

(2021) 02 GAU CK 0030
In the Gauhati High Court
Case No : Writ Petition (C) No. 1921 Of 2018

Padmeswar Konch

APPELLANT

Vs

Assam Power Distribution Company Ltd And Ors

RESPONDENT

Date of Decision : 03-02-2021

Acts Referred:

Electricity Act, 2003 — Section 161
Central Electricity Authority (Measures Relating To Safety And Electric Supply)
Regulations, 2010 — Regulation 35(3)(i), 64(3)
Constitution Of India, 1950 — Article 226

Citation : (2021) 02 GAU CK 0030

Hon'ble Judges : Manish Choudhury, J

Bench : Single Bench

Advocate : K R Patgiri

Final Decision : Disposed Off

Judgement

1. The subject-matter in this writ petition filed under Article 226 of the Constitution of India is the death of the victim, Late Manuj Konch claimed to have occurred in an accident due to electrocution and a direction has been sought to the respondent APDCL authorities to grant adequate

compensation for such death.

2. The relevant background facts, in brief, leading to the institution of the writ petition are as follows : the petitioner is the father of one Manuj Konch.

The family of the petitioner resides in Village â?" Soru Ajoha, Post Office â?" Kolakata, Police Station â?" Dhemaji, District â?" Dhemaji, Assam. It

is projected that on 18.09.2016, the son of the petitioner was taking bath near the tube-well located inside the premises of their residence. Due to

sudden carriage of high voltage of electricity in the electrical lines, caused by a damaged transformer, in the locality under Dhamaji Electrical Sub-

Division, APDCL, Manuj Konch received shock due to electrocution. Though Monuj Konch was taken to the nearby health facility, Bengenagarah

CHC immediately, but the Medical Officer, NHRM at Bengenagarah CHC vide Cadaver Slip declared that the victim was brought dead to the

Centre. An application reporting the death vide death report was duly submitted and the Registrar of Birth and Death, Bengenagarah CHC, District

â?" Dhemaji had issued a death certificate recording the death of Late Monuj Konch on 18.09.2016 vide Death Certificate dated 01.10.2016. In

connection with the said death of the victim, a First Information Report (FIR) was made before the In-charge, Machkhowa Out Post under Dhemaji

Police Station by the petitioner on 09.10.2016 and the same was recorded as Machkhowa Out Post General Diary Entry No. 149 dated 10.10.2016.

2.1. The deceased was aged about 22 years of age and he was the elder son of the petitioner. The deceased was a Graduate in Arts and after passing

is B.A. examination in the year 2015, he took admission in M.A. Course in Sociology in Dibrugarh University in the year 2016.

2.2. It is the case of the petitioner that when despite the fact that the death of the deceased was caused due to electrocution for faults attributable on

the part of the respondent APDCL authorities, no compensation had been paid. The petitioner approached the respondent no. 1 by filing a

representation on 17.02.2017 seeking adequate compensation for the loss suffered by the family due to the death of Monuj Konch. As no response

was received from the respondent APDCL authorities with regard to the said representation, the petitioner has approached this Court by way of this

writ petition seeking the relief, stated above.

3. Heard Mr. K.R. Patgiri, learned counsel for the petitioner. Also heard Mr. D. Bhattacharjee, learned Standing Counsel, APDCL for respondent

nos. 1-3 and Mr. G. Pegu, learned Junior Government Advocate for respondent nos. 4-6.

4. Projecting as above, it is submitted by Mr. Patgiri that the electrical accident was caused due to fault on the part of the respondent APDCL

authorities and there was no negligence on the part of the victim. Referring to the Electrical Accident Enquiry Report submitted by the respondent no.

6, he has submitted that it has been established that the death was due to carriage of sudden and abrupt high voltage of electricity in the electrical line

of the motor connected to the tube-well, which was unexpected. The deceased was simply taking bath near the tube-well located inside his house premises. He has further submitted that despite occurrence of the event of death in the year 2016, the respondent APDCL authorities were lackadaisical in their approach and have not provided due compensation to the family of the victim. He has submitted that the matters regarding high voltage of electricity in the locality and the death of the petitioner's son were brought to the notice of the Deputy Commissioner, Dhemaji by the local public. The Deputy Commissioner, Dhemaji caused an enquiry and in the said enquiry also, it was established that the death of the victim was caused due to electrocution. After such sudden and unexpected death, the family of the petitioner was in great shock and grief and due to such reasons, the FIR was lodged a bit belatedly. Just because an FIR was not lodged immediately the same cannot be a cause for denying the relief when the respondent APDCL authorities were well aware of the incident and when the cause of death has been well established.

5. On the other hand, Mr. Bhattacharjee, learned Standing Counsel appearing for the respondent APDCL authorities has submitted that though it is a fact that the victim died on 18.09.2016 but in the absence of a post-mortem examination report, there is no clear indication as regards the cause of death of the victim. In the absence of the post-mortem examination report it cannot be held with certainty, he has submitted, that the death of the victim was caused due to electrocution in the manner alleged.

6. Mr. Pegu, learned State Counsel has submitted that after the accident was reported to the respondent no. 6, an enquiry was caused through a Senior Electrical Inspector and an Electrical Inspector in terms of the provisions of Section 161, Electricity Act, 2003 and thereafter, an Electrical Accident Enquiry Report had been duly submitted.

7. I have given due consideration to the submissions made by the learned counsel for the parties and also perused the materials made available by the parties through their pleadings.

8. The respondent APDCL authorities has submitted its response through an affidavit-in-opposition filed on 11.12.2020 wherein it is inter alia averred that on verification, it was found that the transmission of 11 Kilo Volt (KV) spur line with 63 Kilo Volt Ampere (KVA) Sub-Station was running

smoothly at Soru Ajuha Village. As per such verification, it was found that the accident had occurred when the deceased was taking bath inside his own house premises near a tube-well, with which an electric motor was fitted. According to the respondent APDCL authorities, the alleged incident took place due to improper wiring of the electric motor connected to the tube-well. It is further stated that since no post-mortem examination on the dead body of the victim was carried out and the FIR was lodged subsequent to the cremation of the deceased, it cannot be held with certainty that the cause of death was due to electrocution. From the said averments, one gets the idea that the version of the respondent APDCL authorities is to the effect that the responsibility for the death of the deceased cannot be affixed on the respondent APDCL authorities. The respondent APDCL authorities have, however, acknowledged the receipt of a copy of the Electrical Accident Enquiry Report.

9. It is found that after the incident on 18.09.2016, a petition was submitted by the local public before the Deputy Commissioner, Dhemaji in respect of the incident that occurred on 18.09.2016 in connection with the electric transformer installed in Soru Ajoha Village and the death of the victim. The Deputy Commissioner, Dhemaji vide his order dated 15.10.2016 directed the Circle Officer, Dhemaji to cause an enquiry in that regard. An enquiry was accordingly caused by the officials with field inspection and by meeting the Gaonburah and other villagers. The Report submitted by the Circle Officer indicated that it was reported that the electrical transformer in the village had problems and many incidents had occurred earlier for the said problematic electrical transformer. It was also reported that four nos. of cows also died earlier because of electrocution. The Report was submitted by stating that the deceased died due to sudden electrocution while he was taking bath near the tube-well. The death stated to have occurred due to electrocution of the electrical motor fitted to the tube-well.

10. Section 161 of the Electricity Act, 2003 has prescribed that if any accident occurs inter alia in connection with the generation, transmission, distribution, supply or use of electricity in or in connection with, any part of the electric lines or electrical plant of any person and the accident results in loss of human or animal life, such person shall give notice of the occurrence and of any such loss caused by such accident to the Electrical Inspector.

The Electrical Inspector is to enquire as to the cause of the accident affecting the safety of the public, which may have occasioned by or in connection

with, the generation, transmission, distribution, supply or use of electricity.

11. The respondent no. 6 who is authorised under Section 161, Electricity Act, 2003 to enquire into such an accident occurred on 18.09.2016 and to

submit a report, conducted an enquiry in respect of the electrical accident in question and thereafter, had submitted an Electrical Accident Enquiry

Report. The respondent no. 6 has filed an affidavit wherein it has been stated that the enquiry under Section 161 of the Electricity Act, 2003 was

conducted through the Senior Electrical Inspector, Tezpur Zone, Tezpur assisted by the Electrical Inspector, Tezpur Zone, Tezpur into the electrical

accident occurred at about 12- 30 p.m. on 18.09.2016. A copy of the Electrical Accident Enquiry Report submitted by the Senior Electrical Inspector

and the Electrical Inspector, on 07.06.2018, has been annexed to the said affidavit.

12. The Electrical Accident Enquiry Report has stated that site verification was done by the said two Inspectorate officials with the assistance of

nearby residents of the locality. The Report has further stated that the house of the victim got service connection of power from 2-wire, 220 Volt

overhead line drawn composite with 11 KV overhead line. At the time of the incident, the electrical network of the victim's locality had to

encounter flowing of very high level of electricity for a short while and many electric gadgets, wirings and bulbs in the neighbourhood got damaged. At

the time of the incident, the victim was taking his bath near the tube-well installed in the house premises of the family. At that time, the tube-well as

well as the water coming out from the tube-well received high level of electricity through the connecting cable of the motor fitted with the tube-well

and as a result, the victim got heavy electric shock and died on the spot.

13. In so far as the causes leading to the electrical accident is concerned, the Electrical Accident Enquiry Report has stated that lack of adequate

protective devices (MCB/MCCB) in the secondary end of the concerned Electrical Sub-Station and lack of periodical maintenance of the line clearing

branches of the trees grown near the lines were the causes behind the accident. The Electrical Accident Enquiry Report has further indicated that the

fuses of inordinate higher rating were provided at the secondary end of the

transformer concerned and the fuses did not blow off at the time of charging with high voltage of the concerned line for which overall protection failed to prevent the accident. It is also mentioned that from the facts and circumstances leading to the accident, contraventions were found with regard to Regulation 35(3)(i) & Regulation 64(3) of the Central Electricity Authority (Measures Relating to Safety and Electric Supply) Regulations, 2010 on the part of the owner of the supply system i.e. APDCL. It has been recommended that the provisions of the Central Electricity Authority (Measures Relating to Safety and Electric Supply) Regulations, 2010 should be strictly complied with by the owner of the supply line besides strict compliance of the safety provisions as laid down under the Regulations to prevent such accident in future. Time to time periodical maintenance/checking of electric lines by the owner of the supply system has also been emphasised for ensuring public safety.

14. It has, thus, clearly emerged from the Electrical Accident Enquiry Report submitted in respect of the incident dated 18.09.2016 that the electrical accident which resulted in the death of the victim - Late Manuj Konch, had occurred due to sudden flow of very high voltage of electricity for a short while in the electrical network near the victim's locality. The victim who was taking bath near the tube- well inside his house premises, had received high electric shock as the tube-well as well as the water coming out from the tube-well received high level of electricity through the connecting cable of the motor connected with the tube well. It has further emerged that as a result of such sudden high voltage of electricity, many electric gadgets, wirings and bulbs in the locality got damaged. In such fact situation, the contention sought to be advanced by the respondent APDCL authorities that the victim died because of his negligence has stood belied. The damages caused to the electric gadgets, wirings and bulbs in the locality go to substantiate the fact that there was fault in the electrical system itself which cannot be shifted to the victim. Thus, in such situation, it is not open for the respondent APDCL authorities in the face of their own inaction and omission, to take a plea of non-availability of post-mortem examination report for denial of due compensation to the family of the victim. The principle of strict liability has been explained by the Hon'ble Supreme Court of India M.P. State Electricity Board vs. Shail Kumari, reported in (2002) 2 SCC

162 and as the learned counsel for the parties have not disputed such position, no dilation is required in that regard.

15. From the Electrical Accident Enquiry Report, it is also evident that the electrical accident happened suddenly and the victim was in no position to take adequate care and protection to avert the situation. The Electrical Accident Enquiry Report has also indicated about the lack of adequate

protective devices (MCB/MCCB) in the secondary end of the concerned Electrical Sub-Station and lack of periodical maintenance of the line clearing

branches of the trees grown near the lines. From the causes of the accident it has clearly emerged that no fault can be attributed to the victim

whereas there were contraventions and non-compliance of statutory protective measures on the part of the owner of the electrical sub-system. The

provisions of Central Electricity Authority (Measures Relating to Safety and Electric Supply) Regulations, 2010 were found to have been contravened

by the supplier of the electrical power system i.e. the respondent APDCL authorities. It is, thus, evident that the victim in the case in hand had met his

death due to acts attributable on the part of the respondent APDCL authorities.

16. The Board of Directors of the respondent APDCL authorities by an Office Memorandum dated 18.12.2013 had provided different quantum of

compensation payable to the next-of-kin of the victims in respect of fatal electric accidents. In the said Office Memorandum dated 18.12.2013, a

detailed procedure had also been laid down in respect of disbursal of such compensation. In supersession of the Office Memorandum dated

18.12.2013, another Office Memorandum came to be issued on 25.09.2017 where a uniform rate of compensation was prescribed. It is stated at the

bar that Assam Electricity Regulatory Commission (AERC) has notified AERC (Compensation to Victims of Electric Accidents) Regulations, 2019

where a detailed procedure has again been laid down as regards electrical accidents and quantum of compensation payable for loss of human

life/animals, etc.

17. As per the Office Memorandum dated 18.12.2013, the compensation payable in respect of a victim above 20 years of age and upto 55 years of

age was Rs. 1.50 lakh. The amount of compensation, as per the Office Memorandum dated 25.09.2017, was at a uniform rate of Rs. 2.50 lakh

irrespective of the age of the victim and the said uniform rate of compensation

came into force w.e.f. 01.04.2017. It has been laid down therein that the above amount compensation shall be disbursed by the Chief Executive Officer of the concerned Electrical Circle within 48 hours of the accident, based on the preliminary satisfaction of the field officers that a prima facie fault of the APDCL was established. Duty was also cast on the concerned officer in the APDCL to send notice and report of the electrical accident immediately to the Electrical Inspectorate, Government of Assam strictly in terms of the mandatory provisions contained in the Electricity Act, 2003 and the AERC Regulations. As per the Office Memorandum dated 07.11.2019, the Assam Electricity Regulatory Commission has notified the AERC (Compensation to Victims of Electrical Accidents) Regulations, 2019 providing for a detailed procedure as well as the quantum of compensation payable for loss of human life/animal and also injury to human, where the accident is attributable to the fault/negligence of APDCL authorities.

18. This writ petition has been preferred in the year 2018. It is not the case of the respondent APDCL authorities that the electrical accident was not within their knowledge. The Electrical Accident Enquiry Report submitted in respect of the electrocution case in hand has not been challenged in any manner by the respondent APDCL authorities till date nor have the findings made in the said Electrical Accident Enquiry Report been traversed in the affidavit-in-opposition filed by the respondent APDCL authorities in the instant case. From the facts that have emerged from the above discussion in respect of the accident, the respondent no. 6 had submitted his Electrical Accident Enquiry Report only on 07.06.2018 in respect of the fatal electrical accident that occurred on 18.09.2016. What took the respondent authorities such long period of time to enquire into the accident and thereafter, to submit the Electrical Accident Enquiry Report has not been explained in either of the affidavits of the respondent authorities. The procedure prescribed in all the above Office Memoranda had/has mandated that it was/is incumbent on the part of the respondent APDCL authorities to settle a claim of a fatal electrical accident within a prescribed period of time from the date of receipt of information about the same on the basis of the documents / records indicated therein. From the discussions made above, it is clearly demonstrated that the settlement of claim in respect of the fatal electrical accident in the case in hand has not been settled expeditiously as

indicated in the Office Memoranda (supra). While the Office Memorandum dated 18.12.2017 had prescribed the period of settlement as 60 (sixty) days, the Office Memorandum dated 07.11.2019 has prescribed a period of 120 (one hundred twenty) days as the period of settlement from the date of occurrence of the event.

19. It is contended on behalf of the respondent APDCL authorities that as the fatal accident under reference had occurred in the year 2016, the compensation prevailing at that time would only be payable to the victim. As there is inordinate and inexplicable delay on the part of the respondent APDCL authorities in disbursement of the compensation amount fixed by its own norms to the family of the victim in the case in hand, this Court does not find any merit in the said submission advanced on behalf of the respondent APDCL authorities as regards the quantum of compensation payable as per the Office Memorandum prevailing at that point of time. It is also noticed from the Office Memoranda (supra) that there has been periodical enhancement in the amounts payable for loss of human life. From such periodical enhancement in respect of the compensation amount itself, it is clearly discernible that the respondent APDCL authorities have themselves observed that due to various factors including the changes in the cost of living index, the rates of inflation, etc., there are needs for upward revision periodically in the compensation amounts for different kinds of electrical accidents after taking into account all the relevant factors inasmuch as a reasonable amount of compensation at a particular point of time might not be reasonable at the later point of time. The respondent APDCL authorities have formulated the guidelines providing for compensation amounts for different hazards to victims of electrocution and it cannot be denied that disbursement of such compensation amount should be prompt and immediate to enable the victims and/or the victim's family to overcome the sudden loss and to deal with the untoward situation which have befallen on them suddenly due to such electrocution death which is always unanticipated. In the event the disbursement of the compensation amount is not made immediately and there is delay in disbursement of the same, it is incumbent on the part of the authorities to offset the situation for the victims and/or victim's family by disbursement of the amount of compensation prevailing on the date of such disbursement.

18. The Office Memorandum dated 07.11.2019 has prescribed an amount of Rs. 4,00,000/- for loss of human life. While prescribing the amount of Rs.

4,00,000/- as compensation, it has also been prescribed that in the event a claim is not settled within a period of 120 (one hundred and twenty) days

from the date of occurrence of the electric accident, the delay in payment of compensation shall result in an additional interest of 12 % per annum on the amount.

19. In the light of the above discussions, this Court is of the considered view that it is the compensation which has been prescribed in the Office

Memorandum dated 07.11.2019, is payable in respect of the fatal electric accident under reference. Accordingly, the respondent APDCL authorities

are directed to make payment of a compensation of Rs. 4,00,000/- to the petitioner along with an interest of 12% per annum on the said amount.

Having due regard to the factual situation obtaining in the case in hand, it is directed that the respondent APDCL authorities shall calculate the interest

at 12% per annum w.e.f. 07.06.2018 i.e. the date of submission of the Electrical Accident Enquiry Report by the respondent no. 6 and the same shall

be paid to the petitioner upon her due identification within a period of 2 (two) months from the date of receipt of a certified copy of this order by the

respondent APDCL authorities. Notwithstanding such payment, it would be open for the petitioner to pursue private law remedy for further

compensation.

20. With the observations made and directions given above, this writ petition stands disposed of. There shall, however, be no order as to cost.