

(2014) 01 OHC CK 0019

In the Orissa High Court

Case No : Original Jurisdiction Case No. 16973 of 1997

Udaya Gagarai

APPELLANT

Vs

Executive Engineer, Electrical Division and Another

RESPONDENT

Date of Decision : 07-01-2014

Acts Referred:

Citation : (2014) 2 ACC 394 : (2014) ACJ 2029 : AIR 2014 Ori 33 : (2014) 1 OLR 516 Suppl.

Hon'ble Judges : B.R. Sarangi, J

Bench : Single Bench

Advocate : Tahali Charan Mohanty, S.C. Swain and S. Patnaik, for the Appellant; Banoj Kumar Pattnaik, S. Sinha, S.K. Pradhan, P.S. Nayak, for the Respondent

Final Decision : Disposed Off

Judgement

Dr. B.R. Sarangi, J.—The petitioner being the father of the deceased Sanatan Gagarai, who died due to electrocution on 25.4.1997 at about 12.30 P.M. near Nischinta under Baruan Out-post under the jurisdiction of Jajpur Police, has filed this writ petition seeking for a direction to the opposite parties for award of compensation of Rs. 5 lakhs. The petitioner's case, in short, is that the deceased while discharging his duties as labourer came in contact with one live electric wire, which was in hanging condition and met with a fatal accident, pursuant to which he died. An U.D.G.R. Case No. 55 of 1997 arising out U.D.P.S. Case No. 2 of 1997 was registered on 25.4.1997 at about 12.30 P.M. under Annexure-2. The deceased left behind his old parents, who were fully depending on his earnings. Case of the petitioner is that the death has been caused due to the negligence on the part of the opposite parties. Therefore, the petitioner has filed this writ application claiming compensation.

2. While entertaining the writ application, this Court issued notice to the opposite parties pursuant to which counter affidavit has been filed, wherein a specific stand has been taken with regard to the identification of the deceased, which is disputed and it is stated that no person namely, "Sanatan Gagarai" died due to

electrocution on 25.4.1997 at about 12.30 P.M. near Nischinta under Baruan Out-post under Jajpur Police Station, rather one Sanatan Bagudia on 25.4.1997 at about 11.30 P.M. while cutting tree branches, which was above the electric line, came in contact with the electric wire and suffered injuries. It is further stated that cutting the tree branches over the electric line by the said Sanatan Bagudia was without the knowledge of the opposite parties and the circumstance under which Sanatan Bagudia faced the accident was beyond the control of the opposite parties. It is stated that it is an unauthorized act of the said person. The opposite parties have further stated that Late Sanatan Bagudia was the victim for his own laches for which the Department is no way responsible nor negligent so as to award compensation in his favour and more so, since the identification of the person concerned is disputed, this writ application is not maintainable and the same is otherwise liable to be dismissed. It is further averred that relying upon the news paper cutting annexed as Annexure-1 and basing upon contradictory statement, no compensation can be claimed and further since disputed questions of fact are involved, the writ application also cannot be sustained. The further plea of the opposite parties is that since the petitioner has not come to this Court with clean hands establishing his relationship with Sanatan Gagarai or Sanatan Bagudia, the petitioner should be put to strict proof of the same. It is further stated that since disputed questions of facts are involved, the petitioner should approach the appropriate forum. Apart from the same, it is stated that law is well settled that the petitioner is required to establish negligence, but the petitioner has failed to produce any substantial evidence before this Court to establish such fact.

3. Mr. T.C. Mohanty, learned Sr. Counsel appearing for the petitioner states that if the factum of death due to electrocution is true, whether Sanatan Gagarai or Sanatan Bagudia has died, is immaterial, and therefore, the authorities relying upon the title of the person concerned, should not reject the claim of the petitioner for grant of compensation, who is the person entitled to under law. He has also relied upon the judgments dated 29.6.2012 passed by this Court in Writ Appeal No. 420 of 2011 (Sambari Nayak v. CGM, Telecom and others), dated 16.3.2011 passed in Writ Appeal No. 353 of 2010 Nirmala Nayak and Others Vs. Chairman-cum-Managing Director, Grid Corporation of Orissa Ltd. and Another, and Uttam Sahoo Vs. Chairman, Orissa State Electricity Board of Another, and stated that in view of the law laid down by the apex Court, this Court is not precluded to grant compensation, rather considering the situation this Court can grant compensation in view of the judgments reported in Jacob Mathew Vs. State of Punjab and Another, as negligence has been caused by the authorities as a result which the deceased died. He has also placed reliance on the judgment of Gujrat High Court in Shriram Education Trust, Trustees of Trust and Others Vs. Mitaben Anilbhai Patel and Others, wherein it is held that be it natural calamity or act of God, construction of building was not in accordance with the sanctioned plan-proper building materials were not used, will not debar the person concerned from getting compensation.

4. Mr. Banoj Kumar Pattnaik, learned counsel appearing for the opposite parties, strenuously urged that since there is dispute with regard to the identification of the person concerned, unless the same is established by approaching the appropriate forum, no compensation can be granted by invoking the writ jurisdiction of this Court and as such, the claim of the petitioner is not maintainable. He has also relied upon the documents filed as Annexures-A and B, the intimation given by the authorities to the OIC, Baruan Out-post with regard to the fatal accident of one Sanatan Bagudia, who is an outsider and consequently the report of the Electrical Inspector, who caused enquiry under Rule 44-A of the Indian Electricity Rules where definite finding has been recorded that while cutting tree branches, the deceased came in contact with 11 KV live wire without the knowledge of the Department. In view of such position, since there is no negligence on the part of the authorities, they are not liable to pay compensation for the death of the deceased. In support of his contention, Mr. Pattnaik relied upon the judgment of the apex Court in *Chairman, Grid Corporation of Orissa Ltd. (Gridco) and Others Vs. Smt. Sukamani Das and Another*,

5. In view of the rival contentions of the parties, on perusing the records, it is found that in the F.I.R. lodged in the Police Station on 25.4.1997 at about 2.30 P.M. in Annexure-2, the deceased's name has been recorded as Sanatan Gagarai, aged 25 years and the cause of death has been reported as "due to electric shock on today, i.e. 25.4.97 at about 12.30 P.M." and such F.I.R. has been registered as U.D. Case No. 2 of 1997 and thereafter the same was registered as U.D.G.R. Case No. 55 of 1997. The Medical Officer on requisition being made by the police has caused post mortem and furnished the report on 25.4.1997 wherein it is stated that "one Sri Sanatan Gagurai aged about 25 years received dead caused to be shocked by the Electric current, which is lying in the verandah of this Haripuchat Addl.P.H.C." But the document in Annexure-A, which is a communication from the electricity authorities to the O.I.C., Baruan Out-post with regard to the fatal accident, it is stated that one Sanatana Bagudia, an outsider has been electrocuted to death coming in contact with 11 KV line at Benipur on 25.4.1997 at about 11.30 A.M. while he was cutting tree branches without the knowledge of Hariput Fuse Call staff. Annexure-B also indicates the name of Sanatan Bagudia, who is an outsider and the cause of accident has been indicated as "while cutting tree branches came in contact with 11 KV line without the knowledge of the Deptt." In the said document as against the information under clause 12, it is stated that F.I.R. has been lodged to O.I.C., Baruan Out-post vide letter No. 192 dated 26.4.1997 of J.E. (Elect.), Kuakhia. The only difference between the two names is the "surname". As revealed from the materials available on record, at the relevant point of time within the jurisdiction of the same police station, this was the only fatal accident that took place leading to the death of the deceased due to electrocution. If the death due to electrocution is established and there is no other person succumbed to death on the particular date and particular time due to electrocution, the irresistible

conclusion that can be drawn is that Sanatan Gagarai and Sanatan Bagudia is the same person, who died due to electrocution as per the records available in the police station, which is the F.I.R. as well as the intimation requisition report and the post mortem report furnished by the concerned Medical Officer. In view of such position, no dispute can be raised with regard to the person who died due to electrocution, rather a conclusion can be drawn that it is Sanatan Gagarai, who succumbed to death due to electrocution on the date of occurrence and the contention raised by the opposite parties with regard to the identification of the person concerned has to be rejected.

6. It is the admitted case that the deceased died due to electrocution. If it is so, whether the said death has been caused due to the negligence on the part of the authorities entitling the petitioner to get compensation, is to be considered. It is the case of the opposite parties that Sanatan Gagarai while cutting the tree branches, came in contact with 11 KV line and died without the knowledge of the Department and therefore, the petitioner is not entitled to get compensation. Fact remains, it is admitted by the opposite parties that the deceased died due to electrocution, but nothing has been placed before this Court to establish the fact whether the death has been caused due to the negligence on the part of the opposite parties or not nor the petitioner could produce any material with regard to the negligence on the part of the authorities. In *Malay Kumar Ganguly Vs. Dr. Sukumar Mukherjee and Others*, , the apex Court considering the meaning of "negligence", held as follows:

Negligence is breach of duty caused by omission to do something which a reasonable man, guided by those considerations which ordinarily regulate conduct of human affairs would do, or doing something which a prudent and reasonable man would not do. Negligence means either subjectively a careless state of mind, or objectively careless conduct. It is not an absolute term but is a relative one; it is rather a comparative term. In determining whether negligence exists in a particular case, all the attending and surrounding facts and circumstances have to be taken into account. Negligence is strictly nonfeasance and not malfeasance. It is omission to do what the law requires, or failure to do anything in a manner prescribed by law. It is the act which can be treated as negligence without any proof as to the surrounding circumstances, because it is in violation of statute or ordinance or is contrary to dictates of ordinary prudence.

7. In *Jacob Mathew (supra)* the apex Court considering the meaning of "negligence", held as follows:

The jurisprudential concept of negligence defies any precise definition. In current forensic speech, negligence has three meanings. They are : (i) a state of mind, in which it is opposed to intention; (ii) careless conduct; and (iii) the breach of a duty to take care that is imposed by either common or statute law. All three meanings are applicable in different circumstances but any one of them does not necessarily exclude the other meanings.

8. In *M.S. Grewal and Another Vs. Deep Chand Sood and Others*, , the apex Court in para 14 stated as follows:

Negligence in common parlance means and implies "failure to exercise due care, expected of a reasonable prudent person". It is a breach of duty and negligence in law ranging from inadvertence to shameful disregard of the safety of others. In most instances, it is caused by heedlessness or inadvertence, by which the negligent party is unaware of the results which may follow from his act. Negligence is thus a breach of duty or lack of proper care in doing something, in short, it is want of attention and doing of something which a prudent and a reasonable man would not do. Though sometimes the word "inadvertence" stands and is used as a synonym to negligence, but in effect negligence represents a state of the mind which, is much more serious in nature than mere inadvertence. There is thus existing a differentiation between the two expressions- whereas inadvertence is a milder form of negligence, "negligence" by itself means and implies a state of mind where there is no regard for duty or the supposed care and attention which one ought to bestow.

9. In *Poonam Verma Vs. Ashwin Patel and others*, "negligence" has been dealt with by the apex Court which has stated thus:

Negligence as a tort is the breach of a duty caused by omission to do something which a reasonable man would do, or doing something which a prudent and reasonable man would not do. The definition involves the following constituents:

(1) a legal duty to exercise due care;

(2) breach of the duty; and

(3) consequential damages.

10. In *Jay Laxmi Salt Works (P) Ltd. Vs. State of Gujarat*, the apex Court held that negligence in performance of duty is only a step to determine if action of Government resulting in loss or injury to common man should not go uncompensated.

11. "Negligence" has also been considered in various judgments of this Court as well as the apex Court. In *Consumer Unity and Trust Society, Jaipur Vs. Chairman and Managing Director, Bank of Baroda, Calcutta and Another*, the apex Court has held that "negligence" is absence of reasonable or prudent care which a reasonable person is expected to observe in a given set of circumstances. But the negligence for which a consumer can claim to be compensated under this sub-section must cause some loss or injury to him. In *Prafulla Kumar Rout Vs. State of Orissa*, the apex Court has held that negligence is an omission to do something which a reasonable man guided upon these considerations which ordinarily regulates conduct of human affairs would do or the doing of something which a prudent and reasonable man would not do. In *Ramesh Kumar Nayak Vs. Union of India (UOI) and Others*, the apex Court considering the meaning of "negligence" held that negligence means failure to exercise the required degree

of care and caution expected of a prudent driver. In *Chatra and another v. Imrat Lal and others*, 1998 (1) Civ.LJ 670, the apex Court while defining the meaning of "negligence" has stated that negligence means the breach of the provisions of law as also the breach of the duty caused by omission to do something which a reasonable man guided by those considerations which ordinarily regulate the conduct of human affairs, would do or the doing of something which a prudent and reasonable man would not do. The negligence or the rashness would depend upon the facts of each case.

12. In *Advanced Law Lexicon of 3rd Edition 2009*, negligence has been defined as follows:

"Negligence" is not an affirmative word, it is a negative word; it is the absence of such care, skill and diligence as it was the duty of the person to bring to the performance of the work, which he is said not to have performed.

Negligence may consist as well in not doing the thing which ought not to be done as in doing that which ought not to be done when in either case it has caused loss and damage to another.

Negligence is "the absence of proper care, caution and diligence; of such care, caution and diligence, as under the circumstances reasonable and ordinary prudence would require to be exercised".

13. In view of the meaning of negligence as elucidated above, it is to be considered at this stage whether the same can be attributable to the opposite parties or not. On the basis of the materials available on record, it is found that the deceased had succumbed to death due to electrocution, but in the self-same enquiry being caused by the electricity authorities vide Annexure-B, it is found that the deceased while cutting the branches of the tree came in contact with the 11 KV live wire without the knowledge of the department and there is no material available on record to indicate whether Sanatan Gagarai was actually cutting the tree branches which could come in contact with the live wire. But there is no dispute on the part of the opposite parties that the death of the deceased has been caused due to electrocution. Maintenance of electricity live wire is the prime duty of the electricity authorities. Even cutting the branches of the trees near the live electric wire is also the duty attached to the electricity authorities coming under the maintenance of the live electric wire. The same has not been done. That itself indicates that the authorities were negligent in their own action in discharging their statutory duty. If the death of the deceased due to electrocution is admitted and there is negligence on the part of the authorities in maintaining the live electric wire, taking into consideration the analogy of negligence discussed supra and relying upon the judgments of this Court as well as the apex Court in *Nirmala Nayak (supra)*, *Executive Engineer, CESU v. Hema Sethi (supra)*, *M.S. Grewal (supra)* and *Jacob Mathew (supra)*, it can safely be held that the death caused to the deceased was due to negligence on the part of the electricity authorities. Accordingly, the petitioner is entitled to get

compensation.

14. For awarding compensation, the apex Court has laid down the guidelines in *Lata Wadhwa and Others Vs. State of Bihar and Others*, and other cases referred to supra in which this Court and the apex Court has awarded compensation considering the income, status as well as age of the person concerned. The deceased, who died due to electrocution, was at the young age and was supporting the family working as a labourer. Considering the length of survival of the deceased, this Court, in the fitness of things, deem it fit and proper to award a sum of rupees three lakhs as compensation to the petitioner. Accordingly, the opposite parties are directed to pay a sum of rupees three lakhs as compensation along with interest at the rate of 10% per annum from the date of death of the deceased till payment within a period of eight weeks from the date of receipt of a copy of the judgment. Out of the total amount of compensation along with interest, fifty per cent shall be kept in fixed deposit in the name of the mother of the deceased in any Nationalized Bank for a period of five years with a condition that the monthly interest on such fixed deposit shall be paid to her regularly and out of the balance 50%, 30% shall be kept in fixed deposit in the name of the petitioner and monthly interest shall be debited to his SB account permitting him to withdraw the same every month for his survival. Balance 20% shall be released in favour of the petitioner. With the aforesaid observation and direction, the writ petition is disposed of. No cost.