
(2014) 12 OHC CK 0066
In the Orissa High Court
Case No : Writ Appeal No. 106 of 2012

T. Bimala

APPELLANT

Vs

Cuttack Municipal Corporation

RESPONDENT

Date of Decision : 15-12-2014

Acts Referred:

Constitution of India, 1950 — Article 21, 226, 32

Electricity Act, 2003 — Section 135

Penal Code, 1860 (IPC) — Section 304(A), 338, 379

Citation : (2015) ACJ 2585 : (2015) 120 CLT 988 : (2015) 2 ILR 1 : (2015) 1 OLR 637

Hon'ble Judges : Amitava Roy, C.J;Dr. Akshaya Kumar Rath, J

Bench : Division Bench

Judgement

Dr. Akshaya Kumar Rath, J.—This appeal has been preferred against the judgment and order dated 23.02.2012 passed by the learned Single Judge in W.P. (C) No. 17413 of 2009, whereby and whereunder the writ application filed by the appellant claiming compensation for the death of her son in electrocution has been dismissed.

2. The unfortunate mother is the appellant. Her son T. Kailash Rao was working as a daily wage earner under the contractors of the Cuttack Municipal Corporation (hereinafter referred to as "the Corporation"). On 15.05.2009 on the instruction of the Junior Engineer of the Corporation, he was cleaning the drain near Sunshine Field, Cuttack. During such cleaning, he suddenly came in contact with the live electric wire and died at the spot due to electrocution. Immediately after the accidental death, the Mayor of the Corporation came to the spot and paid an ex gratia of Rs. 10,000/-. Thereafter neither the Municipal authorities, nor the electricity authorities paid any compensation to the appellant. An F.I.R. was also lodged by the Sub-Divisional Officer, whereafter Purighat P.S. Case No. 49(5) of 2009 was registered against one Babuli Sahoo under Sections 338/ 379/ 304(A), I.P.C. read with Section 135 of the Indian Electricity Act, 2003. When all the persuasion of the appellant to pay compensation ended in a fiasco, she filed

the writ application claiming compensation of Rs. 11,00,000/-.

3. Pursuant to issuance of notice, a counter affidavit has been filed by the respondent no. 1-Corporation. Though the accident was admitted, but a stand was taken that the Corporation had no role to play.

4. Respondent nos. 2 and 3 had also filed a counter affidavit. The sum and substance of the case of the respondent nos. 2 and 3 is that they had taken all precautionary steps to avoid theft of electricity and to avoid any wrong to any person or animal. The electricity had been supplied to the consumers of that area through insulated cable. In spite of that one Sudhakar Sahoo of Upper Telenga Bazar without their knowledge committed theft by hooking and by concealing the hooking wires through that drain. The said theft was not in their knowledge. Thus they were not negligent in any manner. Further the deceased was guilty of contributory negligence as he had not taken proper care before cleaning the drain.

5. Learned Single Judge relying on two decisions of the apex Court in the case of Chairman, Grid Corporation of Orissa Ltd. (Gridco) and Others Vs. Smt. Sukamani Das and Another, and S.D.O. Grid Corporation of Orissa Ltd. and Others Vs. Timudu Oram, came to hold that since disputed questions of fact are involved, the writ application is not maintainable. T. Kailash Rao died as a result of act of a third party i.e. Sudhakar Sahoo, who had take illegal connection of the electricity without the knowledge of the electricity authorities and in that view of the matter, it cannot be said that the officer of the CESU were in any manner negligent. Having held so, learned Single Judge dismissed the writ application.

6. Heard Mr. S.S. Rao, learned counsel for the appellant, Mr. P.K. Mohanty, learned Senior Advocate for the respondent no. 1 and Mr. B. Dash, learned counsel for the respondent nos. 2 and 3.

7. Having regard to the rival pleading of the parties and contentions advanced by the counsel for the parties, two points emerge for our consideration.

1) Whether a writ application under Article 226 of the Constitution of India is maintainable for payment of compensation when death is caused due to electrocution ?

2) Whether respondent nos. 2 and 3 can deny the liability on the ground that the death of T. Kailash Rao was due to act of a third party.

8. The specific case of the appellant is that her son died due to electrocution on 15.5.2009 while cleaning the drain near Sunshine Field, Cuttack. Respondent no. 1 admits the same. The Assistant Electrical Inspector, Cuttack conducted a preliminary enquiry on 16.5.2009 and submitted report vide Annexure-A/2 to the EIC-cum-PCEI, Orissa. The said report reveals that on 15.9.2009, 4/5 persons were engaged by the Corporation for cleaning the drain running adjacent to the pole. While cleaning, T. Kailash Rao was electrocuted by coming in contact with damaged hooking service wire, which was taken from the pole. The service wire

was taken by one Sudhakar Sahu, who was a non-consumer. Service wire & electrical appliances of said Sahu were seized by the Police. The FIR lodged by the IIC, Purighat P.S. reveals that four nos. of labourers were engaged for cleaning drain, out of whom one came in contact with live wire and died. The post mortem report reveals that death of T. Kailash Rao was due to electrical injuries mentioned therein. The documents such as, FIR, post mortem report and report of the Assistant Electrical Inspector, Cuttack prima facie reveal that death of T. Kailash was due to electric shock.

Point No. 1

9. The language of Article 226 of the Constitution does not admit of any limitation on the powers of the High Court for the exercise of jurisdiction thereunder. The power conferred upon the High Courts under Article 226 of the Constitution is wide enough to reach injustice wherever it is found. The apex Court in catena of the decisions laid down certain guidelines and self-imposed limitations have been put there subject to which the High Courts would exercise jurisdiction. Those guidelines cannot be mandatory in all circumstances. When a citizen approaches the High Court in writ petition that a wrong is caused, the High Court will step into protect him, whether that wrong was done by the State or an instrumentality of the State. The High Court cannot pull down the shutters.

10. In *M.S. Grewal and Another Vs. Deep Chand Sood and Others*, , the apex Court observed as under:

"Next is the issue of "maintainability of the writ petition" before the High Court under Article 226 of the Constitution. The appellants though initially very strongly contended that while the negligence aspect has been dealt with under penal laws already, the claim for compensation cannot but be left to be adjudicated by the civil laws and thus the Civil Court's jurisdiction ought to have been invoked rather than by way of a writ petition under Article 226 of the Constitution. This plea of non-maintainability of the writ petition though advanced at the initial stage of the submissions but subsequently the same was not pressed and as such we need not detain ourselves on that score, excepting however recording that the law Courts exist for the society and they have an obligation to meet the social aspirations of citizens since law Courts must also respond to the needs of the people. In this context, reference may be made to two decisions of this Court: the first in line is the decision in *Smt. Nilabati Behera alieas Lalita Behera Vs. State of Orissa and others*, wherein this Court relying upon the decision in *Rudul Sah Vs. State of Bihar and Another*, decried the illegality and impropriety in awarding compensation in a proceeding in which the Court's power under Articles 32 and 226 of the Constitution stands involved and thus observed that it was a clear case for award of compensation to the petitioner for custodial death of her son. It is undoubtedly true, however, that in the present context, there is no infringement of the State's obligation, unless of course the State can also be termed to be joint tortfeasor, but since the case of the parties stands restricted and without imparting any liability on the State, we

do not deem it expedient to deal with the issue any further except noting the two decisions of this Court as above and without expression of any opinion in regard thereto."

11. In this connection, we would like to profitably quote a paragraph from a decision of Madhya Pradesh High Court in the case of Ramesh Singh Pawar Vs. M.P. Electricity Board and Others, . It is held as follows:

"Currently judicial attitude has taken a shift from the old doctrine concept and the traditional jurisprudential system-affection of the people has been taken note of rather serious and the judicial concern thus stands on a footing to provide expeditious relief to an individual when needed rather than taking recourse to the old conservative doctrine of the Civil Court's obligation to award damages. As a matter of fact the decision in D.K. Basu has not only dealt with the issue in a manner apposite to the social need of the "Country but the learned Judge with his usual felicity of expression firmly established the current trend of justice-oriented approach". Law Courts will lose their efficacy if they cannot possibly respond to the need of the society-technicalities their might be many but the justice-oriented approach ought not to be thwarted on the basis of such technicality since technicality cannot and ought not to outweigh the course of justice."

12. Thus we hold that a writ application for payment of compensation for the death of a person in electrocution is maintainable when the undisputed facts clearly reveal the same.

Point No. 2

13. A person undertaking an activity involving hazardous or risky exposure to human life, is liable under law of torts to compensate for the injury suffered by any other person, irrespective of any negligence or carelessness on the part of the managers of such undertakings. The basis of such liability is the foreseeable risk inherent in the very nature of such activity. The liability cast on such person is known, in law, as "strict liability".

14. The doctrine of strict liability has its origin in English Common Law when it was propounded in the celebrated case of Rylands v. Fletcher, 1868 Law Reports (3) HL 330, Justice Blackburn had observed thus:

"The rule of law is that the person who, for his own purpose, brings on his land and collects and keeps there anything likely to do mischief if it escapes, must keep it at his peril, and if he does so he is prima facie answerable for all the damage which is the natural consequence of its escape."

15. There are seven exceptions formulated by means of case law to the said doctrine. One of the exceptions is that "Act of stranger i.e. if the escape was caused by the unforeseeable act of a stranger, the rule does not apply". (Winfield on Tort, 15th Edn. Page 535).

16. The rule of strict liability has been approved and followed in many subsequent decisions in England and decisions of the apex Court are a legion to that effect. A Constitution Bench of the apex Court in *Charan Lal Sahu Vs. Union of India*, and a Division Bench in *Gujarat State Road Transport Corporation, Ahmedabad Vs. Ramanbhai Prabhatbhai and Another*, had followed with approval the principle in *Rylands (supra)*. The same principle was reiterated in *Smt. Kaushnuma Begum and Others Vs. The New India Assurance Co. Ltd. and Others*, .

17. *Sukamani Das (supra)*, *Timudu Oram (supra)* on which reliance has been placed by the learned Single Judge, the question of a strict liability was not taken up in those cases.

18. *Sukamani* 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, since right of life is one the basic human rights guaranteed under Article 21 of the Constitution.

19. In *Madhya Pradesh Electricity Board Vs. Shail Kumari and Others*, , one *Jogendra Singh*, a workman in a factory, was returning from his factory on the night of 23.8.1997 riding on a bicycle. There was rain and hence the road was partially inundated with water. The cyclist did not notice the live wire on the road and hence he rode the vehicle over the wire which twitched and snatched him and he was instantaneously electrocuted. He fell down and died within minutes. When the action was brought by his widow and minor son, a plea was taken by the Board that one *Hari Gaikwad* had taken a wire from the main supply line in order to siphon the energy for his own use and the said act of pilferage was done clandestinely without even the notice of the Board and that the line got unfastened from the hook and it fell on the road over which the cycle ridden by the deceased"s slid resulting in the instantaneous electrocution. In paragraph 7, the apex Court held as follows:

"It is an admitted fact that the responsibility to supply electric energy in the particular locality was statutorily conferred on the Board. If the energy so transmitted causes injury or death of a human, being, who gets unknowingly trapped into it the primary liability to compensate the sufferer is that of the supplier of the electric energy. So long as the voltage of electricity transmitted through the wires is potentially of dangerous dimension the managers of its supply have the added duty to take all safety measures to prevent escape of such energy or to see that the wire snapped would not remain live on the road as users of such road would be under peril. It is no defence on the part of the management of the Board that somebody committed mischief by siphoning such energy of his private property and that the electrocution was from such diverted line. It is the look out the managers of the supply system to prevent such pilferage by installing necessary devices. At any rate, if any live wire got snapped and fell on the public road the electric current thereon should automatically have

been disrupted. Authorities manning such dangerous commodities have extra duty to chalk out measures to prevent such mishaps."

20. The principle of *res ipsa loquitur* is well known. 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 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 no 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."

21. In view of the above, we have no option but to set aside the judgment and order dated 23.02.2012 passed by the learned Single Judge in W.P. (C) No. 17413 of 2009. Applying the principles of strict liability and *res ipsa loquitur*, we direct the respondents to pay interim compensation of Rs. 2,00,000/- (rupees two lakhs) to the appellant within two months leaving the appellant to workout her remedies in the common law forum for higher compensation.

The Writ Appeal is allowed.