

(2010) 06 AP CK 0080
In the Andhra Pradesh High Court
Case No : Writ Petition No. 5536 of 2004

M.Lakshmaiah

APPELLANT

Vs

The Superintending Engineer, AP Transco

RESPONDENT

Date of Decision : 24-06-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 174

Citation : (2010) 06 AP CK 0080

Hon'ble Judges : C.V. Nagarjuna Reddy, J

Bench : Single Bench

Advocate : L.J. Veera Reddy, for the Appellant; O. Manohar Reddy, for the Respondent

Judgement

C.V. Nagarjuna Reddy, J.—This Writ Petition is filed for a Mandamus to declare the action of the respondent in not paying compensation for the death of the petitioner's son due to electrocution on 17-5-2000, as illegal and arbitrary. The petitioner sought for a direction to the respondent to pay compensation/ex gratia to the petitioner.

2. The son of the petitioner, by name, M. Ravi is stated to have died due to electric shock on 17-5-2000 near an agricultural well. The petitioner alleged that the death has occurred on account of snapping of electric wire when the yoke, with which the deceased was ploughing the land, hit the pole. A criminal case in Crime No. 28 of 2000 was registered u/s 174 Cr.P.C., and the same was closed on 2-11-2000 treating the death, due to accident. The petitioner pleaded that he and his wife had been going around the officers for payment of compensation under Apatbandhu Scheme and also for compensation from the AP Transco; and that the District Collector, Nalgonda, vide: Memo dated 20-12-2002, has rejected the petitioner's claim for payment of compensation under Apatbandhu Scheme on the ground that the quota for the year 2002 has already exhausted. As the legal notice caused to be issued by the petitioner on 17-6-2003 did not yield any

result, he filed the present Writ Petition.

3. In support of the claim of the petitioner, the learned Counsel for the petitioner placed reliance on the judgment of this Court in *Master Kartik v. A.P. State Electricity Board* 1995 (3) ALD 1.

4. No counter-affidavit is filed by the respondent.

5. In the absence of denial of the petitioner's allegation, it is reasonable to presume that his son has died due to electric shock. A claim for compensation, ordinarily, is required to be raised before a common law Court. It is only in extraordinary situations that the Constitutional Courts entertain such claims. The reason for reluctance of the superior Courts to entertain such claims is that the parties are required to adduce evidence on various contentious issues, such as, whether the death occurred on account of negligence on the part of the opposite party and what is the appropriate quantum of compensation etc. In the absence of such evidence, the claims for compensation cannot be adjudicated.

6. Though the death of the petitioner's son is stated to have occurred as far back as the year 2000, he has not availed the common law remedy of a civil suit for nearly four years before he filed the present Writ Petition. Ironically, having waited for four years, the petitioner has stated that as filing of the civil suit is time consuming, he has filed this Petition. Had the petitioner been diligent in pursuing his remedy at the right earnest, he would have saved all this time. The judgment in *Master Kartik* (1995) (3) ALD 1 . (supra) is of no avail to the petitioner, because immediately after occurrence of the accident, a Writ Petition was filed in that case and while accepting the contention of the counsel for the respondents that extraordinary remedy under Article 226 of the Constitution of India cannot substitute common law remedy, as held by the Supreme Court in *Tilokchand and Motichand and Others Vs. H.B. Munshi and Another*, this Court held that when disputed questions are involved, civil Court would be the proper forum for deciding such disputes. In that case, this Court has entertained the Writ Petition mainly on the ground that there was not much dispute regarding the manner in which the accident had occurred and has rendered a finding on the negligence. While directing payment of an initial compensation of Rs. 2.00 lakhs, this Court relegated the writ petitioner to civil Court for claiming regular compensation. In my opinion, the judgment in *Master Kartik* (1995) (3) ALD 1. (supra) turned on its own facts, which are totally distinguishable from the facts of this case, because the petitioner herein has failed to approach this Court within a reasonable time of the death of his son and the material facts proving the negligence of the respondents are not available for this Court even to give a preliminary finding on the alleged negligence of the respondents.

7. In this view of the matter, the Writ Petition for payment of compensation cannot be entertained. However, as the respondent is liable to pay ex gratia in terms of the departmental policy, the same shall be paid to the petitioner as per the quantum prescribed at the time of the death of the petitioner's son, if such

an ex gratia has not already been paid, within a period of four weeks from the date of receipt of a copy of this order. The petitioner is entitled to receive such ex gratia without prejudice to his right to sue the licensee and its functionaries for compensation by availing appropriate legal remedy.

8. Subject to the above direction, the Writ Petition is disposed of.