

(2012) 05 P&H CK 0166

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 15411 of 2009

Rajesh Kumar and Another

APPELLANT

Vs

Punjab State Electricity Board
and Others

RESPONDENT

Date of Decision: May 1, 2012

Acts Referred:

- Constitution of India, 1950 - Article 226, 227
- Electricity Act, 2003 - Section 53

Citation: (2012) 168 PLR 700

Hon'ble Judges: Ajay Kumar Mittal, J

Bench: Single Bench

Advocate: G.S. Verma, for the Appellant; B.S. Sudan, for the Respondent

Final Decision: Allowed

Judgement

Ajay Kumar Mittal, J.

The petitioners who are husband and wife have approached this Court through the present petition under Article 226 /227 of the Constitution of India seeking compensation of Rs. 10 lacs on account of death of their son namely Vikas Kumar, aged 7 years on account of electrocution which was as a result of negligence and carelessness of the respondents. A writ of mandamus has been sought for issuance of directions to the respondents to pay the aforesaid compensation. Brief facts as narrated in the petition may be noticed. There is an electric meter box installed in the street outside the gate of house of the petitioners. Many live wires are passing through the said electric meter box and some of the wires are naked. Due to heavy rains, the wires came down and touched the meter box resulting in current in the body of the box. Respondent Nos. 3 to 5 were informed about this situation a number of times. Many complaints were also given to the electricity Board but no action was taken. On 12.07.2009, Vikas Kumar son of the petitioners while playing in the street touched the meter box and he died of electrocution on the spot.

According to the petitioners, no indication of "danger" has been mentioned on the meter box. Body. The petitioners alongwith other residents of the locality went to the Police Station and got recorded DDR No. 22 dated 12.07.2009. The petitioners also approached respondent Nos. 3 to 5 regarding the said incident who promised them appropriate compensation from the Board. After some time they got some blank paper signed from petitioner No. 1. The petitioners came to know that the blank paper was later on converted into a compromise resulting thereby that no compensation will be given to the petitioners as the matter had been compromised. Postmortem was conducted on 13.07.2009 in which it was mentioned that the cause of death was electric burn injuries. The petitioners sent a legal notice dated 10.08.2009 but no action was taken. Having received no response from the respondents, the petitioners filed the present writ petition.

2. Learned counsel for the petitioners submitted that the respondents were negligent in installing the electric connection lines near the house of the petitioners and referred to photograph Annexure P-1 to substantiate the aforesaid claim. On the basis of Annexure P-2 postmortem report, it was contended that the death had taken place due to electric current. It was argued that it was due to the negligence and carelessness of the respondents in putting the electric lines which resulted in the death of their son. On the strength of judgments in [S. Dhanaveni and others Vs. State of Tamil Nadu and others](#), [Dano Bai and Others Vs. Punjab State and Another](#), [Ramesh Singh Pawar Vs. M.P. Electricity Board and Others](#), and [M.P. Electricity Board Vs. Smt. Sunder Bai and Others](#), it was urged that compensation be awarded to the petitioners as claimed by them in the petition.

3. Controverting the aforesaid submissions, learned counsel for the respondents submitted that the writ jurisdiction of this Court has been erroneously invoked for claiming compensation. According to the learned counsel, the dispute required to be resolved by leading evidence for which civil suit was the only remedy. Elaborating his submissions on merits, he referred to photographs Annexure R. 1 to R. 3 to show that the box wherein the meter was installed was locked and there was no negligence on the part of the respondents. Further, reference was made to Para 11 of the written statement where the claim of the petitioners that the death had taken place due to the negligence of the respondents was emphatically denied and it was stated that either the son of the petitioners died in his own house or in order to get undue benefit, they concocted a story of electrocution at pillar box. Relying upon the judgments of the Apex Court in [Chairman, Grid Corporation of Orissa Ltd. \(Gridco\) and Others Vs. Smt. Sukamani Das and Another](#), and [S.D.O. Grid Corporation of Orissa Ltd. and Others Vs. Timudu Oram](#), (SDO Grid Corporation's case), the claim of the petitioners was refuted.

4. In rebuttal, learned counsel for the petitioners contended that whenever there was negligence on the part of the Electricity Department, the writ Court would come to the rescue of the claimants by awarding suitable compensation in the facts and

circumstances of each case. According to the learned counsel, it could not be urged that there was total lack of writ jurisdiction to award compensation in a suitable and appropriate case.

5. After hearing learned counsel for the parties and perusing the record, I find merit in the submissions of learned counsel for the petitioners.

6. Examining the issue regarding maintainability of writ petition under Article 226 of the Constitution of India, reference may be made to various pronouncements of the Hon"ble Apex Court.

7. The Constitution Bench of the Hon"ble Supreme Court in [M.C. Mehta and another Vs. Union of India and others](#), delving into the issue of "strict liability" in para 31 had recorded as under:-

31. We must also deal with one other question which was seriously debated before us and the question is as to what is the measure of liability of an enterprise which is engaged in an hazardous or inherently dangerous industry, if by reason of an accident occurring in such industry, persons die or are injured. Does the rule in Rylands v. Fletcher, apply or is there any other principle on which the liability can be determined. The rule in Rylands v. Fletcher, was evolved in the year 1866 and it provides that a person who for his own purposes brings on to his land and collects and keeps there anything likely to do mischief if it escapes must keep it at his peril and, if he fails to do so, is prima facie liable for the damage which is the natural consequence of its escape. The liability under this rule is strict and it is no defence that the thing escaped without that person's willful act, default or neglect or even that he had no knowledge of its existence. This rule laid down a principle of liability that if a person who brings on to his land and collects and keeps there anything likely to do harm and such thing escapes and does damage to another, he is liable to compensate for the damage caused. Of course, this rule applies only to non-natural user of the land and it does not apply to things naturally on the land or where the escape is due to an act of God and an act of a stranger or the default of the person injured or where the thing which escapes is present by the consent of the person injured or in certain cases where there is statutory authority. Vide Halsbury's Laws of England Vol. 45, para 1305...

We would therefore hold that where an enterprise is engaged in a hazardous or inherently dangerous activity and harm results to anyone on account of an accident in the operation of such hazardous or inherently dangerous activity resulting, for example, in escape of toxic gas the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident and such liability is not subject to any of the exceptions which operate vis-à-vis the tortious principle of strict liability under the rule in Rylands v. Fletcher.

8. The Hon"ble Supreme Court in [D.K. Basu Vs. State of West Bengal](#), noted as under:-

The Courts have the obligation to satisfy the social aspirations of the citizens because the courts and the law are for the people and expected to respond to their aspirations. A court of law cannot close its consciousness and aliveness to start realities. Mere punishment of the offender cannot give much solace to the family of the victim-civil action for damages is a long drawn and a cumbersome judicial process. Monetary compensation for redressal by the Court finding the infringement of the indefeasible right to life of the citizen is, therefore, useful and at time perhaps the only effective remedy to apply balm to the wounds of the family members of the deceased victim, who may have been the breadwinner of the family.

9. In [M.S. Grewal and Another Vs. Deep Chand Sood and Others](#), it was observed as under: -

28. Currently judicial attitude has taken a shift from the old draconian concept and the traditional jurisprudential system-affection of the people has been taken note of rather seriously and the judicial concern thus stands on a footing to provide expeditious relief to an individual when needed rather than taking recourse to the old conservative doctrine of civil Courts obligation to award damages. As a matter of fact the decision in D.K. Basu has not only dealt with the issue in a manner apposite to the social need of the country but the learned judge with his usual facility of expression firmly established the current trend of "justice oriented approach". Law courts will lose its efficacy if it cannot possibly respond to the need of the society-technicalities there might be many but the justice oriented approach ought not to be thwarted on the basis of such technicality since technicality cannot and ought not to outweigh the course of justice.

10. In [Madhya Pradesh Electricity Board Vs. Shail Kumari and Others](#), the Apex Court dealing with the award of compensation in the case of death of a human being resulting due to electrocution recorded in para 8 as under:-

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 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.

11. In all fairness to learned counsel for the respondent-Board, it would be apt to refer to the judgments on which heavy reliance has been placed by him.

12. In SDO Grid Corporation's case (supra) following the earlier decision in Sukamani Das's case (supra), it was held that in the absence of any conclusion that there existed negligence in the performance of its duty and the disputed questions of fact relating to negligence being involved, the Electricity Board could not be saddled with liability in exercise of writ jurisdiction for awarding compensation due to electrocution. The Hon'ble Apex Court in SDO Grid Corporation's case (supra) had noticed its earlier decision in M.P. Electricity Board's case (supra) but had held the same to be not applicable to that case being different on facts. Therefore, it can be safely understood that M.P. Electricity Board's case (supra) has been distinguished on its own facts and the Hon'ble Apex Court has not diluted the doctrine of "strict liability" as discussed in extenso in the judgment of Constitution Bench of Supreme Court in M.C. Mehta's case (supra).

13. From the above, it emerges that there is no absolute bar to the maintainability of writ petition under Article 226 of the Constitution for claiming compensation on account of negligence of the Electricity Department. However, each case seeking compensation due to electrocution has to be judged on the facts and circumstances involved therein.

14. Adverting to the facts of the present case, the perusal of the photograph appended as Annexure P-1 clearly shows that the electric meter box had been installed at the gate of the house of the petitioners. Further, photograph depicts that numerous wires are there which would be dangerous particularly in rainy season. According to the petitioners, the respondents had been apprised of the dangerous situation on various occasions, but no steps were taken by them to rectify the same. Ultimately, Vikas Kumar, son of the petitioners died on 12.07.2009 when he had gone to play outside the house and came in contact with meter box body. He died at the spot due to electrocution. The post mortem report (Annexure P-2) corroborates the version of the petitioners where the cause of death has been specified as electrocution. The relevant portion of the post mortem report reads thus:-

The cause of death in this case is cardiac arrhythmia and cardiac arrest following electric burns sufficient to cause death in ordinary course of nature. Burns are antemortem in nature.

15. The Electricity Board who is the supplier of electricity is expected to maintain the supply system in a very good condition including the live wire and other electrical system used for the purpose of transmission of electricity. It has employed officials to install and maintain its transmission and supply equipment and systems. The Board is required to take all care to avoid an accident irrespective of the mandate of the statute. There would be presumption of negligence when an accident of this

nature, as in the present case, occurs. It is well established that where loss is caused due to negligence or in action on the part of the authority, who is required to take care and caution, it cannot shirk responsibility. Further Section 53 of the Electricity Act, 2003 deals with provision relating to safety and electricity supply.

16. In view of the above, the irresistible conclusion is that negligence was there on the part of the Electricity Department which had resulted in the death of Vikas Kumar. This is clear case of negligence, incompetent workmanship and supervision on the part of the Board and its officials which had resulted in untimely and sudden demise of Vikas Kumar. In the Indian Culture, the parents have lot of expectation from their children as according to the values and ethos imparted to them, they are supposed to look after them in old age. The Department would be liable under torts to compensate the family of the deceased for their negligence etc. and also for the loss of love and affection which they have lost in the untimely demise of their child. The parents are, thus, required to be compensated for the loss.

17. The residual question is quantum of compensation. The deceased in the present case was 7 years of age. Though there may not be financial dependence on a child of seven years, yet the negligence of the respondent department has resulted in the untimely demise of Shri Vikas Kumar. The loss to the petitioners in terms of money may not be ascertained with exactitude yet in order to do justice, for the loss to the petitioners of the love and affection of their child, some amount of compensation is required to be paid by the respondents.

18. For determining compensation in such cases, there is no strait-jacket formula on the basis of which it could be said that a particular amount would be the compensation. There can be no exact uniform rule for measuring value of human life by mathematical precision. However, while determining compensation, it would be essential to keep in mind that compensation awarded should not be inadequate, unreasonable, deficient and at the same time it should also not be excessive or punitive against whom the claim is made. It should not result as a source of profit to the person in whose favour it has been awarded. Some guess work is inevitable. In other words, the quantum of compensation is to be just and reasonable in the given facts and circumstances. A division bench of this Court in [Prem Chand and Another Vs. Uttari Haryana Bijli Vitran Nigam Ltd. and Others](#), where the deceased aged 17 years had been electrocuted, awarded a lump sum compensation of Rs. 2 lakhs. Accordingly, it is considered appropriate to award damages of Rs. 2 lakhs to the petitioners. The respondents shall pay the amount within two months from the date of receipt of certified copy of the order. The writ petition stands partly accepted.