
(2012) 08 NCDRC CK 0001

In the National Consumer Disputes Redressal Commission

Sajjan Sachdeva And Anr. , PUNJAB MANDI BOARD

APPELLANT

Vs

Punjab State Electricity Board and Ors. , Sajjan Sachdeva
(Minor)

RESPONDENT

Date of Decision : 28-08-2012

Acts Referred:

Citation : 2012 4 CPJ 197

Hon'ble Judges : VINEETA RAI J.

Judgement

1. TWO cross First Appeals No.371/2007 & 419/2007 have been filed by Sajjan Sachdeva (minor) who was the complainant before the State Commission, and Punjab Mandi Board respectively being aggrieved by the order of the State Consumer Disputes Redressal Commission, Chandigarh (hereinafter referred to as the "State Commission") in Complaint No.3/2005. Since the facts and the parties involved in both Appeals are the same, it is proposed to dispose of these cases by a common order by taking the facts from First Appeal No.419 of 2007 wherein Punjab Mandi Board is the Appellant. FACTS:

The Appellant/Mandi Board had set up a New Sabzi Mandi at Jalandhar and the late father of the Respondent had purchased Plot No.87 in open auction. A 11 K.V. high tension wire was passing over a number of plots including that of the late father of the Respondent. After the construction was completed, the high tension wire was barely 3 ft. above the shops and was therefore, a public safety hazard. Appellant and Punjab State Electricity Board (who were Opposite Parties before the State Commission) assured that the high tension wire will be removed but nothing was done for a long period of 5 years after which the Punjab State Electricity Board prepared an estimate for shifting the high tension wire and forwarded the same to the Appellant/Board. The Appellant/Board vide cheque dated 12.02.1999 deposited the required amount of Rs.3,54,700/- with the Punjab State Electricity Board for shifting the high tension wire. Another Rs.1,700/- were deposited vide receipt dated 16.02.1999 by the District Mandi Officer with a request to the Punjab State Electricity Board to shift the high tension wire immediately. However, Punjab State Electricity Board did not act on

this request. On 03.03.2002, Respondent had gone to the roof of his father's shop to play and came in

2. CONTACT with the said high tension wire resulting in sparking because of which, Respondent's clothes caught fire and he fell on the dry grass on the roof which also started burning. Respondent was immediately rushed to Sacred Heart Hospital and thereafter to Pasricha Hospital, Jalandhar with major third degree burns of the torso and both arms both legs following the electric shock. Respondent's both legs and two fingers had to be amputated since gangrene had developed because of which Respondent has become disabled for life. Being aggrieved Respondents filed a complaint before the State Commission on grounds of deficiency in service against Appellant/Mandi Board as also the Punjab Electricity Board and three other officers seeking Rs.3,37,040/ - towards the medical expenditure incurred, Rs.40 lakhs for the loss of limbs and Rs.10 lakhs towards mental agony and the trauma suffered. On being served, Appellant/Mandi Board filed written submissions in which it was stated that it was not guilty of deficiency in service because as admitted by the Respondent himself, the Appellant/Board had all along been approaching the Punjab Electricity Board to shift the high tension wire and as soon as the required estimate was made available by the Punjab Electricity Board, Appellant/Mandi Board immediately paid the requisite amount of Rs.3,54,700/ - and again repeatedly requested the Electricity Board to shift the wire which it did not do. Therefore, the deficiency in service if any was on the part of the Punjab State Electricity Board. It was also contended that an inquiry conducted by the Chief Engineer of the Punjab State Electricity Board confirmed that there was avoidable and inordinate delay in shifting the high tension wire which was a public safety hazards and there was violation of Rs.29 of the Indian Electricity Rules, 1956 by the Electricity Board. No reply or affidavit by way of evidence was filed by the Punjab State Electricity Board before the State Commission.

3. THE State Commission after hearing the parties and on the basis of the evidence filed before it allowed the complaint and held both the Appellant/Mandi Board as well as the Punjab State Electricity Board and its officers guilty of deficiency in service. State Commission, therefore, directed them to jointly and severally pay the Respondent a sum of Rs. 9,37,040/ - i.e. Rs.6 lakhs as general damages, Rs.3,37,040/ -for the money spent on Respondent's treatment and Rs.10,000/ -as litigation costs with interest @ 9% per annum from the date of filing of the complaint till realization. The operative part of the order of the State Commission is reproduced: The complainant No.1 had become invalid for whole of his life and his disability is 100% for both the lower limbs and further his prospects in career has been dashed to the ground and his marriage prospects have also dwindled. In fact he had become invalid for whole of his life and has become dependent for routine chores upon his family members. In such circumstances, grant of Rs.6 lakhs as compensation will be suffice on the basis of estimate and guess work as there is no standard formula for granting the same. In similar circumstances, Orissa High Court in Chairman, Grid Corporation of

Orissa Ltd. & Ors. Vs. Smt. Hemlata Sethi & Ors. -, AIR 2002 Orissa 118 had granted compensation as the defendant had failed to discharge burden as they did not prove that in spite of due diligence and all precautionary measures taken, deceased was victim of his careless conduct. In the present case there is not an iota of evidence that OPs No.1 to 3 or for that purpose OP No.4 had taken proper precautionary measures and in spite of their due diligence, incident had taken place in which complainant No.1 Sajjan Sachdeva was careless. Rule 29 states that it is duty of the electricity board to maintain all electric supply lines and apparatus properly, so as to prevent danger but they did not bother and violated rule with impunity.

Therefore, the complaint is accepted with costs of Rs.10,000/- and in all we grant Rs.9,37,040/- i.e. Rs.6 lakhs as general damages and Rs.3,37,040/- spent on his treatment as mentioned in para -20 of complaint. This amount is directed to be paid by OPs No.1 to 4 jointly and severally, along with interest @ 9% p.a. from the date of filing the complaint on 3.2.2004 till the date of payment.

4. AGGRIEVED by this order, the Appellant/Board has filed this First Appeal No.419/2007 seeking quashing of the order of the State Commission against it. Complainant being aggrieved by the lesser amount of compensation awarded by the State Commission has also filed a First Appeal No.371/2007 seeking enhancement of compensation. The Punjab State Electricity Board & its officers had also filed an Appeal which was dismissed by this Commission vide its order dated 10.07.2007. Counsel for Appellant/Mandi Board and Respondent/Complainant were present. None appeared on behalf of Punjab State Electricity Board and its two officers (Respondents No.1 to 3 in F.A.No.371/2007 and Respondents No.3 to 5 in F.A.No.419/2007) though replies have been filed in both F.As. On their behalf. Service is therefore complete.

5. COUNSEL appearing for Punjab Mandi Board in F.A.No.419/2007 contended that the State Commission erred in finding the Appellant/Mandi Board along with Punjab Electricity Board and its officers, guilty of deficiency in service and jointly and severally foisting upon it the liability to pay compensation and other costs to the Respondent. On the other hand, it is clear from the evidence on record that this unfortunate incident took place solely due to the negligence of the Punjab State Electricity Board and its officers who in spite of a number of reminders from the Appellant/Mandi Board and even after it had paid the estimated cost for shifting the wires, did not perform their statutory duty of removing the high tension wire because of which the unfortunate accident took place. The State Commission failed to appreciate that the Chief Electrical Inspector who had conducted an independent inquiry into the incident also concluded that there was violation of Rule 29 of the Indian Electricity Rules, 1956 and that the Punjab State Electricity Board and its officers were at fault. There was no such finding against the Appellant/Mandi Board. Thus, it was because of the acts of omission and commission of the Punjab State Electricity Board that the Respondent was

severely injured and handicapped for life. Therefore, the order of the State Commission foisting the liability on the Appellant/Mandi Board to pay the decreed amount jointly and severally along with Punjab Electricity Board and its officers is not justified and may be set aside.

6. COUNSEL appearing for the Appellant in F.A.No.371/2007 contended that the State Commission while accepting that there was deficiency in service because of which the Respondent has to suffer lifelong disability following amputation of his legs and some fingers erred in awarding very inadequate compensation/damages. For example, while awarding Rs.3,37,040/- for medical expenditure already incurred, it did not take into account the fact that the artificial limbs would have to be changed every two years till such time that the Respondent had reached his full anatomical growth i.e. around 22 years. A certificate to this effect from the Endolite Prosthetic & Orthotic Centre was filed in evidence in support of this fact. Under the circumstances, the Respondent would require at least 8 prosthesis, the cost of which would be about Rs.15 lakhs. Even thereafter, it may have to be changed every 4 to 5 years. The State Commission also erred in awarding damages of Rs.6 lakhs without taking into account the fact that the patient had become totally invalid for his entire life and he would thus not be able to lead a normal family or professional life and in fact be dependent even for routine chores upon others. Therefore, taking into account these facts and the damage caused to a young and promising life, the compensation as requested for by the Respondent may be awarded. In their written replies filed in response, Punjab State Electricity Board and its officers had, inter alia, submitted that delay in shifting the high tension wire while laying an alternate line was because owners of some shops of the Mandi raised objections and got the work stopped. Further, it was because of the negligence of the Respondent's father in not locking the access to the roof despite the knowledge that high tension wire is passing just 3 ft. above it which resulted in the unfortunate accident of the Respondent for which Punjab State Electricity Board and its officers cannot be held responsible. Under the circumstances, the compensation/cost imposed on them was not justified. We have considered the averments made by Counsel for both parties and have gone through the evidence on record including the replies filed on behalf of the Punjab State Electricity Board and its officers. So far as the Appeal of the Appellant/Mandi Board is concerned, it is in evidence that as soon as the construction of the shops in the New Sabzi Mandi had been completed and it became apparent that being a public safety hazard it was necessary to remove the high tension wire passing over the roof of the shops, the Appellant immediately approached the Punjab State Electricity Board for its removal and also forwarded various representations made by the shop owners in this connection. As soon as the Punjab Electricity Board gave the Appellant an estimate of the costs involved for shifting of the high tension wire, the Appellant/Mandi Board immediately deposited the entire amount and when the high tension wire was still not removed, followed it up with several reminders. Under the circumstances, we find force in the contention of the Appellant/Mandi Board in its

Appeal that the Appellant/Mandi Board cannot be held guilty of any deficiency in service since it made all efforts to get the high tension wire removed and also promptly paid the estimated amount necessary for the purpose of shifting it. As observed by the State Commission, the Chief Electrical Inspector of the Punjab State Electricity Board who conducted an inquiry into the incident held only the officers of the Punjab Electricity Board guilty for delay in shifting of the high tension wire and also for violation of Rule 29 of the Indian Electricity Act according to which it was the responsibility of that Board to ensure that "all electric supply lines and apparatus should be constructed, installed, protected, worked and maintained in such a manner as to ensure safety of human beings, animals and property". Thus clearly, it is the Punjab State Electricity Board which was responsible for the accident because of their negligence/delay in shifting the high tension wire for several years. In view of these facts, we do not agree with the order of the State Commission holding the Appellant/Mandi Board guilty of deficiency in service and directing it to pay along with the Punjab State Electricity Board and its officers, jointly and severally, compensation of Rs.9,37,040/ -. We, therefore, set aside this part of the order of the State Commission only against the Appellant/Mandi Board and allow its First Appeal No.419/2007. Regarding the F.A. No.371/2007 for enhancement of the amount awarded by the State Commission as compensation and costs, it is an admitted fact that the State Commission awarded Rs.3,37,040/ - based on the actual expenditure incurred by the Respondent's guardian in his treatment and not for any future medical requirements including change of prosthesis. We further note that the State Commission, keeping in view the fact that the Respondent suffered from 100% disability and that his career has been dashed to the grounds, even though Respondent was a brilliant student, had granted Rs.6 lakhs as compensation on the basis of "estimate and guess work as there is no standard formula for calculating the same". We agree that in the instant case, the generally accepted formula for calculating compensation i.e. loss of wages and loss to estate is not applicable since Respondent was a minor and therefore, compensation would depend on the assessment/judgment of the concerned court. In this connection, we have carefully considered the compensation to be awarded as per the facts of this case including on future medical expenditure as discussed above and are of the view that there is a case for enhancement of the overall compensation amount awarded by the State Commission. We therefore enhance the compensation from Rs.9,37,040/ -(i.e. Rs.3,37,040/ -for medical expenditure + Rs.6,00,000/ -as general damages) awarded by the State Commission to Rs.12 lakhs with interest @ 9% per annum from the date of filing of the complaint till its realization which is to be paid jointly and severally by the Punjab State Electricity Board and its two officers (Respondents No.2 and 3 in F.A.No.371/2007) within two months from the date of receipt of this order after adjusting the amount already paid, if any, failing which the Respondent is at liberty to file for execution. The order of the State Commission stands modified as directed above. The First Appeal No.371/2007 is disposed of on the above terms.