
(2000) 12 OHC CK 0006
In the Orissa High Court
Case No : O.J.C. No. 320 of 1996

Saria Sahu and others

APPELLANT

Vs

State of Orissa and others

RESPONDENT

Date of Decision : 11-12-2000

Acts Referred:

Constitution of India, 1950 — Article 21, 226, 227

Citation : (2002) ACJ 278 : (2001) 91 CLT 232 : (2001) 1 OLR 265

Hon'ble Judges : Pradipta Ray, J; A.S. Naidu, J

Bench : Division Bench

Advocate : Miss S. Panda, for the Appellant; Mr. B.K. Nayak, for the Respondent

Judgement

A.S. Naidu, J.—The legal heirs of the victim who lost his life due to burns sustained from electrocution, by accidentally coming in contact with a sagged 33 K. V. live electric line, filed a petition before this Court for award of compensation. The petition received by post was registered as a writ application and notice was issued to opp. parties. This Court also directed the Government to produce the copy of the enquiry report conducted by the Chief Electrical Inspector, Orissa.

2. In response to the notice, an affidavit was filed by the Government, sworn to by the Deputy Secretary to Government of Orissa, Energy Department annexing the report of the Chief Electrical Inspector as well as other connected papers. It was also averred in paragraph 5 of the affidavit that as per the sanction of the Government in the G. A; Department order dated 20-9-95 (vide Annexure-B/1) an amount of Rs. 4,000/- has been disbursed for treatment of late Madha Sahu.

3. Perusal of the report submitted by the Chief Electrical Inspector (Annexure-A/1) clearly reveals that the fatal electrocution occurred on 30-4-95 when the victim accidentally came in contact with the sagged 33 K. V. overhead conductor, thereby he sustained serious burn injuries. He was admitted in the Government Hospital, Angul on 30-4-95 and after prolonged treatment he was released on

4-11-95 and thereafter succumbed to the injuries on 23-11-95. It is further stated that the overhead conductor was sagged due to bending of line support and the ground clearance was reduced to approximately 5 feet. After elaborate discussion, the Chief Electrical Inspector in his report clearly stated that late Madha Sahu, the ancestor of the petitioners, in fact, became a victim of the aforesaid accident and that the accident occurred due to bending of the line support and reduction of ground clearance.

4. A counter affidavit has been filed by the Executive Engineer, Angul Electrical Division under whose jurisdiction the accident took place. Surprisingly, however, the said Executive Engineer expressed his ignorance regarding the accident.

Another affidavit has also been filed on behalf of Angul Electrical Division on 15-11-2000 wherein it has been, inter alia, averred that after going through the report of the Inspector, a disciplinary proceeding has been initiated against Sri Ramesh Ch. Bastia, Jr. Engineer (Electrical) on 19-1-1999 by the GRIDCO for violation of provisions of the Indian Electricity Rules, negligence in duty and misconduct, under Clause 45 of the GRIDCO Officers Service Regulation.

5. The law relating to award of compensation in electrocution cases as laid down by the Apex Court in the case of Chairman. Grid Corporation of Orissa Ltd. & others v. Smt. Sukamani Das and another AIR 1999 SC 3412 is as follows :

".....It is the settled legal position that where disputed questions of facts are involved a petition under Article 226 of the Constitution is not a proper remedy..."

It is further held by the Apex Court that the question of negligence of officials can be properly examined in a suit where correct facts can be established.

In another decision reported in Tamil Nadu Electricity, Board v. Sumathi and others AIR 2000 SC 1603, the Apex Court held as follows :

"In View of the clear proposition of law laid by this Court in Sukamani Das case AIR 1999 SC 3383 : AIR 1999 SC 3412 when disputed question of fact arises and there is clear denial of any tortious liability remedy under Article 226 of the Constitution may not be proper. However, it cannot 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 cannot be said that there will be any bar to proceed under Article 226 of the Constitution. Right of life is one of the basic human rights guaranteed under Article 21 of the Constitution....."

6. Law is no more res Integra that Article 226 of the Constitution does not cast any limitation on the powers of the High Court in exercise of jurisdiction thereunder though such power has to be sparingly exercised to meet the ends of justice. The efforts of the Court while exercising the powers under Article 226 of the Constitution should not be one for finding means to pull down the shutters of adjudicatory jurisdiction before a party who seeks justice, but to see whether it is possible to entertain his grievance if it is genuine.

7. In the aforesaid backdrop, the documents filed by the parties were scrutinised at length. In the case at hand there are overwhelming evidence which lead to a prima facie conclusion that the deceased lost his life due to the electrical accident. The documents are:

(a) The discharge ticket of Angul District Headquarters Hospital, which clearly reveals that the deceased was admitted on 30-4-95 i.e. on the date of accident, having sustained service electric burn and that after being treated for a prolonged period of 7 months, he was relieved on 4-11-95 ;

(b) A bunch of cash memos filed by the petitioners in support of expences incurred for treatment of Madha Sahu ;

(c) The receipt showing purchase of blood ;

(d) The certificate issued by a Specialist of Angul Hospital clearly revealing that said Madha Sahu sustained extensive electric burns on 30-4-95 by coming in contract with a live wire, accidentally, in the field and underwent treatment under him in the Government Hospital. The certificate further reveals that late Madha Sahu has lost vision of his left eye, lost hearing of left ear, permanent disfiguration of his face and not able to stand and walk about, rendering him physically complete disabled for the rest of his life ;

(e) Death certificate issued by the. Registrar. Birth and Death, P. H. C. Godibandha, Angul, which reveals, the cause of death to be due to extensive electrocution;

(f) Copies of representations filed by the petitioners and others before the competent authority on the date of accident and/or soon thereafter ;

(g) It also appears that the Sub-Collector, Talcher after being satisfied that Madha Sahu becomes a victim of electrocution, sanctioned a sum of Rs. 500/- only for facilitating his treatment on 4-7-1995 from the Red Cross Fund ;

(h) The sanction order revealing that the Government of Orissa in G. A. Department had sanctioned a sum of Rs. 4,000/- only for the treatment of said Madha Sahu from the Chief Minister's Relief Fund ;

(i) Number of photographs of the victim revealing the injuries ;

8. The documents catalogued above coupled with the report submitted by the Chief Electrical Inspector (Ext-A/1) who is an independent technical Government officer, as well as the affidavits filed by the authorities lead us to arrive at prima facie conclusion that said Madha Sahu died due to the electrical accident. It also further appears that the accident took place due to sagged 33 K. V. overhead line which was almost touching the ground and that the cause of accident can be attributed to the omissions/commissions of the GRIDCO and that it is a fit case where the legal heirs of the deceased are to be compensation as defined in Black's Law Dictionary, is, "An act which a court orders to be done, or money which a court or other tribunal 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. Thus, a bundle of facts is necessary to determine compensation.

9 . Miss Panda appearing for the petitioners relied upon decision reported in Assam Sillimanite Ltd. and another Vs. Union of India and others, and submitted that as the relief has become barred by limitation by efflux of time, it would not be proper to direct the petitioners to work out their remedies in common law forum. In the aforesaid decision also, the Apex Court while declining to assess any compensation, directed that the matter be referred to an Arbitrator so that the quantum of relief that can be granted to the petitioner by way of compensation and damages can be assessed.

In accordance with the ratio decidendi of the aforesaid decision, we are not inclined to enter into the complicated and disputed questions of facts in a petition under Article 226 of the Constitution. It is also not possible to assess the quantum of damages caused and compensation payable to the petitioners under our extra-ordinary jurisdiction specially in view of the fact that no material are available before this Court to adjudge as to the exact loss sustained by the survivors of the deceased Madha Sahu. In the absence of any such material it is not possible to arrive at a cogent conclusion and determine the quantum of loss and award compensation.

10. However, in the present case, a number of documents were filed before us. Most of the documents are uncontroverted and are public documents. Perusal of the said documents coupled with the interim payments sanctioned and paid by the Government as well as Red Cross for treatment of the victim prima facie, makes out a case of death due to negligence amounting to tortuous act, It also prima facie appears that the provisions enshrined under Article 21 of the Constitution have been grossly infringed in the present case. A cumulative assessment of various factors and in the light of the ratio laid down by the Apex Court in the decision reported in AIR 2000 SC 1603 (supra) in order to provide immediate help to the bereaved family who definitely belong to the down trodden class of the society, we think it appropriate to direct the opp. party-Grid Corporation to make an ex gratia payment of Rs. 50,000/- (Rupees fifty thousand) with 6 per cent interest from the date of accident till the date of payment towards interim compensation to the legal heirs of victim Madha Sahu and we direct accordingly.

11. In the result, we dispose of the writ application with the observation that the direction to pay the ex gratia compensation shall not stand on the way of the petitioners to work out their grievance and establish the damages caused to them before the common law forum, if they so advised.

P. Ray, J.—I agree.

2. Writ application disposed of.