
(2003) 03 JH CK 0097

In the Jharkhand High Court

Case No : Contempt Case (Civil) No. 892 of 2002

Madhuri Kumari

APPELLANT

Vs

State of Jharkhand and Another

RESPONDENT

Date of Decision : 26-03-2003

Acts Referred:

Contempt of Courts Act, 1971 — Section 2

Citation : (2003) 51 BLJR 896 : (2003) 2 JCR 444

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : Deepak Kumar, for the Appellant; For JSEB: I. Sen Choudhary, A.K. Jha, Ritu Kumar, G.P. IV, for the Respondent

Judgement

S.J. Mukhopadhaya, J.—The husband of petitioner late Ramanuj Prasad was an Advocate's clerk (Munsi) of an Advocate of the Hon''ble Jharkhand High Court. On the fateful day i.e. 30th March, 2001 when her husband was coming to the Hon''ble High Court, he faced accident and died due to electric shock because of fall of live 11000 Volt wire on the road. He was taken to Gandhi Nagar Hospital by the nearby people but was declared dead. The matter was informed to Kanke Police, Ranchi on the same day when fardbeyan was recorded being Kanke PSUD Case No. 4 of 2001 dated 30th March, 2001. The dead body of the deceased was forwarded to RMCH, Ranchi for post mortem wherein after it was handed over to the family members for its last rite.

2. The widow-petitioner represented before the Jharkhand State Electricity Board (JSEB for short) for payment of compensation of Rs. 10,00,000/- and for her compassionate appointment on 5th May, 2001, her husband having died because of negligence on the part of JSEB but no action having been taken, a writ petition WP (C) No. 2025 of 2002 was preferred by petitioner Madhuri Kumari v. State of Jharkhand and Ors., for payment of damages-compensation and for appointment of petitioner on compassionate ground.

A Bench of this Court vide order dated 11th June, 2002 disposed of WP (C) No.

2025 of 2002 Madhuri Kumari v. State of Jharkhand and Ors., with direction to the chairman, JSEB to decide the claim taking into consideration the relevant fact and decision of the Supreme Court in the case of M.P. Electricity Board v. Shail Kumar, reported in AIR 2002 SC 129.

No decision having been taken by the Chairman, JSEB, the widow- petitioner preferred the present contempt petition. During the pendency of the case, the respondents-O.Ps. accepted the petitioner's claim for payment of accident compensation and allowed a sum of Rs. 20,000/- for payment by office order No. 1015 dated 30th December, 2002. In the affidavit relating to compliance of the Court's order, while the authorities accepted that the husband of petitioner died on 30th March, 2001 because of electric shock due to fall of live electric wire of 11000 Volt, taken plea that pursuant to the direction of the Hon'ble Court, a scheme for payment of accident compensation has been formulated by JSEB vide Notification No. 1417, dated 23rd December, 2002 wherein the following compensation amount allowed for payment to the outsiders :

"Nature of damage Amount of Compensation

(a) For Fatal Rs. 20.000.00

(b) For Non Fatal?

(i) Loss of two limbs or two eyes or one limb and one eye. Rs. 15,000.00

(ii) Loss of one limb or one eye. Rs. 10.000.00

3. Counsel for the petitioner raised the question of quantum of damages sanctioned for payment to the family member of a deceased, who died because of negligence on the part of the officials/employees of JSEB.

4. Counsel JSEB submitted that the Court's order having complied, though there is some delay, the contempt proceeding be dropped. It was further submitted that the question of quantum of payment may be looked into, if the petitioner prefers a separate writ petition.

5. The Court was prima facie, not satisfied with the amount of damages-compensation sanctioned by JSEB in favour of widow-petitioner. Taking into consideration that only a Sum of Rs. 20,000/- has been sanctioned and if the petitioner is asked to agitate the question of quantum in a separate writ petition, she will have to incur at least Rs. 5,000 to 10,000/- to fight out the case, this Court wanted to hear the parties on the question of quantum of payment. Parties were asked to file appropriate affidavit.

The Court has noticed the fact that the present case has been preferred by petitioner for initiation of proceeding for contempt. In absence of any specific direction to pay certain amount as damages-compensation in the earlier writ petition, technically, there is no contempt.

In one of the similar case i.e. a contempt petition, the Supreme Court in the case

of H.M. Ramaul v. State of Himachal Pradesh, reported in 1991 Suppl. (1) SCC 198, while observed that there was no contempt but in the interest of justice, issued a specific direction to provide monetary benefit alongwith promotion to the appellant to the said case.

In the aforesaid background, the case was heard on merit to determine whether compensation amount of Rs. 20,000/-released in favour of widow-petitioner is just and proper or not.

There is no law laid down to determine the liability to pay compensation damages in case of accident, fatal or non-fatal, caused due to negligence on the part of JSEB.

A similar case fell for consideration before the Supreme Court in M.P. Electricity Board v. Shail Kumar, reported in AIR 2002 SC 129. That was a case in which one Jogendra Singh, a workman in a factory, aged about 37 years, was riding on a bicycle on the night while returning from his factory without any premonition of the impending disaster awaiting him en-route in the form of a live electric wire was electrocuted and died within minutes. The family members claimed compensation to the tune of Rs. 6.9 lacs. The Trial Court assessed the compensation amount to the extent Rs. 4.34 lacs but the claimants were non suited on the premise that they failed to prove who was liable for payment of above compensation. A division Bench of the M.P, High Court allowed the appeal and directed the State Electricity Board to pay the compensation amount of Rs. 4.34 lacs to the claimants. The M.P. Electricity Board, thereafter, moved before the Supreme Court wherein the Supreme Court held as follows : "It is an admitted fact that the responsibility to supply electric energy in the particular locality was statutorily conferred on the Board. If the energy so transmitted causes injury or death of a human, being, who gets unknowingly trapped into if the primary liability to compensation the sufferer is that of the supplier of the electric energy. So long as the voltage of electricity transmitted through the wires is potentially of dangerous dimension the managers of its supply have the added duty to take all safety measures to prevent escape of such energy or to see that the wire snapped would not remain live on the road as users of such road would be under peril. It is no defence on the part of the management of the Board that somebody committed mischief by siphoning such energy of his private property and that the electrocution was from such diverted line. It is to look out the managers of the supply system to prevent such pilferage by installing necessary devices. At any rate, if any live wire got snapped and fell on the public road the electric current thereon should automatically have been disrupted. Authorities manning such dangerous commodities have extra duty to chalk out measures to prevent such mishaps.

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."

As mentioned, there is no rule/guideline laid down to determine compensation for damages or the strict liability, as laid down in other cases, such as motor vehicle accident claim cases. In such case, u/s 140 of the Motor Vehicles Act, 1988, a fixed sum of Rs. 50,000/- is payable as compensation in case of death of any person and a sum of Rs. 25,000/- is fixed in respect of permanent disablement of any person. This provision is in addition to the provisions to other right to claim compensation for death or permanent disablement u/s 141 of the M.V. Act, 1988. Under the said provision Section 141, the person liable to pay compensation u/s 140 is also liable to pay compensation in accordance with the right on the principle of fault apart from the statutory interest mentioned under the Act.

As noticed, there is no such provision to assess compensation amount in the cases like the present.

The Supreme Court in the case of General Manager, Kerala SRTC v. Susamma Thomas, reported in (1994) 2 SCC 176 laid down the principle for determination of quantum of compensation and held as follows :

"The determination of the quantum must answer what contemporary society "would deem to be a fair sum such as would allow the wrongdoer to hold up his head among his neighbours and say with their approval that he has done the fair thing." The amount awarded must not be niggardly since the "law values life and limb in a free society in generous scales." All this means that the sum awarded must be fair and reasonable by accepted legal standards.

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The measure of damage is the pecuniary loss suffered and is likely to be suffered by each dependant. Thus "except where there is express statutory direction to the contrary, the damages to be awarded to a dependant of a deceased person under the Fatal Accidents Acts must take into account any pecuniary benefit accruing to that dependant in consequence of the death of the deceased. It is the net loss on balance which constitutes the measure of damages. "Per Lord Macmillan in Davies v. Powell, Lord Wright in the same case said, "The actual pecuniary loss of each individual entitled to sue can only be ascertained by balancing on the one hand the loss to him of the future pecuniary benefit, and on the other any pecuniary advantage which from whatever source comes to him by reason of the death." These words of Lord Wright were adopted as the principle applicable also under the Indian Act in Gobald Motor Service Ltd. v. R.M.K. Veluswami where the Supreme Court stated that the general principle is that the actual pecuniary loss can be ascertained only by balancing on the one hand the

loss to the claimants of the future pecuniary benefit and on the other any pecuniary advantage which from whatever source comes to them by reason of the death, that is, the balance of loss and gain to a dependant by the death, must be ascertained.

The assessment of damages to compensate the dependants is beset with difficulties because from the nature of things, it has to take into account many imponderables, e.g., the life expectancy of the deceased and the dependants, the amount that the deceased would have earned during the remainder of his life, the amount that he would have contributed to the dependants during that period, the chances that the deceased may not have lived or the dependants may not live up to the estimated remaining period of their life expectancy, the chances that the deceased might have got better employment or income or might have lost his employment or income altogether."

6. In the present case, the cause of death of the husband of petitioner was due to electric shock of naked live wire of 11000 Volt has been admitted by the parties. It is not the case of JSEB that they took all precaution and there was no negligence on their part. They having accepted their fault, have already sanctioned the compensation amount. The only question arises as to what should be the compensation just and proper for payment in favour of widow-petitioner. The petitioner has claimed that the monthly income of her deceased husband was in between Rs. 6,000-7000/-, who was assisting as Advocate's clerk for a number of lawyers, namely, Mr. B.V. Kumar, Mr. P.K. Appu, Mr. N.P. Singh and other. The age of the deceased husband of petitioner was 38 years at the time of death as recorded in the post-mortem report dated 30th March, 2001. There appears to be no other details given, such as total number of family members, who were dependant on the deceased. In this background, it is actually not possible for this Court to determine the exact/appropriate compensation amount for payment in favour of widow-petitioner.

In the case of M.P. Electricity Board (supra), the Supreme Court noticed that the deceased, Jogendra Singh was a workman in a factory, aged about 37 years. In such case, the Supreme Court upheld the decision of the High Court wherein compensation amount of Rs. 4.34 lacs was allowed in favour of claimant.

7. In the present case, the deceased was an Advocate's clerk and aged about 38 years at the time of death i.e. similarly situated like Jogendra Singh of whom reference has been given by the Supreme Court in M.P. Electricity Board case. But in the present case, the widow being only the claimant, the Court feels that the compensation amount of Rs. 2,50,000/- (two lacs fifty thousand) will suffice for payment in favour of the widow- petitioner taking into account the average earning of an Advocate's clerk and the age of the deceased.

The respondents-Opposite parties including JSEB are, accordingly, directed to pay total sum of Rs. 2,50,000/- (two lacs fifty thousand) in favour of widow-petitioner, without asking for any succession certificate within a period of one

month from the date of receipt/production of a copy of this order, failing which they will be liable to pay the interest @ 8% on such amount from the date of death of the husband of petitioner.

8. This application stands disposed of, with the aforesaid observations/directions.