
(2012) 12 OHC CK 0029
In the Orissa High Court
Case No : Writ Appeal No. 426 of 2011

Pramila Khatua and Others	Vs	APPELLANT
CESU of Orissa and Another		RESPONDENT

Date of Decision : 13-12-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 2013 Ori 95

Hon'ble Judges : V. Gopala Gowda, C.J; B.K. Misra, J

Bench : Division Bench

Advocate : Tahail Charan Mohanty, Sarad Chandra Swain, S. Patnaik, K. Mohanty, S. Mohanty, A. Rout and Smt. B. Mohanty, for the Appellant; B.K. Nayak, for the Respondent

Final Decision : Allowed

Judgement

B.K. Misra, J.—The two appellants, who are not only helpless but hapless also being aggrieved with the order of the learned single Judge in O.J.C. No. 10925 of 1996 dated 11.7.2011 rejecting their case for award of compensation to the tune of Rs. 3,50,000/-, because of the death of the sole bread winner of their family by electrocution have filed this Writ Appeal urging various facts and contentions. The case of the appellants is that the deceased Golekh Khatua who was the husband of the first appellant and son of the second appellant was eking out living by catching fish. It is alleged that on 23.6.1996 around noon time the deceased was returning to his house after catching fish from the river Sapua and on his way at Kundapatna near Jenapur came in contact with a live electric wire which had been snapped from the main line and had fallen on the field covered with green grass. The deceased could not see the live electric wire which had been covered with grass over the ground and died at the spot being electrocuted. The said incident was reported at Gurudijhatia Police Station. The police on receipt of the said information registered Gurudijhatia U.D. Case No. 5 of 1996 which ultimately culminated in registration of G.R. Case No. 19 of 1996.

According to the appellants, the respondents were totally negligent in performance of their statutory duties and therefore when they failed to discharge their duties and responsibilities in proper maintenance of the electric line they are vicariously liable to adequately compensate the legal representatives of the deceased. It is alleged that the deceased was 42 years old when he died and had left behind his widow, two minor sons and two minor daughters besides the widow mother having no source of income. It is the further case of the appellants that the deceased was earning Rs. 3,500/- per month by catching fish. The appellants, who were starving after the death of the sole bread winner approached this Court to get compensation by invoking the extraordinary jurisdiction of this Court, for their survival.

2. Though the respondents, who were the opposite parties in O.J.C. No. 10925 of 1996 entered appearance through their counsel, but they did not file any counter-affidavit.

3. Learned single Judge dismissed the writ petition holding that the appellants could not establish as to what was the cause of the death of the deceased and when no material is available on record to show that the deceased Golekh Khatua died of electrocution, it was difficult for the Court to attribute negligence on the part of the opposite parties and accordingly liberty was given to the petitioners to approach the Civil Court for getting compensation in accordance with law.

4. Dr. Tahali Charan Mohanty, learned Senior Advocate argued with vehemence that the findings of the learned single Judge cannot be sustained in the eye of law as ample materials were there to show that the deceased died of electrocution because of the sole negligence of the opposite parties and the direction of the learned single Judge to approach the Civil Court amounts to putting salt to the injury as the same is inequitable because of long lapse of 15 years from the date of the unfortunate death of the deceased till the judgment of the learned single Judge was delivered. Asking the applicants to approach the Civil Court would be working out grave injustice to them. By placing reliance on several decisions of the Apex Court and of this Court it was strenuously contended by Dr. Mohanty, learned Senior Counsel that the law Courts will lose their efficacy if they cannot possibly respond to the need to the society. Justice oriented approach ought not to be thwarted by adopting a pedantic approach and resorting to technicalities especially when there is an infringement of the indefeasible right to life of the citizen. Monetary compensation at times perhaps the only effective remedy to apply balm to the wounds of the family members of the deceased victim the bread earner of the family. D.K. Basu Vs. State of West Bengal, Ramesh Singh Pawar Vs. M.P. Electricity Board and Others,).

5. Mr. B.K. Nayak, learned counsel appearing for the opposite parties on the other hand submitted that the order of the learned single Judge needs no interference as the same is based on sound proposition of law that disputed questions of facts cannot be gone into in the writ jurisdiction as it is the competent Civil Court who after examining legal evidence on record to prove the

fact of negligence can direct payment of compensation.

6. Upon hearing learned counsel for the respective parties we have carefully examined the correctness of the impugned order of the learned single Judge. We have perused the materials placed before us including the information obtained by the appellants under the Right to Information Act with regard to Gurudijhatia Police Station U.D. Case No. 5 of 1996 dated 23.6.1996 as well as the F.I.R. lodged by one Prasanta Kumar Khatua at Gurudijhatia Police Station, Athagarh on 23.6.1996 at 4.30 p.m. basing upon which U.D. Case No. 5 of 1996 was registered and enquiry was taken up by the A.S.I., of Police, Sri K.K. Sahoo attached to the said Gurudijhatia Police Station. Similarly, we have also perused the final report submitted in Gurudijhatia Police Station U.D. Case No. 5 of 1996. The final form so submitted by police in Gurudijhatia Police Station U.D. Case No. 5 of 1996 categorically shows that the deceased Golekha died because of the electrocution when he came in contact with the live electric wire while returning after catching fish from river Sapua. The F.I.R. also reveals of such a fact and there is absolutely no denial of such alleged death of Golekh Khatua because of electric shock though the opposite parties had entered appearance and contested the matter before this Court. Thus, it is established on record that the death of the deceased was due to electrocution by coming in contact with live electric wire which had been snapped from the main over head line and lying on the field being covered with grasses. It is an admitted fact that the opposite parties are responsible for maintenance of the electric lines and they are duty bound to take protective measures so that live electric wires do not fall on any surface or touches any live object be it a human being or animal. There is absolutely no material to show that the live electric line got snapped suddenly because of heavy lightening, storm or heavy rain before the accident took place. The respondent No. 1 Company who is engaged in supply of electricity has the statutory duty and responsibility for its proper maintenance and adopt all safety measures to see that the wires snapped do not remain alive on the road or pathway or the premises of the inhabitants of the locality and users of the road. It is the duty of the respondent No. 1 Company to install such device/devices to disrupt supply of energy automatically in case of snapping of the live electric line. The argument that the officials of respondent No. 1 Company had no knowledge of snapping of wire is not acceptable at all.

7. The rule of strict liability has been applied in our country and there are catena of decisions on the point including that of the Apex Court and of this Court also. In *M.C. Mehta and another Vs. Union of India and others*, the Apex Court by going beyond the rule of "strict liability" held that:-

Where an enterprise is engaged in a hazardous or inherently dangerous activity and harm is caused on any one on account of the accident in the operation of such activity the enterprise is strictly and absolutely liable to compensate those who are affected by the accident, such liability is not subject to any of the exception to the principle of strict liability under the rule in *Rylands v. Fletcher*.

8. By following the dictum of the Apex Court reported in *M.S. Grewal and Another Vs. Deep Chand Sood and Others*, *D.K. Basu v. D.K. Basu v. State of West Bengal* (supra) *Executive Engineer, Central Electricity Supply Utility Ltd., Cuttack Electrical Division, Jobra, Cuttack Vs. Hema Sethy*, and after hearing the learned counsel for both parties, we have no hesitation in coming to a clear and cogent conclusion that the writ petition under Article 226 of the Constitution is maintainable and the respondents are liable on the principles of strict liability to pay compensation to the appellants in the instant case and the conclusions arrived at by the learned Single Judge in O.J.C. No. 10925 of 1996 dated 11.7.2011 which is impugned in this appeal is not sustainable in the eye of law.

9. The appellants while filing the writ petition had claimed Rs. 3.5 lakhs compensation for the death of Golekh Khauta, who was electrocuted because of the negligence on the part of the opposite parties but enhanced the same to Rs. 7 lakhs in this appeal along with a prayer to grant interest @ 12% per annum on the said sum with effect from the date of filing of the writ petition in the year 1996 till the said sum is paid in full. According to the appellants the deceased Golekh Khauta was a fisherman by profession and was earning Rs. 3,500/- per month and he was 42 years old when he died. Following the guidelines laid down by the Apex Court in the case of *Lata Wadhwa and Others Vs. State of Bihar and Others*, , *M.S. Grewal v. Deep Chand Sood* and the decisions of this Court in the case of *Executive Engineer, Central Electricity Supply Utility Limited, Cuttack Electrical Division, Jobra, Cuttack v. Hema Sethy* (supra) and *Nirmala Nayak and Others Vs. Chairman-cum-Managing Director, Grid Corporation of Orissa Ltd. and Another, Grid Corporation of Orissa Limited and another and Sambari Nayak v. The Chief General Manager, Telecom Orissa Circle, Bhubaneswar and others* as the guiding factor and especially by adopting the scientific method contained in the 2nd Schedule to Motor Vehicles Act, 1988, in our considered view that with the long passage of time since the death of the deceased in 1996 the poor helpless widows are knocking the doors of justice with begging bowl for their sustenance and the four children left behind the deceased, the respondents i.e. CESU is directed to pay compensation of Rs. 3,50,000/- (Rupees three lakhs fifty thousand) to Pramila Khatua, the widow of the deceased late Golekh Khatua with interest @ 6% per annum i.e. from the date of filing of the writ petition on 04.10.1996 till the actual payment is made. Besides that the opposite parties are also directed to pay Rs. 1,00,000/- (Rupees one lakh) as compensation to appellant No. 2 the widow mother of the deceased with interest @ 6% per annum from the date of filing of the writ petition i.e. 4.10.1996 till the actual payment is made. Out of the total amount of Rs. 3,50,000/- compensation to be paid to the appellant No. 1 i.e. the wife of the deceased, a sum of Rs. 3,00,000/- be kept in fixed deposit in any Nationalised Bank for a period of five years with condition that the monthly interest accrued on such fixed deposit be paid to her every month regularly. The rest Rs. 50,000/- is to be paid to appellant No. 1 in cash. Further, we direct that out of the compensation amount Rs. 1,00,000/- to be paid to appellant No. 2 the mother of the deceased, a sum of Rs. 75,000/- be

kept in fixed deposit in any Nationalised Bank for a period of five years with condition that the monthly interest accrued on such fixed deposit be paid to her regularly. The rest Rs. 25,000/- is to be paid to appellant No. 2 in cash. Further, we give liberty to the appellant Nos. 1 and 2 to move this Court for early disbursement of the amounts so kept in fixed deposit in then-name, if for the welfare of their family and urgent need like marriage, medical expenses, repair of the dwelling house, there would be need of money.

With the aforesaid observations and directions, the writ appeal is allowed.

V. Gopala Gowda, C.J.

I agree.