

Official Liquidator and anr. Vs. K.S.E. Board and anr.

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Court : Kerala

Decided On : Jan-08-1990

Reported in : I(1990)ACC627; 1990ACJ421; [1990]67CompCas577(Ker); [1990(60)FLR879]; (1990)IILLJ321Ker

Judge : K. John Mathew, J.

Acts : [Companies Act, 1956](#) - Sections 446; Workmen's Compensation Act, 1923 - Sections 2(1) and 12

Appeal No. : Application No. 973 of 1989 in Company Petition No. 2 of 1987

Appellant : Official Liquidator and anr.

Respondent : K.S.E. Board and anr.

Advocate for Def. : L. Gopalakrishnan Poti, Adv.

Advocate for Pet/Ap. : K. Moni, Adv.

Judgement :

K. John Mathew, J.

1. The official liquidator, who is the liquidator of Mittal Steel Re-rolling and Allied Industries Ltd. (in liquidation) is the 'first petitioner and the second petitioner is a watchman appointed by the liquidator in the said company. The respondents are

the Kerala State Electricity Board and the Chief Engineer, K. S. E. B., Trivandrum. On January 1, 1989, at 12.45 p.m. the second petitioner suffered burns on various parts of his body due to electric shock from the stay wire of an electric post in the company's premises. He was taken to a local hospital first, and, thereafter, to the Medical College Hospital, Trichur. He was an inpatient in the Medical College Hospital up to February 14, 1989. Even though he is discharged, he has not fully recovered from his injuries and he is still under treatment. This application is to direct the Kerala State Electricity Board to pay compensation for the injuries to the second applicant.

2. The injuries suffered by the second petitioner as stated in exhibit A-4 letter sent by the Assistant Engineer, Electrical Section, Wadakancherry, to the liquidator are the following :

- '1. Deep burns on the right leg toe,
2. Burns on left foot,
3. Burns on both palms,
4. Burns on the anterior abdominal wall'.

3. The second petitioner informed the official liquidator about the incident by exhibit A-3 letter, which was received by the liquidator on January 4, 1989. In the said letter, it was stated that when he found fire near the electric post in the premises of the company in liquidation, he tried to extinguish the fire. At that time, he suffered electric shock from the stay wire and suffered burns on both his palms and legs and stomach. The liquidator thereupon sent a letter to the Assistant Engineer, Electrical Section, Wadakancherry. Exhibit A-4 is the reply dated January 11, 1989, from the Assistant Engineer. On March 15, 1989, the Executive Engineer reported the matter to the Chief Engineer of the Electricity Board by exhibit B-1 letter. In that letter it was mentioned that the second applicant was not eligible for compensation for the accident. On January 19, 1989, the liquidator wrote to the Electricity Board about the accident. By exhibit A-5 reply dated April 13, 1989, the Board informed the liquidator that the incident was purely accidental

and not due to any lapse on the part of the Board. He was also informed that no amount by way of compensation can be paid in this case, since compensation is payable as per the existing rules only to dependants of victims in cases of fatal accidents.

4. The second applicant sent exhibit A-6 letter dated March 27, 1989, to the official liquidator informing him that he had sent representations dated January 23, 1989, to the Deputy Chief Engineer of the Electricity Board as well as to some other officers and requesting the liquidator to instruct him as to the further proceedings to be taken for recovering compensation. It was also stated that he had already spent Rs. 3,000 for his treatment. Thereupon, the liquidator filed report No. 16 before this court to direct the Kerala State Electricity Board to pay reasonable compensation to the second applicant. It was subsequent to this that the liquidator and the second applicant filed the present application.

5. In the counter-affidavit filed on behalf of the respondents, it is stated that on getting information about the accident, immediately the Assistant Engineer went to the spot of the accident. He also visited the second applicant in the hospital. The second applicant told him that in the process of extinguishing the fire around the electric post, he accidentally touched the stay wire and had an electric shock which resulted in injuries. It is also mentioned in the counter that the second applicant told the Assistant Engineer that he saw a small piece of metal falling down from the top of the electric post. At the time of the inspection by the Assistant Engineer, there was no leakage of current in the stay wire and he was unable to trace any possibility of leakage from the electric line to the stay wire. The stay wire was tied up at the top with two numbers of 11 KV Xarms fitted to the teak wood post and completely insulated. The Assistant Engineer found that there was no chance of the electric line touching the stay wire. Therefore, the Assistant Engineer concluded that the only possibility of the stay wire becoming live may be because a piece of wire or some other conducting material must have been dropped by birds which made contact with the electric line for a short period till the abovesaid dropped conductor melted and fell away. It is also stated in the counter that this view of the Assistant Engineer is corroborated by the statement of the second applicant that he saw a piece of metal falling down from the electric post.

The Assistant Engineer also noted that the Wadakancherry 11 KV feeder tripped on account of earth fault and overcurrent (R and B) relays. Thus, the contention is that the electric shock was due to reasons beyond the control of the Kerala State Electricity Board and not due to any negligence, default or omission on the part of the Board. The dropping of conductive materials on the line is one of the remotest possibilities and the Board cannot do much for averting such a calamity. It is also contended that the second applicant has not acted diligently (sic) by touching the stay wire of the 11 KV post. It is further contended that instead of reporting to the Electricity Board's office, the second applicant thought that it was expedient to handle the fire by himself which has resulted in the injuries sustained by him. The second applicant was doing the same in the course of his employment and he has sustained injuries arising out of his employment. Therefore, the respondents cannot be made liable for any compensation. Therefore, the contention is that there is no negligence or wilful laches on the part of the Board but, on the other hand, the second applicant himself has caused the accident by his 'impertinent' act.

6. The point to be decided is whether the respondents are liable to pay compensation to the second applicant and if so, what is the compensation amount

7. The evidence consists of exhibits A-1 to A-7 and the oral evidence of P. Ws. 1 and 2 on the side of the applicants. On behalf of the respondents, exhibit P-1 was marked and R. W. 1. was examined.

8. It is not disputed that this court has jurisdiction to consider this application under Section 446 of the Companies Act. One of the contentions urged is that even in case any compensation is payable to the second applicant, only the first applicant is liable to pay the same under the provisions of the Workmen's Compensation Act, 1923. Neither Section 2(1)(n) of the Workmen's Compensation Act nor Schedule II to the Act include an employee of the official liquidator. It is well-settled that in order that a person may claim to be a workman under the Workmen's Compensation Act, he must, unless he is a railway servant and is covered under Clause (i) of Section 2(1)(n), prove that he comes under one or other of the

clauses set out in Schedule II (see *Ukhra Farming Corporation v. Satu Bata Bagdini*, AIR 1955 Cal 105). The words 'in any such capacity as is specified in Schedule II' clearly indicate that the list given in Schedule II is exhaustive and not illustrative. If the employment is one that would not come under any of the categories mentioned in Schedule II, the definition of 'workman' in Section 2(1)(n) cannot be applied to such an employee (see *Golden Soap Factory P. Ltd. v. Nakul Chandra Mondal*, AIR 1964 Cal 217, *Pattammal v. Janakiramakounder* [1975] Lab IC 984 and *Laxmibai Atmaram v. Chairman and Trustees, Bombay Port Trust* [1954-55] 7 FJR 169 ; AIR 1954 Bom 180. Therefore, a watchman working under the official liquidator does not come within the definition of 'workman' under the Workmen's Compensation Act.

9. In any view of the case, under Section 12 of the Workmen's Compensation Act, even in case the official liquidator is made liable, the liquidator will be entitled to be indemnified by the Kerala State Electricity Board.

10. It cannot be disputed that the second applicant suffered electric shock on January 1, 1989, from the stay wire of the electric post within the premises of Mittal Steel Re-rolling and Allied Industries Limited (in liquidation). Exhibit A-4 letter of the Assistant Engineer as well as the oral evidence of R. W. 1, who is the Assistant Engineer, Electricity Board, Wadakkancherry, apart from the evidence adduced on behalf of the applicants, prove that the second applicant suffered electric shock injuries on January 1, 1989.

11. The contention on behalf of the respondents is that the second applicant suffered injuries due to short circuit by a piece of wire or some conducting material dropped by birds. According to the respondents, the stay wire became live due to such short circuit. Such an incident is accidental and not due to any lapse on the part of the Electricity Board or its officers. In exhibit A-4 letter, the Assistant Engineer, Electrical Section, Wadakkancherry, who was examined as R. W. 1, stated as follows :

'Afterwards, we visited Sri Gopalan in the hospital. He stated that while he saw the dry plants burning due to fire he tried to quench the fire using a stick. While doing so, he accidentally touched the above stay wire and fell on it due to electric shock

and got burns on his body. At this time, he happened to see a piece of metal wire falling down from the top of the post.

It is presumed that the 11 KV supply passed to the stay wire through this metal wire and might have been put on live line by some birds. The reason for shock from the stay wire at that moment will be the same.'

12. R. W. 1, the Assistant Engineer, gave evidence that the second applicant told him that he saw a piece of metal falling down from the top of the electric post. Later on, he stated that on inspection he did not find any metal wire near the post. The second applicant was examined as P. W. 1. In his evidence, he stated that he saw some spark at the top of the electric post at the time of the accident and saw something falling down from the post. It is not clear as to how the stay wire became live. Immediately after the incident, the electric connection was switched off. If the stay wire became live due to any metal wire, it is not likely that the entire wire will melt away without leaving any part of it. It is in evidence that a specific search to find out any such material was made by the Electricity Board officers immediately after the incident and they were unable to find the metal wire or any portion of it. Therefore, a safe conclusion is that the second applicant saw the spark at the top of the post which he thought was something falling down. In any view of the case, I do not think that even in case the stay wire became live due to pure accident, the respondents can be exonerated from liability.

13. No material was placed before me in order to enter any specific finding as to whether the Board has complied with all the requirements in drawing the line or in fixing of the stay wire of the electric post. Since the accident took place by electric shock from the stay wire it has to be presumed, till the contrary is proved by positive evidence, that there was negligence on the part of the Electricity Board. The theory of a metal wire being dropped by a bird is not proved. This is a case where the principle of *res ipsa loquitur* squarely applies. The facts established are such that the proper and natural inference immediately arising from them is that the injury complained of was caused by the respondents' negligence. Negligence is not a question of evidence. It is an inference to be drawn from proved facts. Negligence is not an absolute term, but is a relative one, it is rather a comparative

term. Where there is a duty to exercise care, reasonable care must be taken to avoid acts or omissions which should be reasonably foreseen to be likely to cause injury to others. Normally, the burden of proving negligence is on the petitioner (plaintiff) who alleges it. However, in this case the burden or onus of proof is on the respondent, who is expected to show as to how the accident might have occurred without his negligence. In this case, where considerable hardship is caused to the second petitioner as the true cause of the accident is not known to him but is solely within the knowledge of the respondents, the petitioner can only prove the accident but cannot prove how it happened. This hardship can be avoided only by applying the principle of *res ipsa loquitur* : see *Pushpabai Parshottam Udeshi v. Ranjit Ginning and Pressing Co. P. Ltd.*, AIR 1977 SC 1735 ; [1977] 3 SCR 372, *Municipal Corporation of Delhi v. Subhagwanti*, AIR 1966 SC 1750, *State of Punjab v. Modern Cultivators*, AIR 1965 SC 17 and *Shyam Sunder v. State of Rajasthan* [1974] 1 SCC 690 ; AIR 1974 SC 890.

14. I hold that the respondents' negligence caused the accident and they are liable to compensate the second petitioner for the same.

15. Therefore, it has to be considered what is the quantum of compensation. The total amount-covered by exhibit A-7 series of bills comes to Rs. 1,093. At the time, when the second petitioner came to court for giving evidence, I was able to see the seriousness of the injuries suffered by him. The burns on his palms will be a serious handicap for earning his livelihood by physical labour once his temporary service with the liquidator is terminated. It also appeared that he requires further medical treatment. From the nature of his injuries, it is clear that he must have suffered great pain for a considerable period. As P. W. 1, he has given evidence that he cannot work with his right hand since his fingers and arm are affected by the burns. He was earning income by physical labour. He also gave evidence that even at that time he was taking medicines. In this case, it is difficult to assess the exact loss of income suffered by the second petitioner due to the accident. As the Supreme Court stated in *C.K.S. Iyer v. T.K. Nair* [1970] ACJ 110, there can be no exact or uniform rule for measuring the damages and the amount recoverable depends on the particular facts and circumstances of each case. The general rule is that the second petitioner is entitled to a sum which will make good to him the

loss he has suffered and will probably suffer as a result of the wrong done to him for which the respondent is responsible. In *Gujarat State Road Transport Corporation v. Kalubhai Jivabhai Bajania* [1986] ACJ 899, the High Court of Gujarat deprecated the award of Rs. 6,000 by the State Road Transport Corporation while dismissing the petition filed by the corporation. In *Kerala State Electricity Board v. Kamalakshy Amma* [1987] ACJ 251, a Division Bench of this court confirmed the award of Rs. 75,000 after a detailed discussion of the principles involved in awarding compensation. In *Thressia v. Kerala State Electricity Board* [1987] ACJ 880 (Ker), my learned brother, Varghese Kalliath J., directed payment of compensation of Rs. 72,000. In that case, the deceased was an agricultural labourer earning an amount of Rs. 35 as daily wages. The learned judge reasonably fixed Rs. 500 a month as the basic amount of earning, for calculating the damages to be awarded. In *Kerala State Electricity Board v. Sundaram Estate* [1987] 70 FJR 299 (Ker), which was an appeal against the award of the Workmen's Compensation Commissioner, a Division Bench of this court confirmed the award of Rs. 18,816 as well as the direction to the Kerala State Electricity Board to indemnify the employer.

16. In this case, only a rough and ready figure can be fixed for the pain and suffering of the second petitioner, the loss of earning capacity as well as the expenses for treatment. The petitioner was an inpatient from January 1, 1989, to February 14, 1989. He is aged 40 years. He will have to maintain himself and his family for the rest of his life. Taking into consideration all aspects of the case under all the heads, I fix an amount of Rs. 30,000 as compensation. The respondents are directed to pay this amount of Rs. 30,000 to the second petitioner within two months from this date. Failing such payment, the second petitioner will be entitled to realise from the respondents the amount of Rs. 30,000 together with 6% interest thereon from the date of filing of this petition, namely, June 27, 1989, till recovery.