

(1997) 11 OHC CK 0001
In the Orissa High Court
Case No : O.J.C. No. 4156 of 1995

Rushi Prusti

APPELLANT

Vs

Orissa State Electricity Board and Others

RESPONDENT

Date of Decision : 11-11-1997

Acts Referred:

Citation : (1999) ACJ 440 : (1998) 85 CLT 529

Hon'ble Judges : S.C. Datta, J;A. Pasayat, J

Bench : Division Bench

Advocate : S.K. Rath, for the Appellant; B.K. Nayak and J.K. Khuntia, for the Respondent

Final Decision : Allowed

Judgement

A. Pasayat, J.—A boy of tender age lost his life on account of electrocution. The grief stricken father has filed this application for a direction to the Grid Corporation of Orissa Ltd. (in short, "the Corporation") to pay compensation. It is his stand that due to negligence of the officials of the Orissa State Electricity Board (in short, "the Board"), predecessor of the Corporation, Dinabandhu Prusti (hereinafter referred to as "the deceased") lost his life. Dinabandhu was a student of class I of Chainpal Primary School. It appears that on 18.12.1994 there was theft of electric wire from 22 K.V. electricity transmission line. One Pitambas Behera, an employee of the Board intimated the lineman working under the Board on 19.12.1994 at about 7 a.m. that there was theft of live electricity wire in between village Chainpal and Lingarakata. He also made an entry in the fuse-call register maintained by lineman at the office. The entry was made on 19.12.1994 at 7 a.m. at the Maintenance Office at Chainpal. Due to theft of live electric wire, the electricity transmission was interrupted for villages Lingarakata and Chainpal. Though requested as none was available, no step was taken for discontinuance of electric supply, as a result of which loose wire was lying in the field. Deceased after taking breakfast went to enjoy free air and death was waiting for him. He came in contact with live wire and died at the spot with

several burn injuries on his body. On 19.12.1994, after getting information from the local public, the Inspector-in-charge of Talcher Sadar P.S. arrived at the spot and took the dead body for post-mortem examination and Talcher Sadar P.S. U.D. Case No. 12 of 1994 was registered. Post-mortem was conducted by Dr. Kabita Swain, Asstt. Surgeon, Sub-Divisional Hospital, Talcher. In her report, she had clearly mentioned that death was due to shock caused by electric current and excessive electric burns. People of the locality gathered at the place and a procession was led to the office of the Board at Chainpal. Grievance was made before the authorities and request was made to pay compensation. The officials indicated that they would pay compensation after consulting the higher authorities. This assurance was never translated into reality. As no compensation was paid, this writ application has been filed. It is alleged that there was negligence on the part of the authorities in not taking steps promptly and had prompt steps been taken, a valuable life could have been saved. Compensation of Rs. 1,50,000 has been claimed.

2. The authorities of the Board had taken the stand that no negligence was involved and all possible steps were taken and the boy should have been aware that there was loose electric line hanging and should not have gone near it. The Corporation has reiterated Board's stand that it took all possible care and caution and there is no scope to pay compensation.

3. The factual position is almost undisputed. It is not in dispute that the child breathed his last on account of electrocution after having come in contact with live electric wire. It is necessary to refer to the enquiry report submitted by the Chief Electrical Inspector. It is accepted therein that the fatal electrical accident occurred near village Chainpal, causing the death of late Dinabandhu Prusti was due to the theft of 11 K.V. overhead conductor as a result of which one piece of the conductor was dangling from the pin insulator binding. The victim came across with the dangling conductor accidentally and was electrocuted to death. Relevant aspects indicated in the report are as follows:

(i) The 11 K.V. Chainpal feeder was a long line and the only point of isolation was at Banarpal, which is approximately 5.5 km away from the accident spot. There was no sectionalisation point in between and, therefore, in case of emergency, one has to depend on the telephone only. One number of line A. B. switch should have been provided at the Chainpal 1/0.4 K.V. substation, for isolating the feeder for sectionalisation.

(ii) Pitambas Behera, helper should have posted somebody to guard the dangling conductor when he had first noticed it or should have guarded himself and sent the message to the office by somebody else.

Recommendation

(i) Line isolators should be provided in the long transmission lines for better sectionalisation and safety.

(ii) The O.S.E.B. lineman and the helpers should be trained to exercise the general safety practices in electrical work and how to respond to the emergencies.

4. Preventive measures suggested to be taken may provide safety in future. Those cannot be pressed into service to deny liability of the Corporation. 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 loss or injury sustained, the value estimated in money, or something lost or withheld. The term "compensation" etymologically suggests the image of balancing one thing against another, its primary signification being 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.* 5 AC 25.

5. The "Rule of Law" requires that the wrongs should not remain unredressed. All the individuals or persons committing wrongs should be liable in an action for damages for breach of civil law or for criminal punishment. Law of Torts is founded on the principle that every injury must have a remedy. "Compensation" means anything given to make things equivalent, a thing given or to make amends for loss, recompense, remuneration or pay; it need not, therefore, necessarily be in terms of money, because law may specify principles on which and manner in which compensation is to be determined as given. 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 have 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; something given or obtained as equivalent; rendering of equivalent in value or amount, an equivalent given for property taken or for an injury done to another; a recompense in value; a recompense given for a thing received; recompense for whole injury suffered; remuneration or satisfaction for injury or damage of every description. The expression "compensation" is not ordinarily used as an equivalent to "damages" although compensation may often have to be measured by the same rule as damages in an action for a breach. The term "compensation" as pointed out in the Oxford Dictionary signifies that which is given in recompense, an equivalent rendered; "damages", on the other hand, constitutes the sum of money, claimed or adjudged to be paid in compensation for loss or injury sustained. "Compensation" is a return for a loss or damages sustained. Justice requires that it should be equal in value, although not alike in kind. "Amends" is return for something that is faulty in ourselves or towards others. "Satisfaction" is that which satisfies the individual requiring it, is given for personal injuries and may be made either by a return or otherwise, according to disposition of the person to be satisfied. "Recompense" is a voluntary return for a voluntary service; it is made from generous feeling and derives its value not so much from the

magnitude of service or return, as from intention of the parties towards each other; and it is received not so much as a matter of right as of courtesy. "Recompensation" is not voluntary as is recompense, but it is equally indefinite, being estimated rather according to condition of the person and dignity of service than its positive worth, "Requital" is the return of a kindness, the making of it is an act of gratitude. "Reward" may be a bad return when it is inadequate to the merits of the person. In cases of assessment of damages, pure mathematics cannot be relied on exclusively to arrive at a reasonable estimate of just compensation, for much pertains to the realms of hypothesis and in that region arithmetic is a good servant but a bad master and, therefore, an award should be of a round sum rather than one actuarially computed. [Per Lord Ruttan, J. in *Ball v. Kraft* 1967 ACJ 235 (Supreme Court of British Columbia, Canada)]. The following broad principles govern the grant of damages:

- (1) There should not be any negligence on the part of the claimant himself,
- (2) There should not be any improper conduct on the part of the claimant himself,
- (3) The claimant should have taken all the reasonable actions to mitigate the loss or injury sustained by him,
- (4) The acts of the claimant should be lawful, just and reasonable,
- (5) The amount of damages should not exceed the loss sustained by him and such damages may be minimised if his own conduct has contributed to the accident or has rendered some of the damage too remote or has constituted a failure to mitigate the damages, either by not taking such steps to reduce the original loss or to avert further loss.

6. It is true that perfect compensation is hardly possible and money cannot renew a physical frame that has been battered and shattered as stated by Lord Morris in *H. West & Son Ltd. v. Shephard* 1958 ACJ 504 (HL, England). 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, expense, 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 uniform rule for measuring value of human life and measure of damage 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 awarded. Upjohn, L.J. in *Charter House Credit v. Jolly* (1963) 2 CB 683, remarked, "the assessment of damages has never been an exact science; it is essentially practical."

7. It is pleaded by the opposite parties that there was no negligence involved. The doctrine of *res ipsa loquitur* would seem to apply to the facts of the case. It is explained in a very illustrative passage in Clerk & Lindsell on Torts, 16th Edn., pp. 568-569, which reads as follows:

Doctrine of *res ipsa loquitur*. The onus of proof, which lies on a party alleging negligence is, as pointed out, that he should establish his case by a preponderance of probabilities. This he will normally have to do by proving that the other party acted carelessly. Such evidence is not always forthcoming. It is possible, however, in certain cases for him to rely on the mere fact that something had happened as affording *prima facie* evidence of want of due care on the other's part: "*res ipsa loquitur* is a principle which helps him to do so". In effect, therefore, reliance on it is a confession by the plaintiff that he has so affirmative evidence of negligence. The classic statement of the circumstances in which he is able to do so is by Erle, C.J.:

There must be reasonable evidence of negligence. But where the thing is shown to be under the management of the defendant or his servants, 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 defendants, that the accident arose from want of care.

It is no more than a rule of evidence and states no principle of law. "This convenient and succinct formula", said Morris, L.J., "possesses no magic qualities: nor has it any added virtue, other than that of brevity, merely because it is expressed in Latin." It is only a convenient label to apply to a set of circumstances in which a plaintiff proves a case so as to call for a rebuttal from the defendant, without having to allege and prove any specific act or omission on the part of the defendant. He merely proves a result, not any particular act or omission producing the result. The court hears only the plaintiff's side of the story and if this makes it more probable than not that the occurrence was caused by the negligence of the defendant, the doctrine *res ipsa loquitur* is said to apply and the plaintiff will be entitled to succeed unless the defendant by evidence rebuts that probability. It is not necessary for *res ipsa loquitur* to be specifically pleaded.

Reference may be made to another passage from the same book at page 723 which reads as follows:

Liability to children. An occupier must be prepared for children to be less careful than adults. Something which would not be a danger to an adult may very well be one to a child; and a warning sufficient for an adult may be insufficient for a child. In *Moloney v. Lambeth London Borough Council*, an occupier was held liable to a four years old boy who fell through the bars of a balustrade. If a person of the size of the plaintiff lost his balance he was liable to go through the gap. The staircase did not comply with the occupier's duty of care to a child of that age. But in *Ward v. Hertfordshire C.C.*, it was held there was no liability to a child

aged eight who fell against a long standing brick and Hint wall in a school's playground. The wall was not inherently dangerous and the presence of a supervisor would not have prevented the accident.

8. The question of negligence of a company engaged in the transmission of electric energy was considered in *Sugbec Railway, Light, Heat Power Co. Ltd. v. Vandry* (1920) AC 622. The concerned railway company in exercise of statutory powers had erected two overhead cables for the distribution of electric current. In that case, on account of a violent wind, a branch from a tree growing about 28 feet away from the cables was broken, which resulted in the breaking down on the cables and the high tension current found its way along with the low tension cable into the respondents' premises and caused a fire. An action for damages was brought by the respondents against the concerned power company. The Court of Appeal held that the company was liable for the damage without proof that it had been negligent, since it had failed to establish that it could not have prevented the escape of electric current, further that its statutory power afforded no defence, since the escape of the current was not necessarily incident to the exercise of those powers.

9. In *Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and Another*, , the court while dealing with the question of invalidity of action of the Government in blacklisting the contractor without giving him an opportunity of hearing, also dealt with the larger question of the manner in which contracts by the State need to be awarded. In this regard it held as follows:

It is true that neither the petitioner nor the respondent has any right to enter into a contract but they are entitled to equal treatment with others who offer tender or quotations for the purchase of the goods. This privilege arises because it is the Government which is trading with the public and the democratic form of Government demands quality and absence of arbitrariness and discrimination in such transactions. Hon'ble treats privileges as a form of liberty as opposed to a duty-The activities of the Government have a public element and, therefore, there should be fairness and equality. The State need not enter into any contract with any one but if it does so, it must do so fairly without discrimination and without unfair procedure.

10. The expression of "act of God" signifies the operation of natural forces free from human intervention, such as lightning. It may be thought to include such unexpected occurrences of nature as severe gale, snowstorms, hurricanes, cyclones and tidal bores and the like. But every unexpected wind and storm does not operate as an excuse from liability, if there is a reasonable possibility of anticipating their happening. An act of God provides no excuse, unless it is so unexpected that no reasonable human foresight could be presumed to anticipate the occurrence, having regard to the conditions of time and place known to be prevailing at. For instance, where by experience of a number of years, the railway administration knows that in a particular area during a particular season there have been heavy down-pours of rain and consequently extraordinary floods

causing damage to their track, they cannot take the plea, that they were due to act of God because it is within their competence to take such steps as would prevent damage. Lord Westbury defined "act of God" (damnum fatale in Scotch Law) as an occurrence which no human foresight can provide against and of which human prudence is not bound to recognise the possibility. This appears to be the nearest approach to the true meaning of "act of God". Lord Westbury's definition was approved by Lord Demdin and Lord Shaw in the House of Lords in Brenock Corporation v. Caledonian Ry. Similarly, Lord Blandaburgh spoke of it as "an irresistible and unsearchable providence nullifying all human effort." That principle has no application to the case at hand.

11. The residual question is quantum of compensation. The deceased was a boy of tender age of about 7 years. Considering the age of the deceased, compensation of Rs. 40,000 would be reasonable. Out of the said amount, Rs. 30,000 shall be kept in fixed deposit in a nationalised bank for a period of five years in the name of petitioner and the balance amount shall be paid to the petitioner on being identified by any of the learned Counsel appearing for him. The payment of the aforesaid amount of Rs. 40,000 shall be made within three months from today and after the same is deposited the fixed deposit and payment as directed shall be made.

The writ application is disposed of accordingly. No costs.

S.C. Datta, J.

12. I agree.