

K. Samikkanu Vs. Union of India and Another

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Court : Chennai

Decided On : Jan-24-1997

Reported in : 1999ACJ1068; AIR1997Mad229; 1997(1)CTC275

Judge : P. Sathasivam, J.

Acts : [Constitution of India](#) - Article 226; [Code of Civil Procedure \(CPC\), 1908](#) - Sections 174; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 174

Appeal No. : Writ Petn. No. 19452 of 1990

Appellant : K. Samikkanu

Respondent : Union of India and Another

Advocate for Def. : N.A.K. Sharma and ;K. Mahesh, Adv.

Advocate for Pet/Ap. : V. Dhanapalan, Adv.

Judgement :

ORDER

1. The prayer in the writ petition reads as follows :--

'to issue a writ of mandamus or order or direction in the nature of a writ directing the respondent-Corporation to pay adequate and fair compensation for the loss of the life of the petitioner's son.'

2. The case of the petitioner as seen from the affidavit is briefly stated hereunder :--

The second respondent viz., Neyveli Lignite Corporation Limited is in the mining operation with giant cscavator at Second Mines Site. A brick-wall was discovered inside the mine and it was thought that it could be an ancient cave. After hearing the news, the public in the surrounding area were anxious to see the ancient cave. It is averred that there is no fencing or notification cautioning the people on the imminent danger for public. The people, unmindful of the extreme danger, were visiting the structure in large number. The petitioner's son S. Muthu-kumaran, aged about 13 years who was studying in VIII Standard at Neyveli Lignite Corporation Higher Secondary School, Mandarakuppam, Neyveli, went to the site along with one Balaji, aged about 17 years, a neighbour to him at about 4 p.m. on 22-6-1990. As soon as they reached the site along with other spectators, they were trapped in a land side. On hearing the news theresidents of neighbouring areas rushed to the area and dug out all of them. It is averred that the petitioner's son was removed in an unconcious state and subsequently he died at about 5.30 on the same day.

3. It is submitted that the matter has been reported to the Sub-Inspector, Law and Order, Neyveli Police Station and a case has been registered in Crime No. 457 of 1990 under Section 174 of Cr.P.C. News about the accident and consequent death of petitioner's son was reported in the press on 23rd and 24th June 1990, According to the news item the accident was due to the negligence and carelessness of the second respondent authorities who have not adequately cautioned the public on the imminent danger to the life of the people who visited the area nor any security provided at that place. It is also averred that there was no security-man posted in that area to prevent or warn the visitors. Though the authorities were aware of the surging crowd to have a look at the submerged stone structure inside the mines, they never took earnest steps to warn the public adequately to prevent the loss of life or on the imminent danger awaiting for. In those circumstances, according to the petitioner, the failure of the authorities of Neyveli Lignite Corporation has led in the loss of life. It is further averred that at the time of the mishap, the petitioner's son was studying in . VIII Standard at

Neyveli Lignite Corporation Higher Secondary School. He was a bright student throughout his school days and top-ranker. He was his only son out of three children. His bright future had given a great hope to the petitioner's peaceful life and old age which is now rooted out due to the death. The loss and consequential mental agony caused by the death to the negligence of the second respondent cannot be measured and fully compensated. Yet he approached this Court for appropriate direction for payment of adequate and fair compensation for the loss of life.

4. The second respondent filed a counter affidavit, wherein they contended that the writ petition is not maintainable and the petitioner is not entitled to seek the remedy under Article 226 of the Constitution. They also averred in their counter affidavit that the second mine area where the accident took place is an open cast mine situated in a total extent of 18 square kilometres and lignite is being excavated in an area of 4 square kilometres and at a depth of about 50 metres from ground level. The soil cover of about 50 metres depth, overlying the lignite, is being removed in 3 slices namely Top Bench, Middle Bench and Bottom Benches with a height of 20, 15 and 15 metres respectively. The soil removal in these three benches is carried on by huge bucket-wheel excavators. The entire mining area which is a prohibited place for the public. No outsiders are permitted to go inside the aforesaid area without the permission of Manager/Mines. The entry into the mining area is restricted only to authorised persons who are holding valid pass issued by the Manager/ Mines under the Mines Act and its rules. At the entry point to the mining area from the public road, clear notice boards have been displayed that it is a prohibited area for the public. A peripheral canal has been dug right round the mining area acting as a barricade and boundary and canal is about 6 metres wide and 3 metres deep.

5. It is further averred in the counter affidavit that during third week of June 1990, in the course of excavating soil in the top bench some old brick-work and stones were found occurring at a depth of 5 to 10 feet below the ground level. To avoid damage to the buckets and its teeth it was decided to remove these bricks before resuming the excavation works by the bucket wheel excavator. The said brick works are at a distance of 2 kilometres from the mine entry point. The news about

the finding of old brick work had presumably spread among the nearby villages and this has attracted unauthorised entries by few villagers in the prohibited mining area. The son of the petitioner is one who has trespassed into the mining area. It is further averred that even though sufficient security guards to prevent such unauthorised entry, the petitioner's son along with some boys have trespassed into the prohibited area. Further he got into the trench down a slope. During such misadventurous act of the petitioner's son, loose soil overlying the brick works has suddenly slid, burying him. On account of the accidental collapse of loose earth he died on the spot. Therefore according to the second respondent, the death of the petitioner's son was due to his own contributory negligence and unauthorised entry into the prohibited place.

6. Mr. V. Dhanapalan, the learned counsel appearing for the petitioner, after reiterating the factual position as narrated above contended that the second respondent being the Government of India is liable to pay adequate and fair compensation for loss of the life of the petitioner's son. According to him, had the second respondent taken sufficient and adequate safety measures by preventing the public go near the mining operation, the mishap could not have taken place. In those circumstances, relying on the decision of the Apex Court as well as this Court he submitted that this Court under Article 226 of the Constitution has enough power to award adequate and fair compensation to the petitioner.

7. On the other hand Mr. N. A. K. Sharma, the learned counsel appearing for the second respondent reiterating the averments made in the counter affidavit submitted that this Court has no jurisdiction to go into these questions by exercising the extraordinary jurisdiction under Article 226 of the Constitution. Alternatively he also submitted in as much as the accident was due to the negligence of the deceased son of the petitioner, there is no need to pay any amount as claimed by the petitioner. I have carefully considered their rival submissions.

8. In view of the admission made in para 6 of the counter affidavit, there is no dispute with regard to the death of the petitioner's son. It is useful to extract the relevant portion in the said counter affidavit and the same is extracted hereunder:--

'The news about the finding of old brick work had presumably spread among the nearby villages and this has attracted unauthorised entries by few villagers in the prohibited mining area. The son of the petitioner was one such unauthorised entrant who has trespassed into the mining area. Even though sufficient security guards were posted to prevent such unauthorised entry, the petitioner's son along with some boys has trespassed into the prohibited area. Further he failed to confine himself to the viewing of brick works. He got into the trench down a slope and resorted to removing some of the bricks from the trench. During such misadventurous act of the petitioner's son, loose soil overlying the brickworks has suddenly slid, burying him. On account of the accidental collapse of loose earth he died on the spot. Therefore the death of the petitioner's son was due to his own contributory negligence and unauthorised entry into the prohibited place.'

9. The reading of the above admission in the counter affidavit shows that the petitioner's son was buried in the soil due to the accidental collapse of loose earth.

10. In the light of the above factual position, we have to consider whether this Court has power to award compensation in the facts and circumstances stated above?

11. As requested by the learned counsel for the petitioner, I have carefully considered the following decisions reported in *M. C. Mehta v. Union of India*, : [1987]1SCR819 , *Union Carbide Corporation v. Union of India*, : [1989]3SCR128 , *Kumari v. State of Tamil Nadu*, : AIR 1992 SC2069 and *Xavier v. State of Tamil Nadu*, : AIR1994 Mad306 .

12. The reading of the above referred decision clearly shows that this Court has ample power under Article 226 of the Constitution and award adequate and fair compensation. As a matter of fact, prior to the decision of the Supreme Court reported in *Kumari v. State of Tamil Nadu*, : AIR 1992 SC2069 this Court had taken a view that even if the petitioner has any case, the same has to be agitated only before the competent Civil Court and not before this Court exercising relief under Article 226 of the Constitution. The view of this Court has been reversed in the said decision by the Apex Court holding that this Court is competent under Article 226 of the Constitution in a proper case to award compensation.

13. In view of the law laid down in the above referred cases, I am not discussing each of the decisions in detail. No doubt, the learned counsel appearing for the second respondent contended that this Court has no jurisdiction, however he was unable to re-enforce his argument by pointing out any of the contra decisions of this Court or of the Apex Court. Hence. I hold that this Court has power to give relief to the victims in appropriate cases.

14. Now, we have to consider whether there was any negligence on the part of the second respondent or the said mishap was caused solely due to the negligence of the deceased son of the petitioner. Even though the second respondent in his counter has stated that there is a canal around the mining area and necessary warning boards are there as per the provisions of the Mining Act, the fact remains on the fateful day several person from the nearly village rushed to the mishap site in order to see the misterious object. The petitioner's son was one among them has not been disputed. As already extracted, the necessary averments in the counter affidavit filed by the second respondent, the death of the petitioner's son at the mishap place has been admitted. Even according to the second respondent several persons from the near by village rushed to the site clearly show that the second respondent did not take effective preventive steps. Had the security man of the second respondent prevented those persons, the unfortunate death could have been avoided. Moreover, the second respondent has also admitted that the death of the petitioner's son was due to his own contributory negligence. There is no dispute that at the time of the incident the 'petitioner's son was aged about 13 years, i.e., he was a minor at the time of the mishap. It is settled law that there is no question ol applying contributory negligence for the minor's action. In those circumstances, I amsatisfied that the second respondent was negligent in allowing the villagers as well as the petitioner's son to go near the mining area. Hence, on the second aspect also 1 hold that the second respondent alone is negligent and responsible for the cause of death of petitioner's son.

15. Now, we have to decide how much the petitioner is entitled to compensation from the second respondent?

16. As already stated, the deceased was aged about 13 year boy studying in VIII Standard at Neyveli Lignite Corporation Higher Secondary School, Neyveli. According to the petitioner, as seen from the affidavit, that he was a bright student throughout his school days and a top-ranker. It is also further seen that the deceased was a only son out of three children to the petitioner. In those circumstances, considering the entire case, I am of the view that ends of justice would be met by directing the second respondent to pay a sum of Rs. 75,000/- (Rs. seventy five thousand only) together with interest at the rate of 12% per annum from the date of writ petition (i.e., 17-12-1990) till the date of payment to the petitioner.

17. Accordingly, the writ petition is allowed to the extent indicated above. However, there will be no order as to costs.

18. Petition allowed.