

Gittan Ram and anr Vs. State of Jandk; and ors

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Court : Jammu and Kashmir

Decided On : Aug-07-2012

Judge : Mr. Justice J.P.Singh

Appellant : Gittan Ram and anr

Respondent : State of Jandk; and ors

Judgement :

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU. OWP No. 119 OF 200.Gittan Ram and anr Petitioners State of J&K and ors Respondent !Mr. D.K.Bangotra, Advocate ^Mr.G.S.Thakur, Advocate Mr. Justice J.P.Singh Date:

07. 08.2012 :

: Judgment Settled in village Kachhrial of Tehsil Akhnoor located near the Actual Line of Control in the State of Jammu and Kashmir, the petitioners had to leave their home and hearth in the year 1999 because of disturbances on the Border. They were settled temporarily by the State Government at Ram Nagar Migrant Camp Bomal situated in Tehsil Akhnoor. Ganesh Dass aged 20 years, their son, was sleeping in a tent on February 22, 2001 when the Transformer installed by the Power Development Department of the State Government near the tent caught fire and 11 KV Electric Line carrying high voltage electric energy dropped at the tent hitting severely, sleeping Ganesh, who sustained severe burn injuries to which he succumbed at Sub District Hospital, Akhnoor. 2 Attributing Ganeshs death to the

State Governments negligence in not employing safety devices and taking measures, requisite for ensuring that high voltage energy did not escape and caused damage and loss that it had the potential so to do, the petitioners have filed this Petition seeking compensation for the death of Ganesh, the sole bread winner of the petitioners family. Denying their liability the State Government says that the Electric Department had maintained the electric lines properly and falling of one of the lines, on its own, because of fire in the Transformer, resulting into the death of Ganesh would not make the State liable for compensation for his death, in that, unexpected falling of electric line was beyond their control. The compensation claimed by the petitioners is stated excessive. It is pleaded that the compensation should be reasonable, fair and just and not a bonanza. To support the above view, reliance is placed on Divisional Controller, KSRTC v. Mahadeva Shetty reported as 2003 AIR SCW 3797. Submissions made by the learned counsel for the parties have been considered. The State-respondents do not deny Ganeshs death by electrocution as a result of dropping of high tension wire on the tent in which he was sleeping. It is also not denied that the responsibility to maintain controlled flow of electric energy was that of the State Government. In the circumstances, the issue that would, therefore, fall for consideration is as to whether the State Government was liable to compensate the petitioners for the death of their son by electrocution. The legal position being settled by Honble Supreme Court of India as also by this Court in its various decisions that anyone generating, transmitting, supplying or using electric energy of high voltage, is required under law, to ensure that such energy was not transmitted or discharged, unless requisite measures had been taken to prevent its uncontrolled escape, that may injure, impair or take away life or property. Any omission in preventing the discharge of high voltage electric energy by anyone engaged in the activity of supplying such energy is, under law of Torts, liable to compensate for the damage caused because of the uncontrolled escape of such energy. The basis of such liability is a foreseeable risk, inherent in the very nature of such activity. Liability to compensate for the damage caused because of such activity is known as Strict Liability. It differs from the liability that arises from negligence or fault in this way i.e. the concept of negligence comprehends that the foreseeable harm could be avoided by taking requisite precautions. If the operator of such high voltage

electric energy had done all that which could be done to avoid harm, it may not be held liable when the action is based on any negligence attributed; but such consideration may be wholly irrelevant in the case of Strict Liability where the operator of the activity is held liable irrespective of its having taken precautions to avoid harm. In this view of the matter, the plea projected by the State-respondents denying their liability to compensate the petitioners for the death of their son cannot be accepted, for, dealing in the supply of electric energy, admittedly a hazardous activity, the State and its functionaries were bound to take requisite safety measures to ensure that there was no escape of the energy that may cause damage. It was required to install such safety devices which would automatically stop flow of electric energy even in case of force majeure avoiding loss of life and property. The omission of the Power Development Department of the State Government in not taking requisite safety measures has deprived the petitioners of their son and of their dependence on his income. The State is, therefore, liable to compensate the petitioners. After having held the State liable to compensate the petitioners, it needs to be determined as to what would be just compensation to the petitioners for the death of their son. True it is, that exact amount of compensation to which the petitioners may be entitled to, cannot be determined by the Court in exercise of its Extra Ordinary Writ Jurisdiction, for, such determination would require evidence to sustain needed finding in this respect; however, the factors that a Tribunal or Court may take into consideration in awarding just compensation to the victims of motor accidents, can be applied to the petitioners case to award them compensation. There is no evidence about the exact income of the deceased and all that is pleaded by the petitioners is that their son was the only bread winner of the family. In the circumstances, the deceased needs to be treated as nonearning person and to determine compensation for his death, his income can be taken as Rs.3000/-, the notional income that the Courts and Tribunals have consistently been taking while determining compensation in Motor Accident Cases for the death of non-earning persons. The dependence of the petitioners on the income of the deceased, deducting 1/3rd therefrom, as the expenses, that he would have spent on him had he survived, can be taken at Rs.2,000/ per month. In view of the law laid down by Honble Supreme Court of India in Sarla Verma and ors. v. Delhi Transport

Corporation and anr. reported as (2009) 6 SCC 121.13 can be adopted as suitable multiplier to assess compensation for the death of petitioners son keeping in view petitioner No.2s age, which was between 46 to 50 years at the time of the accident. The petitioners claim for Rs.10.00 lac, looked from any angle, does not appear rational and cannot, therefore, be awarded to the petitioners. Adopting formula advocated by Lord Wright in Davies case which was accepted as the correct method of assessing compensation by Honble Supreme Court of India, the petitioners are held entitled to compensation of Rs.3,50,000/- 6 (Three lac fifty thousand only) which includes compensation for loss of estate, love and affection and funeral expenses. The State-respondents are, therefore, held liable to pay Rs.3,50,000/- along with interest @ 7.5% per annum to the petitioners from the date of the filing of the Petition. This Petition, therefore, succeeds and is, accordingly allowed. A direction shall issue to respondent Nos. 1 to 3 to pay the petitioners Rs.3,50,000/- along with interest @ 7.5% per annum from the date of filing of the Writ Petition within two months. (J.P. SINGH) JUDGE JAMMU 07 08.2012 Vinod.

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