
(2008) 05 PAT CK 0021
In the Patna High Court
Case No : CWJC No. 5920 of 2003

Sheet Basant Pashwan

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 15-05-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2008) 3 PLJR 206

Hon'ble Judges : Navin Sinha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Navin Sinha, J.—Heard learned counsel for the petitioners and learned counsel appearing on behalf of the Respondent-Board. The petitioners in both the applications claim compensation for death by electrocution.

2. The submission in CWJC 5920 of 2003 is that in consequence of electric line snapping from the pole, his son came in touch with the same and expired. U.D. case No. 7 of 2002 was registered in that regard on 23.5.2002 which is appended at Annexure-1. The post-mortem report confirms death by electrocution. The local people had raised a general grievance and in spite of repeated complaints to the local office, no step was taken to replace the old and damaged wire. However, no document has been placed on record with regard to this assertion of the petitioner that the wire was old and damaged, liable to snap any time in evidence of admitted negligence on the part of the Board. This has been replied by the Board in paragraph 11 of its counter affidavit that the wire was "O.K. and was thoroughly and regularly maintained".

3. The submission of the petitioner is that snapping of the wire was per se evidence of negligence leading to entitlement of compensation.

4. The defence of the Board in the counter affidavit is that despite proper maintenance, the wire snapped by the act of God due to sudden storm.

5. The U.D. case and the report on the U.D. case are completely silent with regard to the status and condition of the wire. The petitioner in his supplementary affidavit questions the assertion in paragraph 11 of the counter affidavit of proper maintenance of the wire by the Board to submit that the Board has not produced any document to show proper maintenance on its part. That there was statutory duty of the Board to maintain the line in order and, therefore, negligence was to be presumed in the situation.

6. In CWJC 5955 of 2003 the submission is of invocation of the theory of "Res Ipsa Loquitor" for snapping of the electricity line. UD case No. 8 of 2002 was registered. The investigation contains nothing suggestive of negligence. The counter affidavit denies poor maintenance for the supply line to submit that the line snapped due to short circuit caused by a bird remains of which were found at the spot. Any suggestion of negligence has been specifically denied.

7. This Court is afraid that it was for the petitioners to prove negligence on the part of the Board. The pleadings of the petitioners itself are raising disputed questions of fact with regard to the maintenance of the electric line. There is no material before this Court to come to a conclusion with regard to the poor maintenance as the reason for action. If an action of negligence is laid down along with the materials in support of the same, the Board shall naturally have the right to rebut the same by leading evidence. The question of condition of the electric line which is said to have snapped then becomes a disputed question of fact. These are matters which cannot be adjudicated properly in a writ jurisdiction unless the issue of negligence in maintenance be established as an admitted position.

8. The Supreme Court in S.D.O. Grid Corporation of Orissa Ltd. and Others Vs. Timudu Oram, , while considering a similar claim for compensation duo to death by electrocution caused by supply line, the Apex Court at paragraph 6 of the judgment observed as follows:-

"6. In our opinion, the High Court committed an error in entertaining the writ petitions even though they were not fit cases for exercising power under Article 226 of the Constitution. The High Court went wrong in proceeding on the basis that as the deaths had taken place because of electrocution as a result of the deceased coming into contact with snapped live wires of the electric transmission lines of the appellants, that "admittedly/prima facie amounted to negligence on the part of the appellants". The High Court failed to appreciate that all these cases were actions in tort and negligence was required to be established firstly by the claimants. The mere fact that the wire of the electric transmission line belonging to Appellant 1 had snapped and the deceased had come in contact with it and had died was not by itself sufficient for awarding compensation. It also required to be examined whether the wire had snapped as a result of any negligence of the appellants and under which circumstances the deceased had come in contact with the wire. In view of the specific defences raised by the appellants in each of these cases they deserved an opportunity to prove that

proper care and precautions were taken in maintaining the transmission lines and yet the wires had snapped because of circumstances beyond their control or unauthorized intervention of third parties or that the deceased had not died in the manner stated by the petitioners. These questions could not have been decided properly on the basis of affidavits only. 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. The High Court has not and could not have held that the disputes in these cases were raised for the sake of raising them and that there was no substance therein. The High Court should have directed the writ petitioners to approach the civil court as it was done in OJC No. 5229 of 1995."

9. In the aforesaid facts and circumstances, this Court finds it difficult to grant any relief to the petitioners. The applications are dismissed. This shall, however, be without prejudice to their rights for a cause of action under the Civil laws of the land.