

(2008) 11 AP CK 0036
In the Andhra Pradesh High Court
Case No : Writ Appeal No. 54 of 1999

P. Ramulu @ Ramulu

APPELLANT

Vs

The Superintendent Engineer, Electrical Operation, APSEB
and Another

RESPONDENT

Date of Decision : 04-11-2008

Acts Referred:

Citation : (2009) 1 ALD 21 : (2009) 1 ALT 410

Hon'ble Judges : V. Eswaraiah, J;G.V. Seethapathy, J

Bench : Division Bench

Advocate : K. Venkata Reddy, for the Appellant; O. Manohar Reddy, for the Respondent

Final Decision : Allowed

Judgement

V. Eswaraiah, J.—The appellant is the writ petitioner, who filed W.P.23380/1998 seeking to issue a Writ of Mandamus declaring the action of the Superintending Engineer, Electrical Operation, Andhra Pradesh State Electricity Board (hereinafter referred to as "APSEB"), Mehabubnagar and the Divisional Engineer, APSEB, Wanaparthy, Mehabubnagar in not paying the tentative compensation to the petitioner in connection with accident occurred to his wife and two she-buffaloes due to the electrical shock on 15.06.1996 at Ankiropally village, Mandalka Kollapur Mandal, Mehabubnagar District as illegal and arbitrary and to direct the respondents to pay compensation of Rs. 3 lakhs.

2. The said writ petition has been dismissed, holding that merely because the respondents have paid ex gratia of Rs. 10,000/- on account of death of wife of the petitioner and Rs. 2,000/- for the death of two she-buffaloes, the same cannot constitute a ground for issuing a Writ of Mandamus as prayed for, and accordingly, dismissed the writ petition, entitling the petitioner to seek alternative remedies that are available under law. Aggrieved by the said order of the learned single Judge dated 03.11.1998, this writ appeal has been filed.

3. It is the case of the appellant that he is having the agricultural lands in Ankiropally village, Mandalka Kollapur Mandal, Mehabubnagar District and his wife Nagamma went to the fields along with two she-buffaloes on 15.06.1996, and at about 6 p.m. while she was returning home with her she- buffaloes and reached the way at Kasireddybavi of Ankiropally village, her she- buffaloes were caught by electrical wire which has fallen on the ground and the said Nagamma rushed to the spot and tried to get the buffaloes removed from the electrical wire and then she was also caught by electrical power, due to which, Nagamma and her two she-buffaloes died on the spot due to electrical shock.

4. It is stated that the said L.T.lines were cut off 8 days prior to the accident, but the respondents have not taken any precautions to avoid danger to the public and animals by the said cut off lines. It is stated that had the respondents removed the L.T.lines from the field, the accident could not have occurred. Therefore, it is stated that there was gross negligence on the part of the officials of the respondents and therefore, the respondents are liable to pay the compensation. In fact, the respondents have paid an amount of Rs. 10,000/- on account of death of the wife of the appellant and Rs. 2,000/- for the death of two she-buffaloes towards ex gratia without paying any compensation. Even before filing the counter the writ petition was dismissed, after hearing the learned Counsel for the petitioner as well as the learned Standing Counsel appearing for APSEB.

5. Counter dated 18.09.2008 and additional counter dated 29.09.2008 have been filed on behalf of the respondents denying the allegations about the cut off of the LT line wires about 8 days prior to the accident and the respondents have not taken any action to avoid danger to the public and animals and that the accident occurred due to the negligence on the part of the respondents and its board officials. The allegation that the respondent Board officials failed to remove the LT line wire from the fields and further they have not taken any precautions to avoid danger to the animals as well as the public is also denied. It is stated that the agricultural consumers who were availing the electricity supply through the L.T.line got restored supply to their agricultural pump sets duly restringing the snapped conductors (LT line wires). Due to heavy gale and wind, the neutral wire (T.I. wire No. 8 SWG) which was cut off and fallen on ground and other end of G.I. wire which was resting on L.T. pole had come in contact with nearby phase live conductor. Thus, the L.T. neutral wire was under charged condition with electric supply. Incidentally, late Smt. Nagamma and her two she-buffaloes came in contact with this live G.I.wire, and thus, they were electrocuted accidentally. Immediately after receiving information with regard to the accident and death of Nagamma and two she-buffaloes on 15.06.1996, the then Divisional Engineer, Electrical (Operation) has submitted a report stating that the G.I.wire No. 8 which was strung as neutral wire was snapped 8 days back on the span near Kasireddy's well i.e. accident place and second end of GI wire neutral was resting on the ground and other end of the neutral wire was resting on the top of the pole. Due to heavy wind and gale, GI wire touched one of the live phase

conductors on the top of the pole, thus GI wire charged with electric supply. It is stated that the accident has occurred due to gale, but not due to the negligence on the part of the department and the department has taken all safety measures as provided under the Electricity Act. It is further stated that an amount of Rs. 10,000/- for the death of Nagamma and Rs. 2,000/- for the death of two she-buffaloes was paid towards ex gratia as per the provisions available in the Board Rules. It is stated that distribution company pays the ex gratia in all accidental cases and similarly the said ex gratia amount has been paid. It is further stated that all remedial measures have been taken to avoid the accidents. L.T. lines were spread over in the fields in vast areas for extending electrical supply to the agricultural wells. The incident happened only due to natural calamity by reason of heavy gale and wind on 15.06.1996 at 10 a.m. The department staff acted promptly and there is no negligence on the part of the department and its officials. Thus, it is stated that the disputed questions of facts cannot be adjudicated in a writ petition filed under Article 226 of the Constitution of India and that the writ petition has been rightly dismissed.

6. We have perused the relevant records. Immediately after the accident on the next day i.e. on 16.06.1996 at 9.30 a.m. the Village Administrative Officer reported the said incident to the Station House Officer of Kollapur Police Station stating that on 15.06.1996 Smt. Nagamma, W/o. Ramudu, resident of Ankiropalli went to the fields along with her cattle for grazing in the morning and while she was returning home at about 6 p.m. and reached Kasireddybavi, the electrical wires which are fallen due to the rain came in contact with her and her two she-buffaloes, as a result, Nagamma and her two she-buffaloes died. Accordingly, F.I.R. No. 104/1996, dated 16.06.1996 was registered by the Station House Officer, Kollapur under Sec.174 Cr.p.c. A Panchanama was conducted and in the panchanama it was also recorded that the death of Nagamma and her two she-buffaloes was due to the electrical shock only. Thus, there is no dispute with regard to the death of Nagamma and her two she-buffaloes due to the electrical shock.

7. The only question that arises for consideration as to whether there is any negligence on the part of the APSEB and its officials for the death of Nagamma and her two she-buffaloes.

8. Sri O.Manohar Reddy, learned standing counsel, appearing for the respondents submits that there was no negligence on the part of the department and the disputed questions of facts cannot be decided by this Court and the amount of compensation cannot be ascertained by this Court.

9. The Supreme Court in the case of Smt. Shakuntala Devi v. Delhi Electric Supply Undertaking and Ors. 1995(1) SLR 676 directed the Delhi Electric Supply undertaking to pay ex gratia amount of Rs. 75,000/- to the widow of the deceased for the death of her husband who came in contact with a live electricity cable which was resting on the electricity pole had got snapped and was lying in the rain water logged in the village. In addition to the above, the Supreme Court

also directed the 3rd respondent therein to provide employment to the son of the deceased on compassionate grounds.

10. The Supreme Court of India in the case of Surjya Kant Talukdar v. Assam State Electricity Board 1999 Supreme Court Cases (CrI) 251 directed to pay a further sum of Rs. 30,000/- due to the death of the minor daughter of the appellant therein who came in contact with a loose electric wire with her leg while she was going for morning walk.

11. In the case of Madhya Pradesh Electricity Board Vs. Shail Kumari and Others, the Supreme Court, while dismissing the civil appeal filed by the M.P. Electricity Board against the judgment of the M.P. High Court, which granted compensation of Rs. 4.34 lakhs to the claimants on the ground that the deceased died of electrocution who came in contact with live electricity wire, held that the defences put up by the Electricity Board are without any basis and do not reflect the real position at the spot, rather making an attempt to avoid the responsibility and they are liable to pay compensation. The responsibility to supply electric energy is statutorily conferred on the Board, and if the energy so transmitted causes injury or death of a human being, who gets unknowingly trapped into it, the primary liability to compensate 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 to his private property and that the electrocution was from such diverted line. It is the lookout of the managers of the supply system to prevent such pilferage by installing necessary devices. 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 undertaking. 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 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. Merely because the illegal act could be attributed to a stranger is not enough to absolve the liability of the Board regarding the live wire lying on the road.

12. The Supreme Court in the case of Tamil Nadu Electricity Board Vs. Sumathi and Others, held that the High Court cannot award compensation under Article

226 of the Constitution of India for the death caused due to electrocution on account of improper maintenance of electric wires or equipment by the Tamil Nadu Electricity Board and the High Court while exercising jurisdiction under Article 226 of the Constitution cannot appoint an arbitrator under the Arbitration and Conciliation Act, 1996 to decide the quantum of compensation and then make the award of the arbitrator rule of the Court. In that case, there was a dispute even with regard to the death whether the death was due to the deceased coming in contact with a live electricity wire or due to the lightning. Unless the negligence is established, firstly by the claimant, the said disputed question of fact cannot be decided under Article 226 of the Constitution of India and the proper remedy is only before the Civil Court.

13. The learned standing counsel, appearing for the respondents heavily relied upon the judgment of the Apex Court in the case of S.D.O. Grid Corporation of Orissa Ltd. and Others Vs. Timudu Oram, . The facts of the case before the Apex Court are that the co-villager of the deceased had taken power supply to his LI point. Some other villagers also had illegally taken power supply without the knowledge of the electricity authorities by using a hook from the LI point to their houses by means of an uninsulated GI wire. The unauthorized GI wire through which the line was illegally taken, got disconnected and fell on the ground. At that time the father of the claimant was coming that way with his bullock and the bullock came in contact with the live GI wire and as a result thereof got electrocuted. On finding this, the father of the claimant tried to rescue the bullock and got electrocuted. His wife and daughter who came to rescue were also electrocuted. The officials of the electricity Board submitted a report against which the cause of death was mentioned to be due to illegal electric connection taken through hook. It was the case of the electricity Board that despite the fact that the officials of the Board had taken adequate steps to maintain the supply line properly, and before the storm and rain on the night of the accident the supply line was checked by the Junior Engineer and the lineman in the regular course of checking, and even before the information about the snapping of the line was received by the Board officials, the deceased while moving in the morning came in contact with the snapped electric line. In those circumstances, the Apex Court held that there was no negligence on the part of the electricity Board and the said disputed questions of facts cannot be decided in exercise of the writ jurisdiction under Article 226 of the constitution of India. However, without recording a finding with regard to the negligence on the part of the electricity Board, the High Court directed to pay compensation of an amount of Rs. 1,50,000/-. Therefore, the Apex Court held that the High Court committed an error in entertaining the writ petition without appreciating the nature of its jurisdiction. However, in view of long lapse of time, the Supreme Court directed not to recover the amount already paid to the claimants. As there was a clear defence which was taken, the action of the Electricity Board in any way negligent in the performance of duty and the High Court without recording any finding with regard to the negligence on the part of the electricity board, erroneously

entertained the writ petition, that too after a lapse of 10 years.

14. In the instant case, the Sub Inspector of Police, Kollapur reported to the Assistant Engineer, Electrical, APSEB, Kollapur on 15.06.1996 stating that Smt.Nagamma while returning home from the fields along with cattle, on the way, she came in contact with an electric live conductor which already fell down on the ground from the pole, due to which she and her two she-buffaloes met with electric shock and died on the spot. The Medical Officer, who conducted autopsy over the body of the deceased, opined that the deceased Nagamma died due to electric shock. Accordingly, the report was sent requiring the department to fix the responsibility for the above accident for taking legal action against the defaulters.

15. A perusal of the report submitted by the Divisional Engineer, Electrical which discloses the manner in which the accident was occurred goes to show that G.I.wire No. 8 which was strung as neutral wire was snapped 8 days back on the span near Kasireddy's well i.e. accident place and second end of G.I.wire neutral was resting on the ground and other end of the neutral wire was resting on the top of the pole. Due to heavy wind and gale G.I. wire touched one of live phase conductor on the top of pole, and thus, the G.I. neutral wire was charged with electrical supply (LT), Smt. Nagamma W/o. Ramudu along with two she-buffaloes came in contact with the said live G.I. wire and they were electrocuted and died on the spot in the evening of 15.06.1996. Thereafter only, the neutral wire, which has fallen on the ground, was got removed from the spot. It is further stated that proposals for compensation as applicable in the case will be submitted. The perusal of the said report establishes that G.I.wire No. 8 which was strung as neutral wire was snapped 8 days prior to the accident on the spot which was not at all removed from the ground and on the date of the accident due to heavy gale and wind, the G.I. wire came in contact with live wire and therefore, the G.I. wire which came in contact with Nagamma and her two she-buffaloes and as a result, they were electrocuted. Had the G.I. wire removed immediately, the accident could not have occurred. No explanation has been submitted as to why the said G.I.wire which had fallen on the ground from one end has not been removed for continuous period of 8 days. Therefore, it cannot be said that there was no negligence on the part of the department officials.

16. In view of the aforesaid facts and circumstances, it cannot be said that there is a dispute with regard to the cause of the accident and that the disputed questions of facts cannot be decided in the writ petition. Had the counter been filed, we are of the opinion that the learned Judge could not have dismissed the writ petition on the ground that it is not possible for this Court to decide the question whether the accident occurred on account of the negligence attributable to the respondents or not. The perusal of the report goes to show that the accident occurred due to the negligence attributable to the department alone. If that be so, we are of the opinion that the petitioner is entitled for tentative compensation on account of the negligence of the department which caused the

death of the appellant's wife Nagamma and her two she-buffaloes.

17. We are of the opinion that there cannot be any dispute with regard to the law laid down by the Apex Court that the disputed questions of facts cannot be decided by the High Court under Article 226 of the Constitution of India, in the case of S.D.O. Grid Corporation of Orissa Ltd. and Others Vs. Timudu Oram, . We are also of the opinion that the judgment of the Apex Court in the case of Madhya Pradesh Electricity Board Vs. Shail Kumari and Others, is not overruled in any of the subsequent judgments. Therefore, if the negligence of the department is established, there cannot be any embargo to entertain the writ petition and direct payment of compensation. We are of the opinion that in such cases, it may not be possible to determine the actual amount of compensation payable to the legal heirs of the deceased, and it would be determined upon the evidence adduced in respect of the dependency and earning capacity of the deceased etc. But, however, a tentative compensation, depending upon the facts and circumstances of each case can be determined.

18. In the instant case, as narrated above, the GI wire No. 8 which was strung as neutral wire was snapped 8 days back on the span near Kasireddy's well i.e. accident place and second end of G.I.wire neutral was resting on the ground and other end of the neutral wire was resting on the top of the pole. Due to heavy wind and gale GI wire touched one of the live phase conductor on the top of the pole, thus, G.I. neutral wire charged with electric supply and the deceased Nagamma who was coming on the way from the fields came in contact with the said live GI wire and thus herself and her two she-buffaloes were electrocuted. The report of the Divisional Engineer Electrical, (Operation), Wanaparthi clearly discloses that there was negligence on the part of the officials of the Electricity Board as they have not removed the fallen wire for a period of 8 days and had they removed the electrical wire in time, they could have avoided the cause of death of the deceased. If that be so, the ratio of law laid down in the case of Madhya Pradesh Electricity Board Vs. Shail Kumari and Others, is applicable to the facts of this case.

19. In so far as the quantum of compensation is concerned, as per the Panchanama conducted, the deceased Nagamma was hale and healthy, aged about 38 years, and hence we are of the opinion that ends of justice would be met if the appellant/claimant is awarded tentative compensation of Rs. 90,000/- for the death of the deceased and Rs. 2,000/- each for the death of two she-buffaloes. The Electricity Board had already paid ex gratia of Rs. 10,000/- for the death of the deceased and Rs. 2,000/- for the death of two she-buffaloes. Thus, the appellant/claimant is entitled to the compensation amount of Rs. 82,000/-.

20. Having regard to the facts and circumstances of the case, the respondents are directed to pay the balance compensation of Rs. 82,000/- to the appellant/claimant. The Writ Appeal is, accordingly, allowed. No order as to costs.