

K.Sambath Vs. Superintendent Engineeri

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Court : Chennai

Decided On : Jan-02-2013

Judge : G.Rajasuria

Appellant : K.Sambath

Respondent : Superintendent Engineeri

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED :

02. 01-2013 CORAM: THE HONOURABLE MR.JUSTICE N.PAUL VASANTHAKUMAR W.P.No.17691 of 2009 K. Sambath @ Chidambaranathan ...
Petitioner Vs 1. The Superintendent Engineer-I, Puducherry Electricity Board, Uppalam, Puducherry.

2. The Junior Engineer, Electricity Board, Vadhanoor, Puducherry.

3. The Secretary to Government, Secretariat, Puducherry. .. Respondents (R-3 impleaded as per order of this Court dated 4.12.2012 in M.P.No.1 of 2012)
PRAYER : This writ petition is filed under Article 226 of the Constitution of India with a prayer to issue a Writ of Mandamus directing the respondents to pay the petitioner a sum of Rs.5,00,000/- towards compensation for the death of his wife, which was caused by electrocution due to negligence of the respondents. For Petitioner : Ms.S.Rajeni Ramadass For Respondents 1 to 3 : Mr.A.Tamilvanan, Government Advocate (Puducherry) O R D E R The prayer in the writ petition is to

issue a Writ of Mandamus directing the respondents to pay a sum of Rs.5,00,000/- towards compensation for the death of petitioner's wife, caused by electrocution due to the negligence of the respondents.

2. The case of the petitioner is that he is an Agriculturist and residing in Vinayagampattu Village, Puducherry, along with his family and that he is having two sons. On 17.5.2009 around 5 p.m., petitioner's wife Malathi aged 47 years went to farm lands for plucking the grass, to be given to cow. As she did not return home till 6.00 p.m., petitioner along with few neighbours went to the farm land in search of her and found his wife lying in the land, holding the disconnected electric wire in her hand. Immediately petitioner approached the second respondent and electricity connection was switched off. When the petitioner lifted his wife, he found that she was already dead. A complaint was given to the Vinayagampattu Police Station on the same day and a FIR was registered. Post mortem was conducted on the body of the deceased and the post mortem report clearly states that the death was due to electrocution. According to the petitioner, lying of live wire on the land had happened due to the negligence on the part of the respondents 1 and 2 and therefore petitioner is claiming compensation from the respondents to the tune of Rs.5 lakhs, relying on the decision of the Supreme Court reported in (1987) 1 SCC 39.(M.C.Mehta v. Union of India).

3. The learned counsel appearing for the petitioner submitted that the petitioner was earning Rs.3,000/- per month by doing coolie work and submitted a calculation memo for the claim of compensation.

4. The first respondent has filed a counter affidavit stating that a fatal electric accident had occurred to S.Malathy, wife of petitioner on 17.5.2009 in Vinayagampet Village, Mannadipet Commune and on receipt of information, the staff of the Electricity Department rushed to the spot after switching off the power supply. Malathy had come into contact with a snapped live agricultural service connection line and she died on the spot. It is further stated in the counter affidavit that the casurina tree cultivated in the land belonging to one Pitchaikaran of Vinayagampet village fell on the electric line and the electric line snapped due to the impact. Malathy could not spot the snapped line in the darkness and

inadvertently came into contact with the live wire and was electrocuted. According to the respondents, the electric line snapped only due to the fall of casurina tree on account of heavy wind. The respondents also stated that the Electricity Department staff periodically inspect all the Low Tension and High Tension lines and are taking proper measures for the maintenance of all lines. It is also stated that regular patrolling is also carried out. In spite of such vigilant action, some times such accidents happen, which is beyond the control of the Electricity Department and therefore the Electricity Department cannot be held responsible for the death of petitioner's wife Malathy. It is also stated that the petitioner has to approach the Civil Court for claiming compensation and this writ petition is not maintainable.

5. Heard the learned counsel appearing for the petitioner as well as learned Government Advocate (Puducherry), appearing for the respondents.

6. The death of petitioner's wife Malathy due to electrocution as stated above is admitted in the counter affidavit filed by the first respondent. The age of the deceased Malathy and that she was earning Rs.3,000/- per month are also not in dispute. The contention of the respondents is that only due to fall of casurina tree the live wire snapped, resulting in the death of petitioner's wife. This tragedy could have been avoided, if the staff of the Electricity Department verified the same and took necessary precautionary measures. Hence respondents are vicariously liable to pay compensation to the family of petitioner consisting of three members.

7. As already stated the death of petitioner's wife Malathy due to electrocution is not disputed. Her age and income are also not disputed. In such circumstances, respondents cannot contend that the petitioner has to approach the Civil Court for the claim of compensation. The cause of death having been admitted and the negligence also having been proved, respondents cannot escape from the liability of paying compensation to the petitioner and his family members.

8. It is a well settled principle of law declared by the Honourable Supreme Court that if the facts are not in dispute, the legal heirs of the victims of riot, custodial killing or death due to negligence on the part of the State authorities, can claim compensation in writ proceedings. The only impediment in entertaining writ petition

is, there may be factual disputes such as the manner of death, whether there was negligence or not, age and income of the deceased, etc. In this case there is no dispute with regard to the manner of death, age of the deceased and income of the deceased.

9. Payment of compensation can be ordered by the High Court in appropriate case, particularly when there is no factual disputes, under Article 226 of the Constitution of India, is no longer *res integra*. In this regard, the following decisions can be usefully referred to. (i) In AIR 2000 SC 98: (2000) 2 SCC 46. (Chairman, Railway Board v. Chandima Das), a sum of Rs.10 lakhs was awarded as compensation to a Bangladeshi National, who was sexually assaulted by Eastern Railway Employee. Order of the High Court awarding the said compensation was upheld by the Supreme Court. (ii) In AIR 2001 SC 366: (2001) 8 SCC 15. (M.S.Grewal v. Deep Chand Sood), Rs.4.10 lakhs each was awarded for the unfortunate death of 14 young children, who died due to drowning in a river, when they were on picnic organised by the School authorities. (iii) In (2005) 9 SCC 58. (MCD v. Association of Victims of Uphaar Tragedy) the Supreme Court ordered payment of compensation to the families of those, who died in Uphaar Tragedy and directed the MCD to deposit Rs.3,01,40,000/- (Rupees Three Crores One lakh and Forty thousand) and 50% of the said amount was directed to be distributed to the Claimants. (iv) In 2011 AIR SCW 491. (Delhi Jal Board v. National Campaign for Dignity and Rights of Sewerage and Allied Workers), the Supreme Court enhanced the compensation awarded by the High Court of Delhi to sewerage workers' family to Rs.3.29 lakhs, over and above Rs.1.71 lakhs already paid by the Government. Insofar as our High Court is concerned, the said issue is dealt with in several cases. Few decisions are as follows: (a) 2001 WLR 17. (C.Chinnathambi v. State of Tamil Nadu) Rs.1.50 lakhs with 12% interest was ordered to be paid to each school students, who died while water tank broke and fell on them. (b) 2004 WLR 34. (Smt.R.Dhanalakshmi v. Government of Tamil Nadu) - Rs.9.00 lakhs was ordered to be paid to the family of a prisoner, who was killed while in custody. (c) 2004 WLR 61. (DB) (The Chief Secretary to the Government of Tamil Nadu v. Mrs.R.Selvam) Rs.5.00 lakhs was ordered to be paid by the State due to the killing of a medical student inside the Government Medical College Hostel. (d) 2006 WLR 1. (DB) (C.Thekkamalai v. State of Tamil Nadu) The Division Bench enhanced the

compensation from Rs.75,000/- to Rs.5.00 lakhs for the rape victim, who was illegally arrested and raped. (e) 2006 WLR 60.(Lakshmana Naidu (decd) v. State of Tamil Nadu & Another) A sum of Rs.5.00 lakhs was ordered as compensation to the family of the deceased. (f) 2008 (6) CTC 14.(P.N.Kanagaraj v. Chief Secretary, State of Tamil Nadu) Rs.4.10 lakhs with 9% interest was ordered for the death of a school boy. (g) 2009 (1) CTC 43.(Subramaniam v. State of Tamil Nadu) A sum of Rs.3.50 lakhs was directed to be paid for the death of a student in the school due to negligence of the Government School Teacher. (h) 2010 WLR 85.(DB) :

2010. (1) CWC 45.(T.Sekaran v. State of Tamil Nadu & Others) - A sum of Rs.9,07,000/- was directed to be paid to the family of a person, who was shot dead by the Security Warden of Madurai Central Prison. (i) 2011 (1) CWC 78.(The Registrar Administration, Madurai Bench of Madras High Court v. Secretary to Government, Home Department) A sum of Rs.10 lakhs was ordered to the family of an advocate, who died due to not providing immediate medical treatment, in the High Court premises. (j) 2011 (6) CTC 63.(P.Ravichandran v. The Government of Tamil Nadu) A sum of Rs.18.00 lakhs was ordered as compensation to the victim, who suffered 100% disability while doing drainage work. (k) 2012 (2) CTC 84.(Ganesan v. The State of Tamil Nadu) A sum of Rs.10.00 lakhs was ordered to be paid by the State to the family of a victim, who died due to bomb attack while travelling in a Transport Corporation Bus. (l) In (2011) 1 MLJ 140.(V.Ramar v. Director of Medical and Rural Health Services) this Court directed the State to pay a sum of Rs.5.00 lakhs to the family of a woman, who died during delivery due to the negligence of the Government Hospital authorities. (m) In (2011) 1 MLJ 132.(Thangapandi v. Director of Primary Health Services) A sum of Rs.5 lakhs was ordered to the family of a woman, who died after delivery, due to not giving proper treatment by Government Hospital Doctors. (n) In W.P.No.23003 of 2011 dated 24.11.2011 this Court awarded a sum of Rs.10.00 lakhs to the family of a deceased student as he was killed while staying in Government Hostel. (o) In W.P.No.20081 of 2007 dated 4.6.2012 I had an occasion to award a sum of Rs.29.26 lakhs to the petitioner therein, who lost both his parents due to fall of a tree on the road side. Applying the above decisions to the facts of this case, I am of the view that the respondent department is liable to pay compensation to the family of the petitioner for the death of petitioner's wife Malathy due to

electrocution on 17.5.2009.

10. There is no codified law for arriving at the quantum of compensation in cases of this type. The enactments like Motor Vehicles Act, 1988; Workmen Compensation Act, 1948; and Fatal Accidents Act, 1855 may be applied for arriving at the just compensation. In the decision reported in (1969) 3 SCC 6.(C.K.Subramania Iyer v. T.Kunhikuttan Nair) the Supreme Court held that there is no exact uniform rule for measuring the value of human life and the measure of damages cannot be arrived at precisely. In the decision reported in (2001) 8 SCC 15.(M.S.Grewal v. Deep Chand Sood) the Supreme Court held that multiplier method may be adopted to arrive at the just compensation. The age of the deceased can also be taken for arriving at a correct multiplier as per the judgment of the Supreme Court reported in 2011 (5) LW 40.(P.S.Somanathan & Others v. District Insurance Officer & Another).

11. How the Court should decide the cases of this nature is emphasised by the Supreme Court in the decision reported in (2011) 10 SCC 63.(Ibrahim v. Raju). In para 9 it is held thus, "9. This Court has time and again emphasised that the officers, who preside over the Tribunals adopt a proactive approach and ensure that the claims filed under the Act are disposed of with required urgency and compensation is awarded to the victims of the accident and/or their legal representatives in adequate measure keeping in view the relevant factors. Unfortunately, despite repeated pronouncements of this Court in which guiding principles have been laid down for determination of the compensation payable to the victims of road accidents and/or their families, the Tribunals and even the High Courts do not pay serious attention to the imperative of awarding just compensation to the claimants." In (2009) 13 SCC 42.(Reshma Kumari v. Madan Mohan) the Supreme Court pointed out the need of giving just compensation to the victim. In paragraphs 26 and 27 it is held thus, "26. The compensation which is required to be determined must be just. While the claimants are required to be compensated for the loss of their dependency, the same should not be considered to be a windfall. Unjust enrichment should be discouraged. This Court cannot also lose sight of the fact that in given cases, as for example death of the only son to a mother, she can never be compensated in monetary terms.

27. The question as to the methodology required to be applied for determination of compensation as regards prospective loss of future earnings, however, as far as possible should be based on certain principles. A person may have a bright future prospect; he might have become eligible to promotion immediately; there might have been chances of an immediate pay revision, whereas in another (sic situation) the nature of employment was such that he might not have continued in service; his chance of promotion, having regard to the nature of employment may be distant or remote. It is, therefore, difficult for any court to lay down rigid tests which should be applied in all situations. There are divergent views. In some cases it has been suggested that some sort of hypotheses or guess work may be inevitable. That may be so." This Court is bound to bear-in-mind the above stated principles for arriving at just compensation.

12. With regard to the quantum of compensation is concerned, the learned counsel for the petitioner submitted a calculation memo, which reads as follows:
Calculation Income of the deceased .. Rs.3,000/- Less:

1. 4th Expenses .. Rs. 750/- ----- Rs.2,250/- (per month) ----- Annual Income (Rs.2,250 x

12) Rs.27,000/- Multiplier (27,000 x

13) Rs.3,51,000/- Add: Funeral Expenses Rs. 5,000/- Loss of Consortium Rs. 10,000/- Loss of Love and Affection Rs. 10,000/- ----- Total Compensation Rs.3,76,000/- ----- The learned counsel for the petitioner further submitted that the petitioner is entitled to get compensation from the date of death of his wife with 9% interest and interest alone comes to Rs.40,000/- approximately.

13. In the light of above cited decisions of the Honourable Supreme Court as well as this Court, and in the circumstances of the case, and having regard to the death of petitioner's wife Malathy at the age of 47 years, the writ petition is allowed of with a direction to the respondents to pay a sum of Rs.4,00,000/- (Rupees Four Lakhs only) in lumpsum as compensation to the petitioner's family, within a period of two weeks from the date of receipt of copy of this order. Out of the said amount,

petitioner is entitled to Rs.1,00,000/- and the two sons of the petitioner are entitled to Rs.1,50,000/- each. No costs. For reporting compliance of this order, post on 21.1.2013. Index : Yes/No 02.01.2013 Internet : Yes/No Note : Issue copy on 3.1.2013 vr To 1. The Controller of Examinations, Saveetha University, No.162, Poonamallee High Road, Chennai 77.

2. The Registrar, Saveetha University, No.162, Poonamallee High Road, Chennai 77.

3. The Dean, Saveetha Medical College, Saveetha Nagar, Thandalam, Chennai 105.

4. The University Grants Commission, New Delhi. N. PAUL VASANTHAKUMAR, J.

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