is denied. It is also further stated that without prejudice to the above said contention the compensation claimed is high.

4. I have heard the learned Counsel for the petitioner and respondents and perused the relevant records.

5. The learned Counsel appearing for the petitioner would submit that on the factual issue there is no dispute that the petitioner's husband died due to electrocution and by applying the principles of strict liability, the petitioner is entitled to compensation. The learned Counsel also submits that the Supreme Court has held that even assuming that the Electricity Board has taken all safety measures, the Board is liable to compensate irrespective of negligence or

carelessness on the part of the Managers of such undertakings. The learned Counsel would rely upon the Judgment of the Supreme Court in *M.P. Electricity Board v. Shail Kumari and Ors.* 2882 (2) SCC 162. The learned Counsel would also submit that while exercising the jurisdiction under Article 226 of the Constitution of India, this Court can grant compensation by relying upon the Judgment of the Supreme Court in *Smt. Kumari Vs. State of Tamil Nadu and others*, . The learned Counsel would further rely upon the Judgment of the Supreme Court in *M.C. Mehta v. Union of India* AIR 1987 SC 1886 , where while exercising jurisdiction under Article 32 of the Constitution of India, the Hon''ble Supreme Court while dealing with the claims of the victims of Oleum Gas escape for payment of compensation against Shriram, has directed the Deli Legal Aid and Advice Board to take up the cases of sufferers to proceed by filing necessary application for compensation and directing the High Court to nominate one or more Judges for trying such action, to expeditiously decide the amount of compensation. The learned Counsel also relied upon the Judgment of the Supreme Court in *Tamil Nadu Electricity Board Vs. Sumathi and Others*, , which was dealing with the appeal of Tamil Nadu Electricity Board itself, wherein it was held that the power of the High Court under Article 226 is vast and based on the guidelines issued by the Supreme Court and also the self-imposed limitations, the High Court can exercise its jurisdiction.

6. On the other hand, the learned Counsel for the respondent Electricity Board would rely upon an unreported Judgment of this Court in. W.P. No. 10310 of 1999 dated 31.07.2006 *P. Kumaresan v. Tamil Nadu Electricity Board and Ors.* wherein, in respect of disability suffered due to the conduct of the respondent Electricity Board, this Court has granted compensation of Rs. 1,80,000/-. The learned Counsel has also submitted a Division Bench Judgment in W.P. No. 5217 of 1999 dated 05.01.2007 *Parezade Mama v. State of Tamil Nadu rep. By Secretary to Government, Electricity Department and Ors.* wherein, the Electricity Board and the Municipality apart from a Lodge were directed to pay compensation in respect of the injuries sustained by children resulting in amputation. However, the learned Counsel submitted that the claim of the petitioner is of tortious liability, which requires a factual evidence, and therefore, the writ petition cannot be entertained.

7. A reference to the counter affidavit makes it clear that there is no dispute about the death of the husband of the petitioner on 14.06.1996 due to electrocution and it is also not in dispute that the electrocution is because of the falling of electric line on the road. Even though it is stated that it was not due to the negligence en the respondent Electricity Board, but due to "act of God", the fact remains that the petitioner''s husband died due to electrocution.

8. A reference to the post-mortem certificate issued by the Additional Professor of Forensic Medicine, Stanley Medical College Hospital, Madras-1 dated 17.06.1996 makes it clear that the death was due to electrocution. The relevant portion of the certificate which is not in dispute is as follows:

An area of IIInd degree burns on the sacral region 45 x 20 cms. with blackening and charring of the skin.

Internal Examination:

Heart - Filled with fluid blood.

Lungs - Congested; Hyoid bone : Intact;

Stomach: Empty; Liver: Spleen & Kidneys:

Congested; Bladder: Empty; Brain: Congested.

Cause of death: Post mortem findings consistent with the history of death due to electrocution.

9. The petitioner's specific case is that her husband was working as a "Watchman" in Sri Kutchi Milan (Madras) Charitable Trust, which was supported by a certificate issued by the said Trust dated 03.09.1996, which states that the petitioner's husband has been working for the last 3 1/2 years and drawing a gross salary of Rs. 1,500/-per month, which is as follows:

Dated:3.9.96

To

Saint Andrews Church Choolai, Madras.

This is certify that sri stanislaus has been working as a watchman since the last 3 1/2 years and was drawing a gross salary of Rs. 1500/- per month.

10. The fact of employment of the petitioner's husband is not denied in the counter affidavit, however the counter affidavit states that the age of the said Stanislaus was 55 years. The First Information Report has also been registered on the complaint given by S.R. Ruban, son of the said deceased Stanislaus. Even though the post-mortem certificate states the age of the deceased as 50 years, the affidavit filed by the petitioner in support of, the writ petition dated 21.07.1997 shows that her age at the time filing of writ was 50 years and therefore, the age of the petitioner's husband on the date of his death, viz., on 14.06.1996 may not be 50 and it may be slightly more than that.

11. It is also not in much dispute that the petitioner's husband was the only bread-winner of the family and the petitioner has three children out of whom one daughter got married and there is one unmarried daughter and an un-married son. It was held by the Hon"ble Supreme Court in Madhya Pradesh Electricity Board Vs. Shail Kumari and Others, that the liability of the Electricity Board under Law of Torts to compensate for the injuries suffered cannot be denied on the basis that the Electricity Board has taken all safety measures since the liability of the Department is strict liability, relying upon the renowned and celebrated case on the issue, viz., Rylands v. Fletcher 1868 (3) HL 330 : 1861 73

AER 1. The Supreme Court has held as follows:

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.

9. The doctrine of strict liability has its origin in English common law when it was propounded in the celebrated case of *Rylands v. Fletcher* 1868 (3) HL 330 : 1861 73 AER 1 . Blackburn, J., the author of the said rule had observed thus in the said decision: All ER p. 7E-F.

The true rule of law is that the person who, for his own purposes, brings on his land, and collects and keeps there anything likely to do mischief if it escapes, must keep it at his peril, and, if he does not do so, he is prima facie answerable for all the damage which is the natural consequence of its escape.

Therefore, it is too late for the respondent Board to raise the plea as if the respondent Board is not negligent and they are not liable.

11.1 In *Tamil Nadu Electricity Board Vs. Sumathi and Others*, , even though the Hon"ble Supreme Court has held that in cases of disputed questions of fact in existence, on the face of unequivocal denial of tortious liability, seeking remedy under Article 226 may not be proper, it was held that the same cannot be understood that in every case of tortious liability the affected party should be directed to resort to filing of suit, holding that when there is negligence on the face of it, the same to be treated under Article 21 of the Constitution of India and in such circumstances, to enforce the basic human rights, Article 226 can be pressed into service. On the facts of the said case, the Supreme court has come to the conclusion that a disputed questions of fact was involved, but held in the circumstances of the case that the appellant Electricity Board shall not recover the amount which has been paid to the respondents/victims. In that context, the Supreme Court has held as under:

18. In view of the clear proposition of law laid by this Court in *Chairman, Grid Corporation of Orissa Ltd. (Gridco) and Others Vs. Smt. Sukamani Das and Another*, when a disputed question of fact arises and there is clear denial of any tortious liability remedy under Article 226 of the Constitution may not be proper.

However, it cannot be understood as laying a law that in every case of tortious liability recourse must be had to a suit. When there is negligence on the face of it and infringement of Article 21 is there it cannot be said that there will be any bar to proceed under Article 226 of the Constitution. Right of life is one of the basic human rights guaranteed under Article 21 of the Constitution. In *U.P. State Cooperative Land Development Bank Ltd. Vs. Chandra Bhan Dubey and Others*, where one of us (Wadhwa, J.) was a party, this Court after examining various decisions of the courts on the power of the High Court under Article 226 of the Constitution observed that the language of Article 226 of the Constitution does not admit of any limitation on the powers of the High Court for the exercise of jurisdiction thereunder though by various decisions of this Court with varying and divergent views, it has been held that jurisdiction under Article 226 can be exercised only when a body or authority, the decision of which is complained, was exercising its power in the discharge of public duty and that writ is a public law remedy. This Court then observed: (SCC pp. 753-59, para 27)

[It may not be necessary to examine any further the question if Article 226 makes a divide between public law and private law. Prima facie from the language of Article 226, there does not appear to exist such a divide. To understand the explicit language of the article, it is not necessary for us to rely on the decision of English courts as rightly cautioned by the earlier Benches of this Court. It does appear to us that Article 226 while empowering the High Court for issue of orders or directions to any authority or person, does not make any such difference between public functions and private functions. It is not necessary for us in this case to go into this question as to what is the nature, scope and amplitude of the writs of habeas corpus, mandamus, prohibition, quo warranto and certiorari. They are certainly founded on the English system of jurisprudence. Article 226 of the Constitution also speaks of directions and orders which can be issued to any person or authority including, in appropriate cases, any Government. Under Clause (1) of Article 367, unless the context otherwise requires, the General Clauses Act, 1897, shall, subject to any adaptations and modifications that may be made therein under Article 372, apply for the interpretation of the Constitution as it applies for the interpretation of an Act of the legislature of the Dominion of India. "Person" u/s 2(42) of the General Clauses Act shall include any company, or association or body of individuals, whether incorporated or not. The Constitution is not a statute. It is a fountainhead of all the statutes. When the language of Article 226 is clear, we cannot put shackles on the High Courts to limit their jurisdiction by putting an interpretation on the words which would limit their jurisdiction. When any citizen or person is wronged, the High Court will step in to protect him, be that wrong be done by the State, an instrumentality of the State, a company or a cooperative society or association or body of individuals, whether incorporated or not, or even an individual. Right that is infringed may be under Part III of the Constitution or any other right which the law validly made might confer upon him. But then the power conferred upon the High Courts under Article 236 of the

Constitution is so vast, this Court has laid down certain guidelines and self-imposed limitations have been put there subject to which the High Courts would exercise jurisdiction, but those guidelines cannot be mandatory in all circumstances. The High Court does not interfere when an equally efficacious alternative remedy is available or when there is an established procedure to remedy a wrong or enforce a right. A party may not be allowed to bypass the normal channel of civil and criminal litigation. The High Court does not act like a proverbial "bull in a china shop" in the exercise of its jurisdiction under Article 226.

(Emphasis supplied)

11.2 In yet another case in *Smt. Kumari Vs. State of Tamil Nadu and others*, , when a six year old boy of the appellant died falling in a 10 feet deep uncovered sewerage tank in the City of Madras and the writ petition filed by the appellant was dismissed by the High Court, while setting aside the said judgement, the Supreme Court has directed the State Government to pay compensation of Rs. 50,000/- with interest to the appellant, however with a direction that the State Government can recover the said amount from appropriate authority, since the authority who is liable for negligence was not able to be determined. The operative portion of the above cited Judgment is as follows:

3. In the facts and circumstances of this case we set aside the High Court Judgment and direct that respondent 1, the State of Tamil Nadu shall pay to the appellant a sum of Rs. 50,006 (Rupees fifty thousand) with interest at 12 per cent per annum from January 1, 1990 till the date of payment. The amount shall be paid within six weeks from today. It will be open to the State of Tamil Nadu to take appropriate proceedings to claim the said amount or any part thereof from any of the respondents or any other authority which might be responsible for keeping the sewerage tank open. The claim, if made, will be decided in accordance with law. The appeal is allowed in the above terms. There will be no order as to costs.

11.3 A Division Bench of this Court (P.K. Misra and S. Rajeswaran, JJ.) in W.P. No. 5217 of 1999 *Parezade Mama v. State of Tamil Nadu* rep. By Secretary to Government, Electricity Department and Ors., while dealing with the case of death of the mother and father of the children, who died when the children playing in a lodge were to touch the running over head high tension, line approximately 3 feet from the balcony of the lodge and the parents while attempted to rescue the children, by relying upon the Judgment of the Supreme Court in *Nath Bros. Exim International Ltd. Vs. Best Roadways Ltd.*, held that on the face of the conduct of the public authority, there is infringement of Article 21, and there is no bar for the High Court to proceed under Article 226 of the Constitution of India by granting necessary damages, as follows:

17. It is true that writ petitions for claiming damages cannot be resorted when there is a clear denial of tortious liability. At the same time when the negligence

is per se visible and it infringes Article 21, relief claiming damages could be granted under Article 226 of the Constitution of India.

18. In *Nath Bros. Exim International Ltd. Vs. Best Roadways Ltd.*, the Hon''ble Supreme Court no doubt held that the writ petition filed under Article 226 of the Constitution of India, High Court cannot grant compensation to the family of victim who died by electrocution. However, in the very same Judgment the Hon''ble Supreme Court held that when there is negligence on the face of it and infringement of Article 21 is there, it cannot be said there will be any bar to proceed under Article 226 of the Constitution of India.

Ultimately, leaving it to the appropriate forum to decide the final compensation, an interim compensation of Rs. 2 lakhs was awarded in the following terms.

22. Therefore, in our opinion negligence on the part of the Electricity Board, municipality and the lodge is per se visible and this negligence definitely infringes Article 21 of the Constitution of India and therefore we are of the considered opinion that interim compensation can be awarded in this writ proceedings, leaving the final quantum to be decided by an appropriate forum.

23. Considering the nature of the extensive injuries suffered by the minor children, the loss of their parents and the exorbitant medical expenses, to rehabilitate the children we award a sum of Rs. 6 lakhs in total to be paid equally by the municipality-4th respondent, Tamil Nadu Electricity Board (second respondent) and the lodge-6th respondent. As such, each of them shall pay a sum of Rs. 2 lakhs as interim compensation to respondents 9 and 10 within a period of three months from the date of receipt of a copy of this order.

12. By applying the ratio laid down in the above cases to the facts and circumstances of the present case, there is no difficulty to come to the conclusion that no further factual assertion is required since the incident is not denied; the death of the petitioner''s husband is not in dispute. In respect of age, while the petitioner states it was 50, the respondent says it is 55, and in the circumstance that the petitioner''s husband himself was earning only Rs. 1,580/- per month as consolidated amount and even if half of the amount is taken as the amount which he would have contributed to the benefit of the family and by taking his age at the time of death as 53 years, and fixing another 10 years as his expectation of life, the amount which can be paid to the petitioner will be around Rs. 90,000/-.

13. Taking into consideration of the fact that the writ petition has been pending in this Court from 1997, I am of the considered view that at this late point of time the petitioner cannot be driven to Civil Court and therefore'' she has to be compensated. In view of the same, the writ petition is disposed of with a direction to the first respondent, Electricity Board to pay an amount of. Rs. 90,000/- (Rupees ninety thousand only) as compensation to the petitioner for the death caused to her husband Stanislaus in the electrocution which took place on 14.06.1996. No costs.