

(2004) 09 PAT CK 0074
In the Patna High Court
Case No : CWJC No. 3622 of 2000

Ramawati Kuer

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 10-09-2004

Acts Referred:

Citation : (2004) 09 PAT CK 0074

Final Decision : Allowed

Judgement

R.S. Garg, J.—Heard learned counsel for the parties.

2. The facts leading to this writ application and as alleged by the petitioner are that on 23.4.1998 a live electrical wire snapped from the pole and fell on the husband of the petitioner as a result of which he died on the spot. The first information report was lodged which was registered as Sasaram PS case No. 352/98. The petitioner thereafter made an application to the respondents for compensation but as the respondents did not do anything in the matter the petitioner has now come to this Court submitting inter alia that a sum of Rs. ten lacs be awarded to the petitioner as compensation.

3. The first information report is Annexure-1, it reads that at about 4.30 am Shri Ram Awadh Singh, Advocate was going to Kali Mandir to offer his Puja, the wire snapped, fell on his body as a result of which he died on the spot. The respondents in their counter have not denied the two facts that the wire snapped and the deceased died as a result of electrocution. They have simply submitted that in accordance with Section 33 of the Indian Electricity Act, 1910 the accident has not been reported therefore, this Court should not interfere in the matter. They have also submitted that the Assistant Engineer submitted his report on 17.11.1998 wherein he has said that Shri Ram Awadh Singh died of electrocution but the other facts asserted by the claimants that the wire was loose, it was making sparks and such facts were reported to the Electricity Board were concocted. In his report Annexure-A the said Engineer has said that no consumer had ever made any report about the wire being loose or hanging.

4. The respondents have also said that after receiving the information about the death and snapping of the wire, the supply was immediately cut and preventive measures were taken.

5. During course of the arguments it was submitted that as the matter relates to the disputed questions of facts this Court should not interfere under Article 220 of the Constitution of India. Taking an exception to the argument placing reliance upon a judgment of this Court in the matter of Ram Swaroop Yadav v. The Bihar State Electricity Board and Ors., 2004 (2) BLJR 959, it is submitted that the common rule is that the High Court ordinarily would not interfere in a matter where facts are disputed but that rules are not of universal application and are self imposed restrictions. It is submitted that in the said matter in identical situation where the facts were proved that the person died of electrocution, the accident was not denied, the Court held that the High Court would be competent to award compensation under Article 226.

6. The Supreme Court in the matter of Tamil Nadu Electricity Board Vs. Sumathi and Others, , has observed that when a disputed question of fact arises and there is clear denial of any tortious liability, remedy under Article 226 of the Constitution of India may not be proper, but it can not be understood as laying a law that in every case of tortious liability recourse must be had to a suit. When there is negligence on the face of it and infringement of Article 21 is there it can not be said that there will be any Bar to proceed under Article 226 of the Constitution. The observations made by the Supreme Court in the matter of Tamil Nadu Electricity Board v. Sumathi and Ors., (supra) would be relevant.

7. The first question to be considered in this matter would be whether any question of fact has been disputed or not. Whether any fact has been controverted or not, whether the respondents are saying that the facts projected by the petitioner are false, concocted or manufactured only for the purposes of the writ application.

8. To raise a dispute of fact, the respondents have not denied snapping of the wire and the death of Shri Ram Awadh Singh. From Annexure-A, it would clearly appear that the man died on 23.7.1998 because of fall of snapped live wire, their defence only is that nobody lodged any report or complaint with the Department/ Board/its local office that the loose wire or the loose connection was giving sparks. The only fact denied by them is about the report of sparks and not about falling of the live wire and death of the person by electrocution.

8. So far as question of Section 33 is concerned I have already held in the matter of Pappu Rai and Anr. v. State of Bihar, CWJC No. 3689 of 2000, that such an information is to be given to the Board so that they can make an enquiry or the Electrical Inspector in his turn can make an enquiry. Non compliance of Section 33 in the considered opinion of this Court would not lead to a presumption that no accident had taken place.

9. Placing reliance upon a Division Bench judgment of this Court in LPA No. 136

of 2001 decided on 25.7.2001, *Sugriv Mahto v. State of Bihar and Ors.*, it is submitted that the petitioners be asked to make an application to the Electrical Inspector so that he may make an enquiry and submit his report to the Board, the Board would consider the report and take appropriate decision on basis of the said report. In the opinion of this Court the said order would not govern the fate of this case. From the said order it appears that question of effect of non compliance of Section 33, Indian Electricity Act, 1910 was not taken into consideration. Assuming for a minute that the petitioner is asked to make an application to the Electrical Inspector, the Electrical Inspector is directed to make an enquiry and submit his report and thereafter the Board is to take action, what useful purpose would be served in the facts of this case where the facts are not denied. Section 33 of the Act simply authorises the Electrical Inspector to make an enquiry into the facts and report results. If the facts asserted by the petitioner are not denied by the respondents rather have been admitted that the wire snapped and fell and as a result of fall of the wire the man died of electrocution then the Electrical Inspector is not required to make an enquiry into other fact and submit its report to the Board. A fair understanding of Section 33 of the Act especially Sub-section (2) would make it clear that the Electrical Inspector or any other competent person appointed by it shall enquire and report as to the cause of any accident affecting the safety of the public, which may have been affected by or in connection with generation, transmission, supply or use of energy; or (b) as to the manner in, and extent to, which the provisions of this Act or of any license or rules thereunder, so far as those provisions affect the safety of any person, have been complied with. If the Electrical inspector or a person appointed by him has limited and circumscribed jurisdiction then no enquiry is required to be made especially when the facts are not denied. Under the circumstances, I am unable to hold that the judgment of Division Bench in LPA 136 of 2001 would govern the fate of this case.

10. I have already observed that the fact of the death and snapping of the wire have not been denied. The respondents have admitted that after receiving the information they stopped the supply. They have not informed the Court that as to what led to snapping of the wire. They have submitted that in a routine course the wire would not ordinarily snap or fall. If that be so then they were required to give the cause which led to fall of the wire. In the opinion of this Court principles of *res ipsa loquitor* would apply to the facts of this case and I must hold that because of the negligence on the part of the Board the wire snapped, it fell on Shri Ram Awadh Singh and as a result of fall of wire Shri Ram Awadh Singh died of electrocution.

11. The question still would be that what compensation should be paid to the present petitioner. It is argued by the learned counsel for the petitioner that the said deceased was a practicing Lawyer and was earning a lot. Though it was argued that his practice was more than Rs. 20,000/- per month and he was flourishing well, but in absence of income tax return I am unable to hold that he was minting money or was earning a fortune.

12. The deceased was practicing Advocate, aged about 55 years. Even in a miser's estimate it may be observed that he must have been earning at least a sum of Rs. 8,000/- per month. He could have survived for next ten years and could provide help and assistance to the children, who are unmarried and unemployed and his own widow. The principles underlying Motors Vehicles Act may provide a guideline and principles under the Workmen's Compensation Act, again may provide a guideline. Taking into consideration the totality of circumstances and the facts I am of the opinion that award of a sum of Rs. two lacs to the petitioner would be just and proper compensation.

13. Let the said amount be paid by the respondent Board within two months from today. If they fail to make the payment of said amount then after the period of two months the petitioner would be entitled to an interest @ 12% per month. The petition is allowed.