

(1994) 05 SHI CK 0011
In the High Court Of Himachal Pradesh
Case No : Writ Petition No. 216 of 1994

Roop Singh and Another

APPELLANT

Vs

H.P.S.E.B. and Others

RESPONDENT

Date of Decision : 17-05-1994

Acts Referred:

Constitution of India, 1950 — Article 226
Limitation Act, 1963 — Section 14, 5

Citation : (1994) 2 ShimLC 333

Hon'ble Judges : V. Ratnam, C.J.; A.L. Vaidya, J

Bench : Division Bench

Advocate : Kuldip Singh, for the Appellant; Kapil Dev Sood, for the Respondent

Final Decision : Dismissed

Judgement

V. Ratnam, C.J.—In this writ petition, the Petitioners who are the father and brOrs. of one Kumari Kamla Devi, who died as a result of" electrocution on 17-7-1990, have prayed for the issue of a writ directing the Respondents to award compensation in a sum of one lac or any Ors. amount, together with interest at 12% p.a.

2. There is no dispute now that Ku. Kamla Devi, a girl of about 12 years at the time of her death, lost her life as a result of electrocution. According to the case of the Petitioners, the death had resulted on account of negligence of the Respondents in the maintenance and up-keep of the electric supply lines to the residence of the first Petitioner and that the Petitioners are, therefore, entitled to claim compensation on the footing that the death of Ku. Kamla Devi took place on account of the negligence of the Respondents.

3. In the reply filed by the Respondents, they had stated that the deceased had gone to the roof top of the house and had tried to swing, catching hold of the wire and on account of her weight and swing, the service line got broken and that resulted in the electrocution of the deceased, and that the deceased was

negligent and that had brought about the death.

4. Learned Counsel for the Petitioners strongly relied upon the Departmental Enquiry Report, marked as Annexure RA-2, to contend that in view of the report, the negligence of the Respondents had been clearly established and that would justify award of compensation, as claimed by the Petitioners. However, we are unable to accept the contention so advanced. Though it may be that in Annexure RA-2, the Departmental Enquiry Report, it had been found that certain irregularities were found, from Annexure RA-2A, namely, statement of the mOrs. of the deceased, it is found that the deceased was on the roof-top of the house and when she reached home, she saw also lot of people standing on the roof. Admittedly, the deceased was aged about 12 years and it is difficult to accept that children of her age can normally be found at the roof top of the house. The circumstance that the deceased was so found, would also indicate that the deceased had gone to the roof-top and had also perhaps used the electric wire, passing over her head, as a swing, and that had led to the accident resulting in her death. In Ors. words, a contribution, atleast to some degree, by the deceased to the accident, cannot be ruled out, though the percentage of that contribution, cannot precisely be ascertained in the state of the record, as it is. Equally, it may be that the Respondents establish that the deceased was fully and completely responsible for the accident resulting in her death, despite the irregularity noticed in the Departmental Enquiry Report. These are matters, which in our view, require to be established by letting in documentary as well as oral evidence and that would not be within the scope of proceedings under Article 226 of the Constitution.

5. Under those circumstances, we are unable to accept the claim made in the writ petition that compensation should be awarded to the Petitioners and made payable by the Respondents. Since, in our view, certain factual questions regarding negligence and contributory negligence have to be established and that too on the basis of evidence, it would be just and expedient that the Petitioners are directed to resort to a Civil Suit for the purpose of obtaining relief. The Petitioners are, therefore, directed to approach the Civil Court within three months from today. On such approach by the Petitioners, it would also be open to the Civil Court to consider the availability to the Petitioners of the benefit of Sections 5 and 14 of the Limitation Act, as the case may be, subject to the aforesaid, the writ petition is dismissed.