(2004) 11 MAD CK 0115

In the Madras High Court

Case No : Writ Petition No. 6017 of 1997

P. Telsa APPELLANT

Vs

The Chairman Tamilnadu Electricity Board RESPONDENT

Date of Decision : 05-11-2004

Acts Referred:
Constitution of India, 1950 — Article 226
Electricity Rules, 1956 — Rule 91, 91(3)

Citation : (2004) 11 MAD CK 0115

Hon'ble Judges : K.P. Sivasubramaniam, J

Bench : Single Bench

Advocate : S. Vasudevan, for the Appellant; N. Srinivasan, for the Respondent

Final Decision : Allowed

Judgement

K.P. Sivasubramaniam, J.—The petitioner, who is the wife of one Paramasivam, aged about 26 years, who died due to electrocution on 7.6.1991, seeks for a Mandamus to direct the respondent/ Electricity Board to pay a sum of Rs. 2,00,000/- as compensation.

2. According to the petitioner, she is an agricultural labourer and earning about Rs. 500/- per month. Her husband Paramasivam, who was also an agricultural labourer, was earning about Rs. 1,000/- per month. She received a message on 7.6.1991 that her husband was electrocuted as a result of the electric line cut live wire at Idaiyankudi Road, erected and maintained by the respondent Board and the victim died on the spot, while going on his cycle on the road at about 6.30 a.m. The petitioner was shocked to receive the news and on rushing to the spot, she was informed that the body was sent for post-mortem at the Government Hospital, Nanguneri. The final report of the post-mortem is to the effect that the victim died due to electrocution.

3. According to the petitioner, she has sent representations to the respondent claiming compensation by her letters dated 10.7.1991 and 21.4.1994. The

petitioner states that she has lost the only bread-winner of the family. She was advised to approach the Free Legal Aid Board, and during 1996, on her approach to the Tamil Nadu State Legal Aid and Advisory Board, the present counsel was appointed on 2.9.1996 and the writ petition has been filed.

4. The petitioner contends that the accident had occurred because of the bad maintenance of the electrical connection, exposing the live wire and the death of the petitioner''s husband was only due to the negligence on the part of the Electricity Board.

5. A counter affidavit has been filed by the respondent, denying the liability to pay compensation. The petitioner has given a representation only on 21.4.1994. It is further stated that the subordinates of the respondent are properly maintaining the entire electrical distribution system, including the erection and maintenance of overhead lines. The snapping of the conductor was only due to the falling of a branch of the tree, which was on the road side on account of the heavy wind and rain on the date of the accident and hence, there was no negligence or omission on the part of the respondent. The Board had sympathetically considered the petitioner''s representation and had granted a sum of Rs. 10,000/- to the petitioner on 11.6.1996 by way of a cheque. However, the petitioner has refused to accept the amount.

6. Learned counsel for the petitioner contends that in terms of Rule 91 of the Indian Electricity Rules, it was obligatory on the part of the respondent to have every overhead line over any part of a street or other public place, properly protected with a device approved by the Inspector for rendering the line electrically harmless in case the line breaks. Likewise, under Sub Rule (3), the owners of every high and extra-high voltage overhead line shall make adequate arrangements to prevent unauthorised persons ascending any of the supports of overhead lines. Therefore, according to the learned counsel for the petitioner, Rule 91 obligates the Electricity Board to ensure the use of protective devices so that when the electrical line breaks, it will not cause harm to anyone. Therefore, even assuming that the snapping of the electrical line was due to any tree having fallen on the electrical line, it should have been devised in such a manner that there will be no power supply in the line. If the said obligation on the part of the Electricity Board had been properly discharged, such instances of electrocution could be avoided. Therefore, this is a case of res ipsa loquitur and the burden is on the Electricity Board to show that there had been no negligence or carelessness on their part.

7. It is further stated that the deceased was a locally employed agricultural cooly and he was aged only about 26 years and hence, the claim of Rs. 2,00,000/- was not at all excessive.

8. Learned counsel for the Electricity Board, however, contends that in terms of the judgment of the Supreme Court in TAMIL NADU ELECTRICITY BOARD V. SUMATHI & ORS AIR 2000 SCW 1717, a petition under Article 226 of the

Constitution was not maintainable when disputed questions of fact arise for consideration and the liability is clearly denied.

9. I have considered the submissions of both sides.

10. A perusal of the counter affidavit discloses that the fact of electrocution of the petitioner''s husband is not at all denied. It is not the case of the Electricity Board that the victim did not die due to electrocution, as claimed by the petitioner. Therefore, I am inclined to hold that there is nothing further to be substantiated by the claimant by driving her to go before the civil Court.

11. In PARVATI DEVI & ORS. V. COMMISSIONER OF POLICE, DELHI & ORS., (2003) 2 SCC 754, the Supreme Court held that when once the fact of death is established, the authorities concerned must be held to be negligent and thus responsible for the death. That was also a case where the victim died on account of electrocution while walking on the road. The fact of the death having resulted due to electrical shock was established. In the said background, the Supreme Court held that when once it is established that the death was on account of electrocution, the authorities are to be held to have acted negligently. Further, on consideration of the obligation on the part of the Electricity Board under Rule 91, as mentioned above, it is the duty of the Electricity Board to see to it that a proper devise should be adopted, whereby, if any electrical line gets snapped, the electrical line should be rendered harmless, which, apparently, had not been complied with in the present case. Therefore, I am inclined to hold that the claimant need not be driven to the civil Court, more so, considering the situation that the respondents are not possessed of any records as on date. In view of the fact that the fact of electrocution is admitted, the respondent is liable to pay a just and fair compensation.

12. Though there is no fixed formula for arriving at a just and fair compensation, it is sufficient to bear in mind that the victim was an agricultural labourer. Though the petitioner claims that he was earning about Rs. 1,000/- per month, it can be safely assumed that he would have been contributing at least Rs. 700/- per month to the family, and on that basis, a loss of annual income of Rs. 8,400/- can be safely fixed. By adopting a multiplier of 15, the total amount will come to Rs. 1,26,000/-. By adding a further amount towards loss of consortium, the compensation payable can be safely fixed at Rs. 1,50,000/-, as on the date of the accident.

13. Though the petitioner has approached this Court only in the year 1997, it is seen that she has made a representation both in the year 1991 and 1994, and in view of her poverty, she has not been able to approach the civil Court, and after approaching the Legal Aid Board, the writ petition has been filed in the year 1997. Though more than 13 years have passed, it would be reasonable to direct the respondent to pay interest at the rate of 6% per annum for a period of ten years over the principal amount of Rs. 1,50,000/-. On that basis, a sum of Rs. 90,000/- becomes payable towards interest for a period of ten years. Hence, a

total of Rs. 2,40,000/- is payable to the claimant. Though the petitioner had prayed only for Rs. 2,00,000/- in the writ petition, the sum of Rs. 2,40,000/- awarded by this Court is inclusive of the interest of Rs. 90,000/-.

With the result, the respondent is directed to pay a sum of Rs. 2,40,000/- to the claimant within a period of eight weeks from the date of receipt of a copy of this order. The writ petition is accordingly allowed.