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Court : Guwahati

Decided On : Sep-15-2005

Reported in : III(2006)ACC36,AIR2006Gau59,(2006)2GLR387

Judge : Ranjan Gogoi, J.

Acts : [Constitution of India](#) - Article 226

Appeal No. : W.P. (C) No. 2494 of 2000

Appellant : Surjya Das

Respondent : Assam State Electricity Board and ors.

Advocate for Def. : H. Roy, S.C.

Advocate for Pet/Ap. : N.S. Thakuria, Adv.

Disposition : Petition allowed

Judgement :

ORDER

Ranjan Gogoi, J.

1. This writ application has been filed seeking compensation for the death of the petitioner's wife that had occurred in an incident of electrocution on 13-8-1999. According to the petitioner, on the fateful day at about 5 p.m. the petitioner's wife,

who was a daily wage earner, was working in a paddy field when an electric wire of high intensity fell on her leading to her death. In the writ petition filed, the petitioner has further averred that an FIR in respect of the aforesaid incident was lodged with the jurisdictional police station, i.e. Chaigaon Police Station and an Unnatural Death Case being No. 9/99 was registered in respect of the said incident. According to the petitioner, post mortem of the body of the deceased was performed and the post mortem report indicates that the death of the petitioner's wife had occurred on account of electrocution. The petitioner has further averred in the writ petition filed that it is only after failing to get the matter of compensation redressed at the hands of the authority that the instant recourse to the writ remedy has been made seeking the relief claimed.

2. The authority of the Assam State Electricity Board has filed an affidavit contesting the claims of the petitioner. In the affidavit filed, no dispute has been raised with regard to the incident in question and the fact that the death of the petitioner's wife had occurred as a result of electrocution. According to the respondents the high intensity electric lines had snapped on account of the snapping of weasels conductor and that the said incident/accident was not on account of any negligence or failure on the part of the Board to perform any of its statutory duties or to act with due care and caution. The respondent Board, in the affidavit filed, has further taken the stand that in the present case although the information of the accident was sent by registered post to the Chief Electrical Inspector to the Government of Assam on 14-8-1999, till date, the report of the Electrical Inspector has not been submitted. In absence of the report of the Electrical Inspector, it will not be correct to hold the Board to be liable for any negligence or breach in performance of its duties. The claim of income by the petitioner's wife is also disputed by the Board and it is the ultimate contention of the Board that this Court in the facts noticed above should decline to exercise its discretionary jurisdiction vested under Article 226 of the Constitution to award any compensation and leave the aggrieved party to have recourse to the forum of the Civil Court in order to establish negligence, if any, on the part of the Board for the incident/ accident in question.

3. Mrs. N.S. Thakuria, learned Counsel for the writ petitioner by relying on the averments made in the writ petition has contended that the deceased wife of the petitioner, as a daily wage earner, had an income of about Rs. 1500/- per month and that she was only 35 years at the time of her death. In so far as the question of negligence is concerned, learned Counsel for the petitioner, by relying on a judgment of the Apex Court in the case of M.P. Electricity Board v. Shail Kumari reported in : [2002]1SCR164 has argued that the liability of the respondent Board, in the facts of the present case, must be determined by application of the principle of strict liability in which event proof of any negligence will not be required. Relying on a judgment of this Court in the case of Ajit Deka v. Assam State Electricity Board reported in 2004 (Suppl) GLT 406, learned Counsel has argued that in a somewhat similar situation, in the absence of the statutory report of the Electrical Inspector this Court had not hesitated in exercising its power under Article 226 of the Constitution to award compensation to the claimant therein on account of death caused by an incident of electrocution.

4. The arguments advanced on behalf of the petitioner have been resisted by Shri H. Roy, learned senior counsel appearing on behalf of the respondent Board. Controverting the submissions made in the writ petition, Shri Roy has argued that the particular electrical line was commissioned after due inspection by the Electrical Inspector and that the incident in which death had occurred, was not on account of any negligence or lapse on the part of the Board. The exercise of power under Article 226 though discretionary, according to the learned Counsel, has to follow certain well recognized norms and in the present case, when the basic facts entitling the petitioner to compensation are not fully established, the matter should be adjudicated in the proper forum, i.e. the Civil Court where the petitioner would have all opportunities to establish the negligence alleged against the Board. It is, therefore, contended by Shri Roy that the present would not be a fit case for award of compensation in exercise of the high prerogative writ power. In so far as the principle of strict liability is concerned Shri Roy by placing reliance on a subsequent decision of the Apex Court in the case of SDO, Grid Corporation of Orissa Ltd. v. Timudu Oram reported in : AIR 2005 SC3971 , has submitted that in somewhat similar facts the Apex Court was of the view that the entitlement of compensation should be left to be adjudicated by the Civil Court. Shri Roy has

further argued that in the case of SDO, Grid Corporation of Orissa Ltd.AIR 2005 SC 3971 (supra) the decision of the Apex Court in M.P. Electricity Board : [2002]1SCR164 (supra) was considered and the Apex Court had distinguished the said judgment on the ground that in the said case the question of negligence was determined by the Civil Court.

5. The arguments advanced on behalf of the rival parties have been duly considered.

6. The rule of strict liability, which has its origin in English Common Law, has been applied to several situations in the country with suitable adaptations and modifications. The following observations contained in para 8 of the judgment in M.P. Electricity Board : [2002]1SCR164 (supra) would amply sum up the present day position in so far as the application of the principle is concerned.

8. 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.

The rule of strict liability with suitable modifications had come to be firmly embedded in the system of Jurisprudence prevailing in the country and the law laid down by the Apex Court in the case of M.P. Electricity Board : [2002]1SCR164 (supra) does not stand whittled by the subsequent pronouncements of the Apex Court in the case of SDO, Grid Corporation of Orissa Ltd.AIR 2005 SC 3971 (supra). In paragraph 8 of the aforesaid Judgment, the earlier decision of in the

case of M.P. Electricity Board was considered and the Apex Court, without, in any manner effecting the principle of strict liability, preferred not to rely on the Judgment of the Apex Court in the case of M.P. Electricity Board AIR 2002 SC 551 (supra) as the said Judgment had followed a determination of negligence by the Civil Court. In the above premises, it can, therefore, be reasonably understood that the Apex Court in the case of SDO, Grid Corporation of Orissa Ltd. AIR 2005 SC 3971 (supra) had distinguished the Judgment in the case of M.P. Electricity Board (supra) on its own facts without in any way affecting the principle of law laid down therein.

7. In the present case that death of the petitioner's wife took place on account of an incident/accident of electrocution caused by the falling of a live wire due to snapping of the electrical conductor is virtually an admitted fact. The generation/transmission of electricity undertaken by the respondent Board is an activity involving hazardous and risky exposure and inherent danger to human lives. The Board, therefore, will be governed by the principles of strict liability and in the event of such an accident the Board can be made liable to pay compensation by application of the said principle. This will bring the Court to the next question, i.e. the quantum of compensation. The determination of quantum of compensation to be awarded in a given case is not without difficulties as in the ultimate resort determination of quantum is made by a subjective process though care must be taken to ensure that all such objective factors that are required to be considered are duly taken note of by the Court or by other such forum that may be called upon to decide the question. In the present case, the petitioner's wife was 35 years of age when the accident occurred. The petitioner claims that his wife was a daily wage earner. Even if the earning of the petitioner's wife is taken at the minimum, it would not be unreasonable to compute her earnings at about Rs. 1500/- per month. The petitioner has certainly been deprived of the company of his wife by the unfortunate incident, besides the incident must have caused pain, suffering, and anxiety to the petitioner. Taking into account the totality of the facts, the Court is of the view that a compensation package of Rs. 1,50,000/- will meet the ends of Justice. I, therefore, order the Board to pay the aforesaid amount minus what has already been paid, on proper identification of the petitioner within a period of 3 months from the date of receipt of this order failing which, the unpaid

amount shall carry interest @ 6% per annum.

8. The writ petition is allowed to the extent Indicated above.

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