

(2008) 01 DEL CK 0125
In the Delhi High Court
Case No : C.W.P. No. 1108 of 2001

Shri Dharampal

APPELLANT

Vs

Delhi Transport Corporation and Another

RESPONDENT

Date of Decision : 14-01-2008

Acts Referred:

Citation : (2008) 101 DRJ 197

Hon'ble Judges : Anil Kumar, J

Bench : Single Bench

Advocate : Rekha Aggarwal, for the Appellant; Vinay Sabharwal, for respondent No. 1/DTC and K.N. Dutta, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—The petitioner in this writ petition claims compensation of Rs. 5 Lakhs each from both the respondents on account of the death of his wife due to electrocution on account of alleged negligence on the part of respondents.

2. Petitioner is an employee, a driver with the Delhi Transport Corporation and he was allotted a government accommodation bearing house number E-78, DTC Colony, Shadipur, New Delhi where he was living with his wife, since deceased, and four children. According to him the residents of this colony dry their clothes on roofs/terraces of the houses. It is contended that on 19th July, 1999 at about 10.45 AM, the petitioner's wife, Smt. Bimla, went to the terrace of her house to dry the clothes on an iron wire which was tied to sewer pipes on the terrace floor. The iron wire had electricity and the wife of the petitioner, got electrocuted and died. The petitioner alleged that his wife got electrocuted on account of negligence of the respondents as the electric lines are very old and in dilapidated conditions because of which short circuit occurred. It was contended that the other persons in the colony had also suffered electric shocks earlier. These dilapidated lines were not changed or replaced by the respondents despite various request by the resident Association. It is pleaded that had the respondents been cautious and repaired the lines, the wife of the petitioner could

have been saved from electrocution. The allegation of the petitioner is that the respondents were quite negligent and irresponsible to their legal duties.

3. The deceased was stated to be high secondary pass and had a diploma in Cutting and tailoring from National trade Council for training in vocational trades, Ministry of Labor, Government of India. It was contended that she was hale and hearty and she was earning about Rs. 4500.00 per month and she would have lived for another 30 to 40 years. The deceased left behind, petitioner, her husband, three daughters and one minor handicapped son. On account of the death of late Smt. Bimla Devi, petitioner and his family members have suffered immensely. The petitioner had made two representations for maintenance of old and dilapidated electric lines, however, the respondents remained unresponsive. The petitioner had also made a representation for grant of compensation which was duly received but the representation was neither replied nor any compensation has been paid. On the death of petitioner's wife on account of electrocution for the alleged negligence of the respondents, a first information report was also registered, a copy of which has been produced by the petitioner. A copy of post-mortem report of the deceased has also been produced by the petitioner along with other documents in support of his claim for compensation on account of the death of his wife owing to negligence on the part of respondents imputable to them. The petitioner averred that no amount of compensation is sufficient for the sufferings of the petitioner and his children, however, he claimed an amount of Rupees Five lakhs.

4. The petition is contested by the respondents. Delhi Transport Corporation, Respondent no.1, contended that this Court does not have jurisdiction to decide the questions raised in the writ petition and the petitioner should approach the appropriate civil court. It was denied that the wife of the petitioner was electrocuted on account of wrongful and negligent acts on the part of the officials of the respondent no.1. It was not admitted that the electric lines of the colony were old and in dilapidated condition. Regarding representations made to the respondent no.1, it was stated that the representations were to replace the old fans and not to replace the electric wires and the pipes. The respondent no.1 also refuted its liability on the ground that maintenance and up keeping was carried out from time to time. Liability of the respondent no.1 was also refuted on the ground that its officials were carrying out and performing their duties with the utmost care and caution and there was no dereliction of duties. Regarding the representation dated 15th May, 1999 it was contended that the same was regarding minor repairs of appliances like cooling fans etc. It was also contended that for the alleged fault imputable to the electric line of Delhi Vidyut board, the respondent no.1 cannot be made liable.

5. Delhi Vidyut Board, respondent no.2 also contested the petition on the ground that it raises disputed facts as to on account of whose negligence, the wife of the petitioner was electrocuted. The said respondent contended that a senior mistri had immediately reached there and had disconnected the electric line. It was

also pleaded that on investigation by the police authorities no fault was found and no action was initiated against respondent no.2. The said respondent also refuted its liability on the ground that an electric inspector had also visited the site and as per his report, the death was due to the defect in the internal wiring of the flat and there was no fault on the part of Delhi Vidyut Board. Relying on the facts stated in the first information report it was pleaded that the allegations were made only against respondent no.1 and not against respondent no.2. It was also contended that to claim damages and compensation one has to prove the case in a suit and not to claim compensation under Article 226 of the Constitution of India.

6. The allegations of the respondents were refuted by the petitioner in his rejoinder. It was contended that the colony is very old as it was constructed in 1954 and the electric lines were damaged which are not replaced despite repeated reminders and request to the respondents. The petitioner pleaded that the liability of the respondents is joint and several and the averments made in the petition were reiterated.

7. During the pendency of the petition, the respondent no.2 was divided into various different companies. The rights and liabilities of respondent no.2 pertaining to the petitioner came under North Delhi Power Ltd, which company was substituted in place of Delhi Vidyut Board and amended memo of parties dated 11th July, 2003 was filed. The said substituted respondent adopted the defense of the Delhi Vidyut Board and did not file a separate reply.

8. An additional affidavit was also filed on behalf of respondent no.1 contending that an inquiry office is functioning in the said colony from 9.30 to 18.00 hrs and one employee is deputed to register the complaints of the residents. It was also contended that service line for individual quarter are provided and maintained by respondent no.2 and no expenditure was incurred by respondent no.1 on it. The respondent no.1 was stated to maintain only internal wiring and switches and details of expenditure incurred in various years was given. It was also stated that on the day of incident there was no complaint of leakage of electricity nor any such complaint was lodged in the near past. The petitioner also filed an additional affidavit deposing that an inspection was carried out on 12th August, 1999 and report dated 30th August, 1999 was submitted. In the report it was stated that the insulation resistance of the electrical installation was tested with 500 volts insulation tester and leakage of current was observed. The main switch board, sub main switch and distribution board were found to be burnt out and the wires were joint directly with incoming electric line without any protective device such as cut out fuse/MCB. The insulation of wires of the main switch board and sub main switch board were found worn out/damaged and the conductor were exposed in certain areas. It was stated that the staff of Respondent no.2 had visited the premises on the day of incident and they found one of the live conductor of the worn out inter connection VIR wire in contact with the metallic main switch board of the flat of the petitioner and it was

electrically charged and the sewer pipes were also electrically charged. According to the petitioner, the report indicated that the provisions of Indian Electricity Act had not been complied with by the staff of respondent no.1.

9. The parties also relied on Chairman, Grid Corporation of Orissa Limited (GRIDCO) v. Smt. Sukamani Das (1997) 7 SCC 298; Sanchalakshri v. Vijayakumar Raghuvirprasad Mehta (1998) 2 SCC 245; Shakuntala Devi (Smt) Vs. Delhi Electric Supply Undertaking and Others, ; Tamil Nadu Electricity Board Vs. Sumathi and Others, ; Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others, ; The Chairman, Railway Board and Others Vs. Mrs. Chandrima Das and Others, ; 2002 ACJ 337 (SC) ; Haryana State Electricity Board v. Ram Nath : (2004)5SCC793 ; S.D.O. Grid Corporation of Orissa Ltd. and Others Vs. Timudu Oram, ; Rudul Sah Vs. State of Bihar and Another, ; D.K. Basu Vs. State of West Bengal, ; Smt Shobha and Shri Kailash Chand and Another Vs. Govt. NCT of Delhi and Another, ; Poonam Sharma v. Union of India 2003 VI AD (Delhi) 373; A.V.V.N.L. and Others Vs. Smt. Sarli and Others, ; Rizwan Ahmad Vs. The State of Bihar and Others, ; M.P Electricity Board. v. Smt. Sunder Bai AIR 2006 Madhya Pradesh 137; Suni Manoj Mathew v. BSES Rajdhani 2006(1) LRC 339 (Del) and Ramesh Singh Pawar Vs. M.P. Electricity Board and Others, in support of their contentions. The petitioner contended that the writ petition is maintainable and he is entitled for compensation whereas the respondents contended that the writ petition is not maintainable as it raises disputed question of facts which cannot be decided in a writ petition and consequently no amount can be awarded to the petitioner by the respondents.

10. Considering the facts and contentions and the laws cited by the parties what is to be determined is, whether there are disputed questions of fact and whether it will be appropriate for this Court to award compensation to the petitioner in the writ petition under Article 226 of the Constitution of India.

11. First it will be appropriate to consider the precedents relied on by the parties in the present facts and circumstances. One of the decision relied upon by the respondents is Chairman, Grid Corporation of Orissa Limited (GRIDCO) v. Smt. Sukamani Das (1997) 7 SCC 298. In this case one Pratap Chandra Das, while returning to his village from another village in Amara in Orissa, came in contact with an electric wire which was lying across the road. According to the claimants in that case, the electric wire had snapped on account of the negligence of GRIDCO and its officers who were required to maintain the electricity transmission line. Therefore, the legal representatives of the deceased claimed compensation of a sum of Rs. 3 lakhs against the GRIDCO and filed a writ petition under Article 226 of the Constitution of India. The electricity Corporation GRIDCO denied the liability on the ground that 12 WLT line had snapped on account of thunderbolt and lightning and not because of negligence as proper guarding was provided for the electricity line and the death in the circumstance could not be due to negligence and the defense of an act of God was raised. It was also contended that since the matter involved the disputed questions of fact,

the writ petition was not maintainable. The writ petition was, however, allowed by the High Court and the petitioners were awarded compensation in the sum of Rs. 1 lakh. In appeal to the Hon'ble Supreme Court, the decision was reversed and it was held at page 301 by the Apex Court as under:

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. Mere fact that the wire of the electric transmission line belonging to the appellant No. 1 had snapped and the deceased had come into 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 into contact with the wire. In view of the specific defenses 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 unauthorised intervention of third parties or that the deceased had not died in the manner stated by the petitioner. 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.

12. The Supreme Court had also held in Sukamani Das that the power under Article 142 was not available to the High Court while exercising the powers under Article 226 of the Constitution, which was held in Sanchalakshri v. Vijayakumar Raghuvirprasad Mehta (1998) 2 SCC 245. The Apex Court also distinguished its earlier decision in Shakuntala Devi (Smt) Vs. Delhi Electric Supply Undertaking and Others, holding that the question of negligence can be properly examined in a suit where correct facts can be established, however, an amount was awarded ex gratia in exercise of the powers of the Supreme Court under Article 142 of the Constitution which power is not available to the High Court.

13. In Tamil Nadu Electricity Board Vs. Sumathi and Others, the question which arose for consideration was whether the High Court under Article 226 of the Constitution can award compensation for death caused due to electrocution on account of improper maintenance of electric wires or equipment by an Electricity

Board and can appoint an Arbitrator under Arbitration and Conciliation Act, 1996 to decide the quantum of compensation. While deciding this case the Supreme Court took note of the decisions in Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others, and The Chairman, Railway Board and Others Vs. Mrs. Chandrima Das and Others, and Chairman, Grid Corporation of Orissa Limited (GRIDCO) v. Smt. Sukamani Das (1997) 7 SCC 298 and held on page 552 as under:

Since disputed questions of facts arose in the present appeals the High Court should not have entertained writ petitions under Article 226 of the Constitution and then referred the matter to arbitration in violation of the provisions of the new Act. There was no arbitration agreement within the meaning of Section 7 of the new Act. Under the new Act award can be enforced as if it is a decree of a court and yet the High Court passed a decree in terms of the award which is not warranted by the provisions of the new Act. The appellant had also raised the plea of bar of limitation as in many cases if suits had been filed those would have been dismissed as having been filed beyond the period of limitation. In our opinion exercise of jurisdiction by the High Court in entertaining the petitions was not proper and the High Court in any case could not have proceeded to have the matter adjudicated by an arbitrator in violation of the provisions of the new Act.

14. A two judges Bench of the Supreme Court in 2002 ACJ 337 (SC) though declined to interfere with the finding of the High Court had deleted the finding of fact that the victims had died because of negligence of the State Electricity Board and had also allowed the compensation to be retained and not refunded. The Apex Court had held:

Looking to the fact that the two victims were electrocuted because of an illegal hooking for the purpose of theft of electricity, the petitioners cannot be held guilty of negligence although they may have stated that there is a need for conducting de-hooking raids more frequently

15. The principle of strict liability to award compensation in a case of death due to electrocution was applied in Madhya Pradesh Electricity Board Vs. Shail Kumari and Others, which was a case arising out of judgment in a civil suit filed by the heirs of victim for compensation. Thus the Supreme Court had distinguished the ratio of Nilabati Behera (supra) and Chandrima Das (supra) in their application to the claim of compensation for death due to electrocution especially where facts were disputed.

16. In Haryana State Electricity Board v. Ram Nath : (2004)5SCC793 , on the facts which were not disputed the compensation was awarded. In this case a five-year old child died as a result of coming into contact with a high- tension wire which passed over the roof of the house. The pleas raised in the petition were not denied in the counter affidavit except stating that ``the entire colony was an unauthorized colony and that unauthorizedly the height of the houses had been raised."` The Supreme Court had observed:

To the categoric averments set out hereinabove that the wires had become loose and were drooping and touching the roof of the houses, there is no denial. To the categoric averments that complaints had been made, both in writing and orally, requesting that the wires had to be tightened, there is no denial. A mere vague statement to the effect that the height was as per the prescribed limit does not detract from the facts that there is a deemed admission that the wires were drooping and touching the roofs.

17. In Ram Nath (supra), the Hon''ble Supreme Court noticed the judgment of Sukamani Das but impliedly distinguished it on the ground that the case being decided by it (i.e. Ram Nath) did not involve disputed questions of fact. The Court observed on (SCC, p 795)

...the unauthorized constructions have been put up close to their wires it is their duty to ensure that the construction is got demolished by moving the appropriate authorities and if necessary, by moving the court of law. Otherwise, they would take the consequences of their inaction. If there are complaints that these wires are drooping and almost touching houses, they have to ensure that the required distance is kept between the houses and the wires, even though the houses be unauthorized.

18. The question of maintainability of a writ petition for claiming compensation for death due to electrocution was again examined by a two-Judges Bench of the Hon''ble Supreme Court in S.D.O. Grid Corporation of Orissa Ltd. and Others Vs. Timudu Oram, . The petitions were in fact part of a batch of writ petitions that were disposed of by the judgment in Sukamani Das. However, for some reason, they were not taken up along with that batch. The facts were more or less similar. A co-villager of the deceased had taken power supply to his LI point. Some other villagers had illegally taken power supply from this line by using a hook from the LI point to their houses by means of an un- insulated GI pipe. The unauthorized line got disconnected and fell on the ground. On 22.8.1978 when the father of the respondent was coming along that way, his bullock came in contact with the live GI wire and got electrocuted. His wife came to his rescue and hearing her cries, her father while trying to rescue her also got electrocuted. A writ petition under Article 226 of the Constitution claiming compensation was filed. In the counter affidavit GRIDCO denied its negligence pointing out that the electric wire got snapped on account of the illegal hooking. In Timudu Oram, an attempt was made to get the Hon''ble Supreme Court to distinguish its earlier ruling in Sukamani Das by referring to the decisions in Shail Kumari (supra) and Ram Nath (supra). Nevertheless, the Supreme Court held that the case would be covered by Sukamani Das since it involved disputed questions of fact. It was held that the High Court erred in entertaining the writ petition under Article 226 of the Constitution after a lapse of ten years.

19. Where the compensation had been claimed on account of death and injury on the basis of constitutional wrong but not due to electrocution, the approach of the Supreme Court has been different. Some of the prominent decisions are

Rudul Sah Vs. State of Bihar and Another, ; Nilabat Behera (supra); D.K. Basu Vs. State of West Bengal, and Chairman Railway Board v. Chandrima Das (supra). However, it has been held that in cases of electrocution involving disputed question of facts, a writ petition under Article 226 of the Constitution of India is not maintainable. It is in the electrocution cases as can be seen from the discussion hereinabove, that the approach has been different. In Ram Nath, the Hon'ble Supreme Court upheld the award of compensation by distinguishing Sukamani Das. Later, in Timudu Oram, after noticing and distinguishing Ram Nath the Supreme Court reiterated and followed the decision in Sukamani Das holding that a writ petition under Article 226 was not maintainable. The decision in Sumathi (supra) is also to the same effect. All these decisions are of two-Judges bench. Timudu Oram, being the most recent decision, and consistent with Sukamani Das (supra) and Sumathi (supra) must be held to express the present status of the law and is binding. The net result is that in cases involving claim for compensation on account of death due to electrocution, where the facts are disputed, the Supreme Court has held that a writ petition for payment of compensation is not maintainable under Article 226 of the Constitution. The remedy in such cases will obviously be only before the Civil Court.

20. The petitioner has relied on some of the judgments of the High Courts, including this Court, where compensation has been awarded in a writ petition under Article 226 of the Constitution. Reference has been made to the judgments in Smt Shobha and Shri Kailash Chand and Another Vs. Govt. NCT of Delhi and Another, , Poonam Sharma v. Union of India 2003 VI AD (Delhi) 373, A.V.V.N.L. and Others Vs. Smt. Sarli and Others, ; Rizwan Ahmad Vs. The State of Bihar and Others, ; M.P Electricity Board. v. Smt. Sunder Bai AIR 2006 M P 137, Suni Manoj Mathew v. BSES Rajdhani 2006 (1) LRC 339 (Del) and Ramesh Singh Pawar Vs. M.P. Electricity Board and Others, . On a appropriate consideration of these it is apparent that these precedents relied on by the petitioner are distinguishable. In A.V.V.N.L. v. Smt. Sarli (supra), a reference has been made to the decision in Shail Kumari in order to justify the award of the compensation. However the case was an appeal before the High Court against the judgment of the Additional District Judge in a civil suit. Likewise, in M.P. Electricity Board v. Smt. Sunder Bai (supra), also the case came up by way of an appeal from a judgment in a civil suit. Neither decision Therefore considered the issue of maintainability of a writ petition claiming compensation for death due to electrocution. The judgment of the Division Bench of the Patna High Court in Bihar Electricity Board v. Ram Swaroop Yadav (supra) does not advert to the question of maintainability of the writ petition under Article 226 of the Constitution. Therefore, no reference has been made to any of the judgments of the Supreme Court in the electrocution cases referred to above. The judgment in Suni Manoj Mathew v. BSES Rajdhani (supra) was rendered by a learned Single Judge of this Court in a writ petition under Article 226 of the Constitution. The Court granted compensation to the petitioner for the death as a result of a heavy metal ladder used for repairing street lighting rolling down the pavement and

colliding with a motorcycle being driven by the victim. It was not a case of death due to electrocution. That perhaps explains why no reference was made to any of the judgments of the Hon'ble Supreme Court in the electrocution cases. Ramesh Singh Pawar v. Madhya Pradesh Electricity Board (supra) is a judgment by a learned Single Judge of the Madhya Pradesh High Court in a writ petition under Article 226 of the Constitution. The learned Single Judge referred to both judgments Sukamani Das (supra) and Shail Kumari (supra) and sought to distinguish Sukamani Das on the reasoning that the judgment in Shail Kumari is a later one. However the learned Single Judge appears to have overlooked the fact that Shail Kumari was not a decision arising out of the writ petition under Article 226 of the Constitution but in an appeal against a decision in a civil suit. While, as has been pointed out in this decision, it is true that the principle of strict liability enunciated in Nilabati Behera (supra) had not been considered by the Supreme Court in Sukamani Das, the subsequent decision in Sumathi does notice those decisions and yet adopts the same line as Sukamani Das. Further, the judgment in Sukamani Das has been followed by the subsequent judgment in Timudu Oram. For all the above reasons, none of the judgments of the different High Courts relied upon by the counsel for petitioner can help petitioner's case.

21. Are the facts, as alleged by the petitioner, admitted or disputed is to be ascertained to decide whether the compensation can be awarded to petitioner on account of death of his wife by electrocution. The petitioner contended that the electric lines are very old and in dilapidated conditions resulting into electric short circuit and the negligence is in not repairing the faulty lines and in being unresponsive. The respondent no.1 contended that internal wiring is maintained properly as maintenance is carried out from time to time and the officials were carrying out and performing their duties with the utmost care and caution and there was no dereliction of duty. To substantiate this plea it is contended that an inquiry office is functioning in the said colony from 9.30 to 18.00 hrs and one employee is deputed to register the complaints of the residents. It was also contended that service line for individual quarter are provided and maintained by respondent no.2 and no expenditure was incurred by respondent no.1 on it. The respondent no.1 was stated to maintain only internal wiring and switches and details of expenditure incurred in various years was given. It was also stated that on the day of incident there was no complaint of leakage of electricity nor any such complaint was lodged in the near past. Regarding complaints being not attended for replacement of allegedly old and dilapidated electric lines, it was stated that representations made were of repair of some appliances, like ceiling fans etc. and not for replacement of internal electric lines. The respondent no.2 has refuted its liability by contending that on investigation on complaint filed by the petitioner with police reflected that the complaints were made against the respondent no.1 for internal wiring and not against the respondent no.2. In the circumstances, it is not admitted that the death occurred on account of negligence of respondents. Whether the respondents were negligent, if so what was their negligence and whether both were negligent or only one of them was

negligent and whether their liabilities are joint or several is to be determined which is not admitted. In the circumstances, apparently there are various disputed question of facts, some of which are discussed herein above. The Supreme Court has held that in electrocution cases, if the facts are disputed, the High Court will not be justified in awarding compensation in such cases.

22. In the light of these binding decisions of the Supreme Court as detailed and discussed herein above, this Court cannot possibly entertain this writ petition and grant compensation on the basis of the principle of strict liability or rest ipsa loquitur though sending the petitioner to civil court will delay the resolution of his claim. Therefore, this Court has no other option but to hold that the writ petition in the facts and circumstances which involves disputed questions of facts is not maintainable and the petitioner will have to approach the appropriate Civil Court to claim the compensation for the death of his wife on account of alleged negligence of the respondents. It is, however, made clear that the petitioner shall be entitled to avail all legal remedies available to him in accordance with law and he will be entitled to claim the benefit of Section 14 of the Limitations Act, 1963 to avail the legal remedies available to him.

23. The writ petition is, Therefore, dismissed as not maintainable and with no order as to cost, however, petitioner will be entitled to avail any other legal remedy available to him.