
(1995) 09 OHC CK 0014
In the Orissa High Court
Case No : O.J.C. No. 3353 of 1994

Rajani Dei

APPELLANT

Vs

Chairman, Orissa State Electricity Board and Others

RESPONDENT

Date of Decision : 20-09-1995

Acts Referred:

Citation : (1996) ACJ 1146 : (1996) 81 CLT 353

Hon'ble Judges : P.C. Naik, J;A. Pasayat, J

Bench : Division Bench

Advocate : A.S. Naidu, P.K. Mohanty, A.K. Rath, D.K. Ray and S.P. Choudhury, for the Appellant; G. Rath, B.R. Sarangi and B. Mohanty, for the Respondent

Judgement

A. Pasayat, J.—It is ironic in a State where power cuts and power failures are usual features, one Bhagata Mallik (hereinafter referred to as "deceased") lost his life on account of electrocution. This application has been filed by Rajani Dei, unfortunate widow of the deceased, claiming compensation from the Orissa State Electricity Board (hereinafter referred to as "Board").

2. Background facts, almost undisputed, are as follow:

On 21.5.1992, in the evening, the deceased was cultivating his agricultural lands at a distance of about half furlong to the southern side of Japa-Iribina main road. Suddenly an overhead electric wire snapped and came in contact with him resulting in his instantaneous death. An U.D. case was registered in Ersama Police Station. The Officer-in-charge of Ersama Police Station visited the spot, found the dead body of the deceased lying on the land and a live 11 K.V. electric line hanging over the land. Inquest could not be conducted immediately due to the dangerous position of the live wire, and on his request live line was disconnected by the officials of the Board. Thereafter inquest was held, and final report was submitted on 30.5.1992. Post-mortem report indicated death due to extensive burn produced by high voltage electricity resulting in cardiac arrest and shock. It is petitioner's case that on account of negligence of the Board

authorities, which is duty-bound to maintain poles and lines in order, deceased lost his life. This court has been moved for a direction to the Board and its functionaries to grant compensation of Rs. 3,00,000/-.

3. In the counter-affidavit filed by the Board and its functionaries, it has been stated that because of high speed wind and stormy weather one 11 K.V. conductor slipped from the pin-binding and was hanging loose. Consequently, the live line wire of 11 K.V. line which runs from Japa to Dhobei was hanging at a ground clearance of 5 ft. and on 21.5.1992 at about 6 p.m. the deceased came in contact with such live line wire and got electrocuted. It is pleaded that there was no negligence and though maintenance was done in a proper manner, due to act of God the conductor slipped from the pin-binding and was sagging at a ground clearance of 5 feet. Rejoinder affidavit by the petitioner was filed enclosing certain documents, and an additional affidavit has also been filed enclosing a report of the Chief Electrical Inspector addressed to the Principal Secretary of the Government regarding fatal electric accident resulting in the death of the deceased. Findings recorded by him are as follow:

(a) Departmental enquiry report and the accident report (in Annexure XIII) were not available. These should have been submitted within three days or 45 hours respectively of occurrence of the accident as per "Safety Manual" of the Board and Rule 44-A of the Indian Electrical Rules, 1956.

(b) There has been serious violation of Rule 29 and the quality of work was very poor; otherwise, the conductor would not have slipped from the pin insulator.

(c) Slipping of conductor from the pin insulator is thus due to improper construction and maintenance.

(d) The supervisory staff are responsible for the accident.

Certain suggestions have also been given in the report to provide for preventive measures:

(i) Pre-monsoon checking should be taken up for all overhead lines, so that no conductor snaps or slips from pin-binding easily.

(ii) Overhead lines should not come in contact with branch of any tree in their routes.

(iii) The field engineers should ensure that an adequate ground clearance is maintained for all overhead conductors as per provisions of Indian Electrical Rules.

(iv) Wide publicity should be made by the Board to create awareness amongst public about the danger of loose hanging wire.

4. Though S.D.O. (Electrical), Tirtol, was examined by the Chief Engineer (Rural Engineering and Distribution), O.S.E.B., Bhubaneswar and agreed to accept reply, recommended that field and supervisory staff may not be held responsible.

Preventive measures, as suggested, may provide safety in future. Those can be pressed into service to deny liability of the Board. The term "compensation" as stated in the Oxford Dictionary signifies that which is given in recompense, an equivalent rendered. "Damages", on the other hand, constitute the sum of money claimed or adjudged to be paid in compensation for the loss or injury sustained, the value estimated in money, of something lost or withheld. The term "compensation" etymologically suggests the image of balancing one thing against another; its primary signification is equivalence, and the secondary and more common meaning is something given or obtained as an equivalent. Pecuniary damages are to be valued on the basis of "full compensation". That concept was first stated by Lord Blackburn in *Livingstone v. Rawyards Coal Co.* (1880) 5 AC 25. It is true that perfect compensation is hardly possible and money cannot renew a physique frame that has been battered and shattered, as stated by Lord Morris in *H. West & Son Ltd. v. Shephard* 1958 ACJ 504 (HL, England). Compensation is an act which a court orders to be done, or money which a court orders to be paid, by a person whose acts or omissions caused loss or injury to another in order that thereby the person damnified may receive equal value for his loss, or be made whole in respect of his injury. It is a return for a loss or damage sustained. Justice requires that it should be equal in value, although not alike in kind. Object of providing compensation is to place claimant as far as possible in the same position financially as he was before accident. Broadly speaking, in the case of death basis of compensation is loss of pecuniary benefits to the dependants of the deceased which includes pecuniary loss, expenses, etc. and loss to the estate. Object is to mitigate hardship that has been caused to the legal representatives due to sudden demise of the deceased in the accident. Compensation awarded should not be inadequate and should neither be unreasonable, excessive nor deficient. There can be no exact or uniform rule for measuring value of human life and measure of damages cannot be arrived at by precise mathematical calculation; but amount recoverable depends on broad facts and circumstances of each case. It should neither be punitive against whom claim is decreed nor it should be a source of profit of the person in whose favour it is agreed. Upjohn, L.J., in *Charter House Credit v. Jolly* (1963) 2 QB 683, remarked, "the assessment of damages has never been an exact science; it is essentially practical."

Considering avocation the deceased pursued and the surrounding circumstances like his age and income at the time of death, compensation of Rs. 50,000/- (Rupees fifty thousand) would be adequate. Learned Counsel for petitioner states that in case a sum of Rs. 50,000/- be paid as compensation, there shall be no further claim lodged by the petitioner.

5. In the aforesaid circumstances, the Board is directed to pay a sum of Rs. 50,000/- to the petitioner by the end of December, 1995. The amount be deposited in this court. Assessment of the compensation payable is not end of the exercise. Law should deliver justice. It is imperative for the court or Tribunal, as the case may be, to see that the benefits of the compensation awarded pass

judiciously and money ultimately reaches the beneficiaries and the fruits of the exercise are enjoyed by them. The burden and responsibility is more where the beneficiaries are weak and exploitable. The compensation should not be allowed to be frittered away, thereby frustrating and losing the purpose for which compensation is awarded. In the aforesaid background, we direct that a sum of Rs. 35,000/- be kept in fixed deposit in any nationalised bank for a period of five years. The balance shall be released to the petitioner on being identified by any of the Counsel appearing for her in this court.

6. The writ application is disposed of accordingly.

P.C. Naik, J.

7. It need not be emphasised that great care and caution is expected from the Electricity Board in laying, installing and maintaining overhead wires carrying heavy load of electric energy as these are dangerous. Generally these wires should not snap and fall on the ground. In case this happens, to my mind, unless rebutted, an inference can be drawn that there has been carelessness and negligence on the part of the Electricity Board in the maintenance of overhead lines. Needless to say, the Electricity Board is also required to take necessary precautions against the danger of overhead lines snapping and falling on the ground. Rule 91 of the Indian Electricity Rules, 1956, inter alia, provides as follows:

91. Safety and Protective Devices.- (1) Every overhead line (not being suspended from a dead bearer wire and not being covered with insulating material and not being a trolley-wire erected over any part of street or other public place or in any factory or mine or on any consumer's premises) shall be projected with a device approved by the Inspector for rendering the line electrically harmless in case it breaks.

8. In the instant case, the defence plea that because of the strong wind and stormy weather, a conductor slipped from the pin-binding and consequently the live wire hung on the ground cannot absolve the Electricity Board of its negligence. There is nothing to indicate that the mishap was a result of vis major. Overhead lines should not normally snap or hang on the road nor should a conductor slip from the pin-binding due to wind and rain. To my mind, it discloses lack of proper supervision and maintenance. The burden, in such a case, would be on the Electricity Board to prove that adequate precautions, proper care and maintenance were being carried out. In the absence of any material, the negligence of the Electricity Board can be inferred. In such a case, the Electricity Board becomes liable for its negligence.

9. The performance of dangerous work requires a very high degree of care. On this point a reference may be made to paras 35 and 36 contained in Vol. 34, Halsbury's Laws of England, 4th Edn., which read thus:

(35) Nature of duty.-The performance of dangerous work and the possession, use

or supply of dangerous things impose a duty to take special precautions. There is no legal classification of work or things as dangerous or not dangerous. Danger is a matter of degree and every activity is fraught with some possible element of danger to others. The law in all cases exacts a degree of care commensurate with the risk created, and the more dangerous the act the greater the care that must be taken in performing it. However, the liability of the person on whom the duty is imposed is not absolute; it arises only where there is some element of negligence on his part.

(36) Duty to take special precautions.-Work of articles which have been held to call for special precautions include the launching of a ship, the use of a traction engine, fireworks, firearms, a soldering lamp, a calor gas cylinder, explosives and surgical treatment. Operations connected with the handling of petroleum and the distribution of gas and electricity also call for special precautions and are in addition subject to statutory provisions for safety. Persons who leave dangerous things where they are likely to be caused or affected by others, and particularly by young persons, are responsible if the interference should reasonably have been foreseen and results in injury.

It follows that the Board must take special precautions in the operations connected with the transmission of energy through overhead lines. Reference may also be made to *Quebec Railway, Light, Heat Power Co. Ltd v. Vandry* 1920 AC 662, a case in which the question of negligence of the company engaged in transmission of electric energy was involved. The Quebec Railway, in exercise of statutory powers, had erected two overhead cables for the distribution of electric current at tensions of 2200 volts and 108 volts respectively and they supplied current at 108 volts to the respondents' premises. A violent wind (not amounting to force majeure) tore a branch from a tree growing about 28 feet away from the cables, and drove it against them. In consequence the cables were broken down and the high tension current found its way along with low tension cable into the respondents' premises and caused a fire. The respondents brought an action for damages against the appellants.

10. On these facts, the Court of Appeal held as under:

That the appellants were liable for the damage without proof that they had been negligent, since they had failed to establish that they could not have prevented the escape of the electric current; further that the appellants' statutory powers afforded no defence, since the escape of the current was not necessarily incidental to the exercise of those powers.

Reference may also be made to para 57 contained in Vol. 34 of Halsbury's Laws of England, 4th Edn., which reads thus:

(57) Inference of defendant's negligence.-Under the doctrine *res ipsa loquitur* a plaintiff establishes a *prima facie* case of negligence where (1) it is not possible for him to prove precisely what was the relevant act of omission which set in train the events leading to the accident, and (2) on the evidence as it stands at

the relevant time it is more likely than not the effective cause of the accident was same act or omission of the defendant or of someone for whom the defendant is responsible, which act or omission constitutes a failure to take proper care for the plaintiff's safety. There must be reasonable evidence of negligence. However, where the thing which causes the accident is shown to be under the management of the defendant or his employees and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of explanation by the defendant that the accident arose from want of care.

I agree that an award of Rs. 50,000/- to the petitioner will serve the ends of justice.