

(1995) 07 AP CK 0064
In the Andhra Pradesh High Court

Master Kartik being Minor rep. by his Father and Others	APPELLANT
Vs	
A.P. State Electricity Board and Another	RESPONDENT

Date of Decision : 21-07-1995

Acts Referred:

Constitution of India, 1950 — Article 21, 226
Electricity (Supply) Act, 1948 — Section 26
Electricity Act, 1910 — Section 37

Citation : (1997) 1 ACC 619

Hon'ble Judges : P. Ramakrishnam Raju, J

Bench : Single Bench

Judgement

P. Ramakrishnam Raju, J.—The first petitioner is the minor son of petitioner Nos. 2 and 3 who is studying in 5th class. On 11.1.1994 he came into contact with a live overhead 11000 volts high voltage electric line passing adjacent to their neighbour's house, the second respondent herein, due to which he suffered severe burns. He was admitted into CDR Hospital immediately, but on account of those burns elbow of the right hand and below knee of the right leg were amputated. The building in which the accident occurred was in existence for over a decade and the H.T. line in question was installed about one and half years back. The requirement relating to installation of overhead lines is set out in Chapter VIII of the Indian Electricity Rules, 1956, framed u/s 37 of the Indian Electricity Act, 1910. Sub-rule (2) of Rule 80 of the said Rules prescribes that the horizontal clearance between the nearest conductor and any part of the building shall be atleast 1.2 metres or 48". But the distance in question on inspection is found to be less than 36" and there is a clear shortage of 1 foot and if the maximum deflection due to wind pressure is also taken into consideration, the clearance will be less than 36". The first respondent-A.P.S.E.B. failed to follow safety norms and failed to maintain the prescribed distance according to law. No endeavour was made to put up any insulating material to cover the lines running dangerously close to the building due to which the career and prospects of the first petitioner received a serious setback. He suffered terrible psychological

depression. His career is marred and it is not possible for him to gain normal life, nor lead a comfortable social family life. Article 21 of the Constitution is violated since right to live with dignity and in a fit and dignified manner is denied to the first petitioner. The petitioners are therefore entitled to recover damages of a sum of Rs. 23,09,324/-, the breakup of which is shown in the writ petition. The petitioners have issued a notice to the first respondent which was received on 16.5.1994, but as they did not receive any reply the writ petition is filed.

2. In the counter-affidavit filed by the first respondent, it is stated that the writ petition is bereft of necessary details and as to how the accident had occurred. No written complaint was given to police either by the parents of the first petitioner or others about the incident. But, however, the CDR Hospital authorities informed Kachiguda Police Station on phone about the accident. The first (sic. 2nd) respondent constructed the building without any set-off as required under the provisions of Hyderabad Municipal Corporation Act. There is no compound wall to the said building nor any open space due to which the building is straightway open into 200 feet road on the margin of which the electrical line is situated. In view of the location and construction of the building, the clearance was short by 0.08 metres. It is not possible for a boy like the first petitioner to come in contact with the live wire with bare hands unless the boy had used an object like a long iron rod which acts as a conductor. Merely because the minimum required horizontal clearance has fallen short of a few inches, it cannot be inferred that the respondent is negligent. As no details are given in the petitioner's affidavit, it is presumed that the first petitioner might have come into contact with the live conductor by climbing up the pole for purpose of retrieving certain playing object like kite or otherwise. Therefore, it is unjust to blame the first respondent for the alleged negligence in the absence of specific proof. Huge claim of compensation without relevant details cannot be sustained. Had there been appropriate complaint at the relevant time, the police would have certainly gathered the facts leading to the accident and it is not possible at this belated stage to ascertain the exact reasons for the accident. In any event, these allegations will have to be enquired into in a properly constituted suit. Therefore, the writ petition is not maintainable.

3. The second respondent against whom no specific relief is claimed, in his counter-affidavit stated that on the fateful day at 5.00 p.m. the first petitioner and his son went to the terrace of the first floor of the building, a little later he heard shouts from the residents of the first floor in the opposite building and his son came running and informed that the first petitioner had fallen down on the terrace. The second respondent immediately went up and found the first petitioner in an unconscious state with his face lying on the parapet wall of the terrace and there was a small iron rod in his right hand touching the electric hefty wire passing nearby. He immediately realised what had happened and fortunately he could notice a wooden piece nearby on the terrace and with the help of that wooden piece, he separated the iron rod from the live wire and carried the petitioner to the ground floor. Thereafter several neighbours gathered

including the third petitioner and the boy was immediately admitted in the hospital. He also denies that his building was constructed contrary to the Municipal laws. He also asserts that his son, Mr. Rajasekhar, immediately after the incident told him that the first petitioner and his son were talking about the school matters in the upstairs. While so, the first petitioner took up an iron rod which was lying there and was waving it standing against the compound wall, during the course of which the rod came into contact with the live wire and, thus, this accident had occurred. He finally states that the attitude of the first respondent is indifferent and even after happening of the above event, the first respondent did not take precautions to insulate the electrical wire passing by. The wire remains open throwing threat of danger to the inmates even now.

4. Mr. Y.V. Ratnakar, the learned Counsel for the petitioners contends that u/s 26 of the Electricity (Supply) Act, 1948, the Electricity Board has all the powers and obligations of a licensee under the Indian Electricity Act, 1910 and that Section 37 of the said Act, the Electricity Board may provide for the protection of persons or property from injury by reason of contact with or proximity of or by reason of defective or dangerous condition of any appliances or apparatus used in the generation, transmission, in supply or use of energy. Sub-rule (2) Rule 80 mandates that where a high voltage overhead line passes adjacent to any building, it shall have a vertical clearance of not less than 1.2 metres in case of high voltage lines up to and including 11000 volts and the Board has failed to follow this safeguard which consequently resulted in the accident. Therefore, the petitioners are entitled to compensation of Rs. 25,09,324/-.

5. Mr. C.V. Nagarjuna Reddy, the learned Standing Counsel appearing for the respondent-Electricity Board, contends that mere breach of duty is not sufficient to give rise to a claim for damages; extraordinary remedy under Article 226 of the Constitution cannot be invoked as effective alternate remedy by way of civil suit is available to the petitioners, where such matters can be decided only after looking into evidence on the issues involved. In any event as the petitioners have not given any complaint for over more than four months, there was no opportunity for any agency like police to investigate into the root-cause of the accident.

6. Relying on *M.C. Mehta and another Vs. Union of India and others*, the learned Counsel for the petitioners contends that industry engaged in a hazardous or inherently dangerous activity is liable to compensate all affected persons and the measure of compensation must be correlated to the magnitude of the damage and capacity of the enterprise, because such compensation should have a deterrent effect. The learned Counsel next relied on *Francis Coralie v. Union Territory of Delhi* AIR 1981 SC 746 for the proposition that no one shall be deprived of his life or personal liberty except by procedure established by law and the right to live, enshrined under Article 21 cannot be restricted to mere animal existence, and, therefore, needs much more than just physical survival. The next decision relied on is *Sakuntala Devi v. Delhi Electric Supply Undertaking*

1995(2) SCC 369. In the said judgment the Supreme Court has directed the Delhi Electric Supply Undertaking which was negligent to maintain electric installation lines in proper condition, to pay ex gratia amount of Rs. 75,000/- to one Ram Naresh Yadav who was electrocuted by a live wire. In Smt. Charanjit Kaur Vs. Union of India and others, , the Supreme Court has directed payment of Rs. 6,00,000/- against the Union of India as the husband of Smt. Charanjit Kaur who was taken to illness was not given proper treatment, nor allowed to be treated privately by his family members and due to the inaction of the commanding Officer to issue orders which ultimately resulted in the mysterious death of the said officer with 98 percent of burn injuries which the authorities could not satisfactorily explain.

7. The contention of the learned Counsel for the petitioners is that civil suit is not an answer in such situations. He relied on Sabastian M. Hungray v. Union of India AIR 1984 SC 1026 where the Supreme Court has awarded a sum of Rs. 1,00,000/- against each of the two respondents by way of exemplary costs, as the Supreme Court has, having regard to the circumstances, drawn an inference that the two persons must have met an unnatural death. In Bhim Singh, MLA Vs. State of Jammu & Kashmir and Others, the Supreme Court has awarded a compensation of Rs, 50,000/- as a member of the Legislative Assembly was detained and thereby prevented from attending to his lawful activities. Therefore, the learned Counsel for the petitioners contends that the petitioners are entitled to the relief.

8. It is contended by the learned Standing Counsel that extraordinary remedy under Article 226 of the Constitution cannot substitute the place of common law remedy. For this proposition he placed reliance on Tilokchand and Motichand and Others Vs. H.B. Munshi and Another, . No doubt, in the said decision, the Supreme Court observed that it does not convert Civil and Criminal actions into proceedings for issue of writs but in rare cases where ordinary process of law is inefficacious, the Supreme Court interferes even where other remedies are available. In D.L.F. Housing Construction (P) Ltd. Vs. Delhi Municipal Corpn. and Others, it is observed that in case where the basic facts are disputed and conflicting questions of law and fact depending on the evidence are involved, writ is not the proper remedy.

9. No doubt, when disputed questions of fact are involved Civil Court would be the proper forum for going into those disputes, effectively, after recording evidence. But, in this case, the manner in which the unfortunate accident had occurred on 11.1.1994 which resulted in amputation of right hand and right leg of the first petitioner is not very much in dispute. It is also not in dispute that Rule 80 of the Indian Electricity Rules provides certain safeguards. According to the said Rule, horizontal clearance between the nearest conductor and any part of the building shall be at least 1.2 metres where H.T. line passes through, In this case, it is admitted that the said distance is not maintained. The Electricity Board and its officers who are statute-bound to maintain electrical installation

lines at proper distance, failed in their duty exposing the lives and safety of the residents of the locality to grave danger. The first petitioner who is a boy of nine years, unfortunately fell victim of the act of the respondent No. 1 who allowed the H.T. live wire in close proximity to the residential building in utter disregard to the safety of the inmates and visitors. The first petitioner being a boy of nine years, unaware of the danger that may befall him, went up the stairs of his neighbour's house alongwith Rajasekhar, his class mate. While talking with him, the first petitioner had inadvertently took up an iron rod, as misfortune would have it, waved the same, which came into contact with the live wire. The first respondent is squarely responsible for the utter negligence in leaving the live wire without taking any precaution so as to insulate the same when the distance of the live wire and the building is within the prohibited distance. In the counter-affidavit filed by the second respondent, it is stated that even now the Electricity Department has not bestowed its attention to insulate or take any kind of precaution to prevent recurrence of such accidents, but merrily left the live wire as it is, unmindful of the consequences. The first respondent cannot disown its responsibility and get away with immunity. Therefore, I am of the view that the action of the first respondent amounts to supine indifference and carelessness of the consequences that follow. I have no hesitation in coming to the conclusion that the first petitioner had suffered serious setback in life due to the torture, agony and mental depression on account of the careless attitude adopted by the first respondent.

10. However, I am conscious that this Court cannot without giving an opportunity to both the parties to adduce evidence regarding the quantum of damages decide the same finally. Therefore, it is a fit case where the matter has to be examined in-depth after adducing evidence before the competent Civil Court.

11. As the civil suit takes a few years before a decision is taken and as the first petitioner has to be educated, assisted in attending to School and also in his normal duties, I am of the view that tentatively, there should be a direction to the first respondent to pay a sum of Rs. 2,00,000/- within one month from today, which will be subject to the final order and decree that may be passed by the Civil Court. I am arriving at this figure of Rs. 2,00,000/- as tentative compensation as the said amount if deposited in a Nationalised Bank would fetch an annual income of about Rs. 25,000 /-which would come to Rs.2,000/- per month which is necessary for providing assistance to the first petitioner. In addition to that I also direct the first respondent to pay the petitioners a sum of Rs. 1,00,000/- towards medical expenses incurred by the petitioners in connection with the treatment which amount will also be subject to final orders of the Civil Court. The said amount has also to be paid within the period indicated above. The first respondent has to deposit the amount directed to be paid to the petitioners in a Nationalised Bank in the name of the first petitioner being minor represented by father and guardian, the second petitioner; so that the second petitioner can withdraw the interest every month or at every quarter as is convenient to him and keep the deposited amount till the first petitioner

attains majority. After the first petitioner attains majority, he is entitled to withdraw the said sum. However, the sum of Rs. 1,00,000/- directed to be paid to the petitioners towards medical expenses, shall be paid directly to the petitioners. In view of the serious handicap with which the first petitioner is to put up and in view of my finding that the first respondent is grossly negligent and liable to pay damages, I am not directing the petitioners to furnish any security.

12. The Writ Petition is, accordingly, allowed to the extent indicated above, but in the circumstances without costs. The 1st respondent is directed to insulate the H.T. wire so as to prevent recurrence of the incident within two weeks from today, if not already done.