

(2011) 12 PAT CK 0013
In the Patna High Court
Case No : C.W.J.C. No. 2436 of 2005

Vijay Singh and Another

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 02-12-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 287, 304(A)

Citation : (2012) 2 PLJR 771

Hon'ble Judges : Ahsanuddin Amanullah, J

Bench : Single Bench

Advocate : Nawal Kishore Singh, Jitendra Nath Tiwary and Upendra Mishra, for the Appellant;

Final Decision : Allowed

Judgement

Ahsanuddin Amanullah, J.—Heard learned counsel for the petitioners and Mr. Vinay Kirti Singh, learned counsel for the Bihar State Electricity Board (hereinafter referred to as the "Board") as well as learned counsel for the State. The present writ application has been filed seeking compensation to the tune of Rs. 5,00,000/- each, by way of compensation, to the petitioners on account of death of their sons due to electrocution. The son of the petitioners, aged about 13 years and 12 years respectively, are alleged to have died due to electric shock on 7.11.2004 as a result of high tension wire falling upon them. In this regard Giriyak P.S. Case No. 116 of 2004 under Sections 287, 304(A) of the Indian Penal Code was also lodged against the employees of the Electricity Board. It is the case of the petitioners, as is also clear from the F.I.R., that they were on way to orchard when high tension wire of 11 K.V. snapped and fell upon them resulting in instantaneous death. After inquest, post mortem was also conducted and the report mentioned that death is due to electric shock caused by live wire. Learned counsel for the petitioners submits that in this background various representations, since in January, 2005, have been filed before the authorities of the Board for paying compensation but nothing has materialized. Even registered

representations were sent to the respondents including the Electrical Inspector but the same has not resulted in any relief to the petitioners. Learned counsel has relied on the following decisions in support of his contention.

(i) Ramawati Kuer vs. The State of Bihar & Ors. reported in 2004 (4) BBCJ 230, the relevant being at paragraphs no. 10, 11, 12 and 13 of the same. [Also reported in Ramawati Kuer Vs. The State of Bihar and Others].

(ii) Ram Swaroop Yadav Vs. Bihar State Electricity Board and Others , the relevant being at paragraphs no. 6, 7 and 8. The said decision has been affirmed by the decision reported in Bihar State Electricity Board and Another Vs. Ramswarup Yadav and Others, .

(iii) Dr. Vishwanath Prasad vs. The State of Bihar & Ors. reported in 2010 (1) P.L.J.R. 986.

(iv) Md. Kashim Sah & Ors. vs. The State of Bihar & Ors. reported in 2011 (3) P.L.J.R. 408.

(v) Madhya Pradesh Electricity Board Vs. Shail Kumari and Others, , the relevant being at paragraph no. 7 (Also reported in Madhya Pradesh Electricity Board Vs. Shail Kumari and Others, .

(vi) Tamil Nadu Electricity Board vs. Sumathi & Ors. reported in AIR 2000 SC 1603, the relevant being at paragraphs no. 8, 9 and 11 in which it is held that only in cases where the case of the Electricity Board was that there was no negligence and that the deceased had died due to lightening and not on account of improper maintenance of electric wires, and the facts being seriously in controversy, entertaining writ petition in High Court was not proper. When there is negligence on the face of it, there cannot be any bar under Article 226 of the Constitution. He submits that in the present case even as per the counter affidavit of the Bihar State Electricity Board, it is not their case that the snapping of wire was the result of lightening or thunderbolt or the case of any other person being responsible for the deaths and thus the jurisdiction of this Court is not totally ousted.

2. Learned counsel for the Board, on the other hand submits that the application under Article 226 of the Constitution is not maintainable and the matter is more appropriate either for civil suit or consumer forum. He has drawn the attention of this Court to the following orders/judgments:-

(i) Chairman, Grid Corporation of Orissa Ltd. (Gridco) and Others Vs. Smt. Sukamani Das and Another, , the relevant being at paragraph no. 6 (Also reported in AIR 1999 SC 3412).

(ii) S.D.O. Grid Corporation of Orissa Ltd. and Others Vs. Timudu Oram, .

(iii) Jacob Mathew Vs. State of Punjab and Another, .

(iv) Sheet Basant Pashwan Vs. The State of Bihar and Others, .

3. Learned counsel for the petitioners with regard to the issue as to what amount would be appropriate if at all this Court feels inclined to award compensation, has relied upon the decision rendered by Hon''ble Apex Court in the case of National Insurance Company Limited vs. Kusuma & Anr. reported in 2011 (4) P.L.J.R. (SC) 188.

4. The said case, under the Motor Vehicles Act, 1988 is relevant in the present case to the extent that it gives some indication as to what could be an appropriate amount which should be fixed as compensation in the case. In the aforesaid case before the Hon''ble Apex Court, ultimately, the amount of Rs. 2,00,000/- which was already payable on account of the death of an unborn child due to Motor Vehicle Accident has been upheld. Learned counsel submits that in the present case since the age of the children who were actually born was 13 and 12 years respectively, this Court may be inclined to award compensation of an amount which can be a reasonable expectation of the pecuniary benefits from the children by the parents, had they been alive, as has been done by the Hon''ble Apex Court.

5. Learned counsel for the Board on the other hand has relied on various decisions of the Court to contend that such matters cannot be appropriately dealt with or positive order passed under writ jurisdiction. In that view of the matter, there not being a clear cut finding with regard to fixation of liability after negligence having been established, which can only be done in appropriate proceeding after adducing proper evidence, no compensation should be awarded.

6. Learned counsel for the petitioner also relied on the decision rendered in the case of Lallan Prasad Singh Vs. The State of Bihar and Others, rendered by this Court on 8.11.2011 in which also compensation of Rs. 3,00,000/- has been awarded to the petitioner after considering the rival contentions in detail. He relies upon the said ratio of the judgment and the reasoning mentioned therein.

7. Considering the facts and circumstances of the case, this Court feels that the first objection of maintainability raised on behalf of the Board is not tenable and is hyper-technical for the reason that sons of the petitioners dying due to electric shock as a result of high tension wire falling upon them is not in dispute.

8. It is also not in dispute that there was any lightening or thunderbolt or any act of sabotage which resulted in such snapping of wire. The jurisdiction of the Court thus is there to pass a positive order. Further this Court is also inclined to rely upon the ratio as well as the reasoning of the Hon''ble Apex Court in the case of M.P. Electricity Board (supra) where at paragraph 7 it has been held that since the responsibility to supply electric energy in a particular location is statutorily conferred on the Electricity Board, if such energy transmission cases results in death or injury of a human being, who unknowingly gets trapped into it, the primary liability to compensate the sufferer is that of the supplier of the electric energy. The relevant paragraph 7 of the judgment is quoted herein below:-

7. 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 get 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 to his private property and that the electrocution was from such diverted line. It is the lockout of the managers of the supply system to prevent 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.

9. This Court is also inclined to follow the order passed by it in the case of Lallan Prasad Singh (*supra*) on 8.11.2011. The detailed discussion in the said order are being followed and relied upon but not being repeated for the sake of brevity.

10. Learned counsel for the Board has drawn the attention of this Court to the orders passed in C.W.J.C. No. 14410 of 2009 Reported in 2010 (3) P.L.J.R. 393 dated 4.12.2009 and C.W.J.C. No. 9562 of 2008 dated 19.9.2011 by which the matter has been referred to the State Human Rights Commission to decide the issue. He submits that the present case also should be referred to the State Human Rights Commission.

11. This Court does not dispute the proposition that the State Human Rights Commission can also look into the matter but the same is not being done in view of the admitted facts and the law laid down by various pronouncements of the Courts as well as the fact that the present writ application has been filed in the year 2005 and thus after over 6 years it would not be appropriate to relegate the petitioners to a forum where the whole exercise has to begin afresh. Moreover, relegating a person to the alternative forum is neither mandatory nor binding. In the present case this Court feels that at this stage it would not be appropriate to remit the matter to the State Human Rights Commission. Copies of the aforementioned two orders have been produced by learned counsel for the Board which are being kept on record.

12. In view of the discussions made hereinabove and also taking help from the decisions relied upon by learned counsel for the petitioners where compensation has been awarded and quantified, the writ petition is allowed with the direction to the respondents to pay a sum of Rs. 2,50,000/-to each of the petitioners. This Court also grants liberty to the petitioners to move before the Court of competent jurisdiction for any enhancement, which according to them would be more appropriate in the facts and circumstances of the individual cases. Since the award of compensation has been decided by this order, the limitation for

deciding any compensation would start from today.

13. In such a situation, if the petitioners or any of the legal representatives of the deceased approaches the Court concerned, it shall proceed on the merits with regard to the enhancement of the compensation amount, grant of interest or any relief which may be due to them, and decide the same in accordance with law. The writ petition is accordingly allowed to the extent indicated above. The said exercise should be taken to its logical conclusion by the respondent-Board within three months from the date of receipt/production of a copy of this order upon the Secretary of the Board.