

Ajit Deka Vs. Assam State Electricity Board and ors.

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Court : Guwahati

Decided On : Dec-08-2003

Judge : Amitava Roy, J.

Acts : [Indian Electricity Act, 1910](#); Indian Electricity Rules, 1910

Appeal No. : WP (C) No. 1958 of 2000

Appellant : Ajit Deka

Respondent : Assam State Electricity Board and ors.

Advocate for Def. : Singha, Adv.

Advocate for Pet/Ap. : H. Sarma and Y.S. Mannan, Advs.

Judgement :

Amitava Roy, J.

1. A tragic incident leading to the death of the petitioner's father the bread earner of a family of six members and the apathetic attitude of the Assam State Electricity Board thereafter referred to as the Board) in providing him with compensation has brought the petitioner before this court.

2. I have heard Mr. H. Sharma, learned counsel for the petitioner, Mr. Singha, learned Standing counsel for the Board and Mrs. R. Chakraborty, learned State

counsel, Assam.

3. This court while issuing Rule on 12.4.2000 directed the Senior Electrical Inspector, Barpeta Zone. Govt. of Assam to make an enquiry into the matter and submit a report. By way of interim measure, this court further directed the Board to pay an amount of Rs. 25000 by way of interim compensation. In spite of the above order of this Court, no report has yet been submitted. In view of the fact that the incident took place as far as back as in 1999, I do not propose to postpone the disposal of this case any further.

4. The facts in minimum for disposing of the petition are that the petitioner's father Hareshwar Deka, since deceased while on his way to the place of his work at 5.30 A.M. on 18.6.1999 accidentally came in contact with a live electric wire which had snapped near the road side pole resulting in his instantaneous death. The deceased left behind his wife and five children including the petitioner at the time of his death. He was the sole earning member of the family. A police case was registered and a post mortem examination was done on the dead body of the deceased which confirmed death due to electrocution. The news of the death of the petitioner's father was also carried in the issue dated 23.6.1999 of the local newspaper, namely, Ajir Batori. Though on receiving the information of the incident, the officials of the Board visited the site and made an enquiry, the petitioner has complained that in spite of repeated representations and appeals thereafter no compensation was provided to him and it is under, these circumstances that the petitioner is before this court. He has prayed for Rs. 3,00,000 as compensation.

5. According to the petitioner his father at the time of his death was earning Rs. 3,500 per month. Though he was aged, about 60 years, he enjoyed good health and it was expected that he would have lived for another 10 years. It has been contended by the petitioner that the incident occurred due to the negligence on the part of the Board-authorities and that if they would have taken steps in time, same would have been averted.

6. The Board in its counter while admitting the aforementioned incident has denied the allegations of negligence. Its plea is that due to heavy storm in the night, a tree

fell on a single phase line at around 1 A.M. on 18.6.1999 as a result of which the line conductor wire snapped near the road side and remained hanging about 4 feet above the ground. As the Board officials were not informed about the break down in the night, subsequently on receiving the information, the lineman immediately rushed to the site and discharged the line. It has been contended that the deceased had a poor eye sight and due to poor visibility condition in the early hours on the fateful day, the accident took place. The claim that the monthly income of the petitioner's father was Rs. 3,500 was also denied by the Board.

7. Mr. Sarma, learned counsel for the petitioner has submitted that keeping in view the nature of the activities taken up by the Board, it is incumbent on it to take all possible care and caution from preventing forgeable accidents and mishaps and it is no defence for it to contend that as no report was made about the falling of the tree on the transmission lines and snapping of the wire timely action was not taken in order to avoid its liability to pay compensation. According to him as the incident has been admitted, the Board is liable to pay compensation. As the petitioner's father at the relevant time had a monthly income of Rs. 3500 the amount of compensation as claimed by the petitioner is on the lower side. According to him, therefore, it is a fit case where this court would issue a writ of mandamus directing the Board to pay the amount as prayed for. He placed reliance on a decision of the Apex Court in *M. P. Electricity Board v. Shail Kumar and Ors.*, respondent, reported in (2002) 2 SCC 162.

8. Mr. Singha, learned counsel for the Board, on the other hand, has submitted that the facts of this case do not indicate any negligence on the part of the Board whatsoever resulting in the death of the petitioner's father and therefore no liability in law for paying compensation can arise. Without prejudice to the above, the learned counsel placed before this court a set of guidelines framed by the Board for payment of compensation in accident cases. According to the said guidelines, petitioner's father being aged about 60 years at the relevant time, the petitioner was entitled to a sum of Rs. 20,000 only.

9. It is true that in absence of a report from the Senior Electrical Inspector for the incident, no direct evidence with regard to negligence of the Board in the matter is

available.

10. That is, however, not sufficient in my considered view to restrict a writ court from exercising its jurisdiction in an appropriate case for granting an adequate amount of compensation if the negligence can be reasonably perceived from the attending facts and circumstances. Keeping in view the hazardous nature of the activities taken up by the Board in supplying electrical energy through the transmission lines to be maintained by it, the facts of the present case demonstrate negligence of the Board in not attending to the snapped live wire in time, which ultimately led to the death of the petitioner's father. Is the plea of the Board that as the wire had fallen from the transmission lines due to falling of a tree thereon in course of a storm previous night a sufficient defence. The answer is not far to seek. In cases of the present nature where death has occurred due to electrocution on coming into contact with a live wire from the transmission lines maintained by the Board the negligence is self evident. The authorities of the Board in not attending the power lines to ascertain the condition thereof immediately after the storm were callously negligent about their duties and responsibilities under the [Indian Electricity Act, 1910](#) and the Rules framed thereunder. Having regard to the activities taken up by the Board and the disastrous consequences likely to follow if the transmission lines are not kept under continuous surveillance and maintenance more particularly after a storm it is difficult to hold that the plea taken up by the Board is a justifiable defence against the allegation of its negligence in the case in hand. The principle of strict liability has been evolved by the court would squarely apply and it has to be concluded that because of the storm the possibility of snapping of transmission lines and similar eventualities should have been for seen by the authorities of the Board and timely steps should have been ensured to avoid all possible accidents. It was the duty of the Board and its officials to take necessary steps to ascertain as to whether the lines were in order and that the consumers and the public in general were not exposed to any risk of their lives and property. This admittedly was not done and instead the Board waited for a report to be made so as to discharge the line.

11. In a similar situation, the Apex Court while dealing with the aspect of negligence of a supplier of electrical energy in *M. P, Electricity Board, Appellant v. Shail Kumar and Ors.*, Respondent, reported in (2002)2 SCC 162 held as follows :

'Even assuming that all such measures have been adopted, 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'. It differs from the liability which arises on account of the negligence or fault in this way, i.e., the concept of negligence comprehends that the foreseeable harm could be avoided by taking reasonable precautions. If the defendant did all that which could be done for avoiding the harm he cannot be held liable when the action is based on any negligence attributed. But such consideration is not relevant in cases of strict liability where the defendant is held liable irrespective of whether he could have avoided the particular harm by taking precautions.'

11. In view of the above, I am of the considered opinion, that the Board was negligent in not keeping a continuous vigil on the transmission lines because of which the petitioner's father met with the accident causing his death.

12. The next question is what should be the amount of compensation. The monthly income of the petitioner's father has been denied by the Board. The petitioner has claimed that his father was a bell metal artisan at the relevant time and in fact was maintaining a family of six members. It is not denied by the Board that the petitioner's father was the sole earning member of the family. The incident had occurred in the year 1999 and even on a moderate estimate the petitioner's father can be taken to be earning Rs. 1500 per month. If that be so, his yearly income would have been Rs. 18,000. The petitioner claims that his father was in good health. The post mortem report does not disclose that the petitioner's father was suffering from any serious ailment. In that view of the matter, it would not be too much to hold that the deceased would have lived for another 10 years. Taking into consideration the above, I am of the view that tax amount of Rs. 1,75,000 as

compensation would meet the ends of justice. As an amount of Rs. 25, 000 has already been paid as has been submitted at the bar, the Board is hereby ordered for releasing the balance amount of Rs. 1,50,000 within two months from the date of receipt of the certified copy of this order. The aforesaid amount would be deposited by the Board with the Registry of this Court and if the same is done, the Registry would release the amount in favour of the petitioner on his proper identification.

With the above directions and observations this writ petition stands disposed.

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