

## **Mrs. Ashwini Manoj Patil and Others - Petitioners @HASH Bangalore Electricity Supply Company Limited (Bescom), Bangalore and Others**

**Court:** KARNATAKA HIGH COURT

**Date of Decision:** April 7, 2016

**Acts Referred:** Constitution of India, 1950 - Article 226  
Electricity Act, 2003 - Section 161

**Citation:** (2016) 5 KantLJ 511

**Hon'ble Judges:** Raghvendra S. Chauhan, J.

**Bench:** Single Bench

**Advocate:** Sri D.N. Nanjunda Reddy, Senior Counsel for Sri Ravi M.R.C., Advocate, for the Petitioner; Sri. S.S. Naganand, Senior Counsel for S. Sriranga and Smt. Sharada Naganand, Advocate, for the Respondent No. 1; S.N. Prashanth Chandra and Nandgopal B., Advocates

**Final Decision:** Dismissed

### **Judgement**

@JUDGMENTTAG-ORDER

Raghvendra S. Chauhan, J. - Having lost their sole bread-earner in an alleged electrocution on 18-5-2013, the petitioners have approached this

Court for seeking compensation of Rs. 29,81,72,870/- with interest at 12% per annum from the respondents.

2. Briefly the facts of the case are that, on 18-5-2013, at about 7.20 P.M., Mr. Manojkumar Vasant Rao Patil was walking on Church Street, near

Kaati Zone Restaurant in Bangalore along with his colleague Mr. Palgun V.S., for watching the IPL Cricket match being hosted at Chinnaswamy

Stadium in Bangalore. Since it had rained, a puddle of water had collected near the footpath. Mr. Patil tried to cross the puddle. But unfortunately,

he lost his balance. In order to support himself, he caught hold of the protective steel wire fence covering an electrical transformer installed by the

respondent 1-Bangalore Electricity Supply Company Limited. The moment he touched the steel wire fence, allegedly, he received a heavy electric

shock due to leakage of the current passing through the fence. Immediately he was rushed to the Mallya Hospital. But, he was declared as

brought dead"" by the Doctors. Immediately, on 18-5-2013, Mr. Patil's friend, Mr. Palgun V.S., lodged the First Information Report ("FIR", for

short) with the Cubbon Park Police Station.

3. On 19-5-2013, Mr. Patil was subjected to a post-mortem examination. According to the post-mortem report, the opinion with regard to the

cause of death was reserved till the Histopathological examination report was received. According to the Histopathology Report ""Possibility of

Electrocution can be considered"". Therefore, on 10-7-2013, a final opinion was expressed with regard to the cause of death. Dr. Bheemappa

Havanur, Associate Professor, Department of Forensic Medicine, Bangalore Medical College and Research Institute had opined that the death

was ""due to cardiac failure as a result of Electrocution"". Therefore, the present petition for seeking the aforementioned compensation from the

respondents.

4. Mr. D.N. Nanjunda Reddy, the learned Senior Counsel for petitioners, has raised the following submissions before this Court: firstly, relying on

the case of Sanjay Gupta and Others v. State of Uttar Pradesh and Others, (2015)5 SCC 283, the learned Senior Counsel has pleaded that

monitory compensation for contravention of fundamental rights is available to the petitioners as there is a distinction between the remedy in "public

law" and the remedy available in "private law". The remedy available in "public law", through a writ petition seeking compensation, is distinct from

and in addition to the remedy available in "private law" for damages in tort.

Secondly, if the facts of the case are indisputable, then the petitioners are justified in seeking compensation by invoking the writ jurisdiction of this

Court under Article 226 of the Constitution of India.

Thirdly, the facts are absolutely indisputable. For, the FIR lodged by Mr. Palgun V.S., immediately after the accident, clearly states that Mr. Patil

had lost his balance, had caught hold of the steel fence, and had been electrocuted due to leakage of electricity through the fence. Both according

to the Histopathology report and the final opinion of the Doctors, the cause of death was electrocution. Since electricity is not meant to run through

a steel fence protecting a transformer and since in the present case, electric current had leaked into the fence, according to the learned Senior

Counsel, it is clearly a case of res ipsa loquitur. Thus, the respondents were responsible for the untimely death of Mr. Patil at the young age of 37

years.

Fourthly, Mr. Patil was a Vice-President of M/s. Sundaram Auto Components Limited (part of TVS Group of Companies). He had not only done

his B.E. (Hons.) from BITS Pilani, but had also completed his MBA. He was working with the company for the last sixteen years. He was praised

for his hardwork, dedication and business acumen. At the time of his death, he was earning a salary of Rs. 45,65,023/- per annum. Considering his

brilliance, he would have gone on to win many laurels. Yet, tragedy had struck and the petitioners have been left high and dry. Therefore, the

petitioners deserve to be compensated by the respondents as claimed by the petitioners.

5. On the other hand, Mr. Naganand, the learned Senior Counsel for respondent 1, has raised the following contentions before this Court: firstly,

things are not as simple as pleaded by the learned Senior Counsel for petitioners. For, the case of Sanjay Gupta does not deal with the death of an

individual, but deals with a tragedy which had caused the death of sixty-four persons, and had left more than hundred persons injured in a massive

fire accident that had engulfed the India Brand Consumer Show organised in Victoria Park, Meerut on 10th April, 2006. Moreover, in catena of

cases where the Hon'ble Supreme Court has granted compensation to the victims, those cases also dealt with human tragedies on a large scale.

The case of Smt. Nilabati Behera alias Lalita Behera v. State of Orissa and Others, (1993)2 SCC 746 and Union Carbide Corporation

and Others v. Union of India and Others, (1991) 4 SCC 584 were both cases of mass tragedies.

Secondly, the issue whether Mr. Patil had expired due to electrocution or for other reasons is unclear from the documents produced by the

petitioners themselves. According to the medico-legal certificate (Annexure-F), in an answer to the question as to how did the injury occur, the

word "electrocution" has been put with "?" According to the post-mortem report, Mr. Patil had suffered merely two external injuries, namely linear

scratch abrasions (three in number) present on the front of lower part (wrist) of (RD) forearm measuring 6 cm. x 0.1 cm. x 0.1 cm. each, and

secondly, compressed abrasion present in the middle front of chest measuring 2 cm. x 1 cm. These injuries are not the result of electrocution. In

fact, electrocution generally leaves burned injuries both inside and outside the body. But, such burned injuries are conspicuously missing in the

present case. Initially, when the post-mortem was carried out on 19-5-2013, the Doctors were unable to give a clear-cut finding as to Mr. Patil's

cause of death. Even according to the Histopathology report "the possibility of electrocution can be considered". Hence, electrocution is merely in

the realm of "possibility". It is not a concrete fact. Moreover, according to the final opinion of the Doctor, the death was due to cardiac failure as a

result of electrocution. Thus, the death did not occur due to the electrocution, but due to "cardiac failure".

Thirdly, Section 161 of the Electricity Act, 2003 ("the Act" for short) deals with notice of accidents and inquiries in connection with the generation,

transmission, distribution, supply or use of electricity in or in connection with any part of electric lines or electrical plant resulting in loss of human or

animal life. Such accident need to be reported immediately to the Electrical Inspectorate. Section 161(2)(a) of the Act, empowers the Inspectorate

to enquire into the case of any accident affecting the safety of the public, which may have been occasioned by, or in connection with, the

generation, transmission, distribution, supply or use of electricity.

According to the learned Senior Counsel, Electrical Inspectorate is an independent person, as he is unconnected with the Electric Company.

Furthermore, on 19-5-2013, the Electrical Inspectorate visited the site of the accident. He recorded, a categorical finding, that the accident was

not caused due to leakage of electricity from the installation in question. The tests were carried out by the Electrical Inspectorate in the presence of

the Cubbon Park Police. It was finally concluded that ""there was no leakage of the electricity in the installation, or in the HT Cable, LT Feeder,

Filler and the LT Cable on the date of accident"". Thus according to the Electrical Inspectorate ""the death was not caused due to electricity"".

Fourthly, even on the date of accident, immediately after the alleged accident, the Assistant Engineer had rushed to the site. Even according to his

report, there was no discrepancy in the electrical distribution and everything was found to be intact. Therefore, even the Assistant Engineer

concluded that the death could not have been due to any electrocution. Even the statement of the Junior Engineer, who had visited the site, was

recorded by the police. Even in his statement, he claimed that he had visited the site on 18-5-2013 at about 8.45 p.m. He discovered that the LT

Feeder Box was not grounded. According to the learned Senior Counsel, these reports clearly establish that there was no leakage of electricity

onto the steel fence surrounding the transformer. Thus, the death could not have been caused due to electrocution.

Fifthly, since there are disputed questions of fact which would require both oral and documentary evidence, the writ jurisdiction of this Court

cannot be invoked.

Lastly, since the petitioners have an alternate remedy of filing a civil suit for damages, the present writ petition is not maintainable before this Court.

6. In rejoinder, Mr. Nanjunda Reddy, the learned Senior Counsel has prayed that, in case this Court were of the opinion that the petitioners should

pursue their civil remedy, since the petitioners are forced out into the cold, and are not in a position to pay the Court fees for the accident of

damages claimed by them, therefore, this Court should direct the payment of interim compensation in favour of the petitioners to the tune of Five

Crores. Or in the alternative, this Court should direct the learned Civil Court to immediately grant an interim compensation in favour of the

petitioners so that the petitioners can at least survive financially during the pendency of civil suit for damages.

7. In reply to the said prayer, Mr. S.S. Naganand, the learned Senior Counsel, submits that the petitioners have not revealed, to this Court, the

extent of death benefits they have received due to the sudden death of Mr. Patil. The petitioners would also be entitled to receive death benefits

from Mr. Patil's employer and from the Insurance Company. Moreover, since Mr. Patil was working as a Vice-President for sixteen long years,

the family must have a saving of its own. Therefore, the petitioners are not justified in claiming that suddenly they are forced out into the cold.

Lastly, this Court would not be justified in granting an interim relief or in directing the Civil Court to immediately grant the interim relief since the

very cause of death is still surrounded in mystery.

8. Heard the learned Counsel of parties and perused the documents submitted along with the writ petition and the counter.

9. Of course there is no issue with the principle laid down by the Hon'ble Supreme Court in the cases of Sanjay Gupta, Smt. Nilabati Behera alias

Lalita Behera and Union Carbide Corporation, that monitory compensation can be granted for contravention of fundamental rights as there is,

indeed, a distinction between the remedy available in "public law" and the remedy available in "private law". The remedy available in "public

law" is distinct from and in addition to the remedy available in "private law" for damages. Furthermore, if the facts are indisputable, the petitioners

would be justified in seeking compensation by invoking the writ jurisdiction of this Court under Article 226 of the Constitution of India.

10. However, the moot issue before this Court is, whether the facts regarding the cause of death of Mr. Patil are indisputable or not? Although Mr.

D.N. Nanjunda Reddy, the learned Senior Counsel, would like this Court to believe that the facts are indisputable, but, the documents submitted

by the petitioners themselves envelop the issue of cause of death in a shroud of mystery. Firstly, the two injuries revealed in the post-mortem report

prima facie do not point to electrocution. Secondly, even the Doctors who conducted the post-mortem, even they were unsure as to the cause of

death. Thus, the experts themselves were hesitant to pin-point the cause of death till the Histopathology report was received. Thirdly, even the

Histopathology report claims that the possibility of electrocution can be considered. But, it does not specifically speak of electrocution as the cause

of death. Fourthly, neither the report of the Electrical Inspectorate, nor the report of the Assistant Engineer, nor the statement of the Junior

Engineer recorded by the police revealed that there was a leakage of electric current in the steel fence surrounding the transformer. According to

the two reports and the statement of the Junior Engineer there was no leakage of electricity in the installation, or in the ITT cable, LT Feeder, Filler

and the LT Cable on the date of accident. Therefore, these reports further create a doubt about the cause of Mr. Patil's death. Therefore, what is

the plausible cause of his death is riddled with doubts.

11. These doubts can be cleared by the petitioners only by filing a civil suit for damages, where they would have ample opportunities for submitting

oral and documentary evidence to establish that Mr. Patil died due to electrocution. However, the complicated issue of the cause of his death

cannot be decided by this Court in a writ jurisdiction. Although the writ jurisdiction is meant to protect the civil and fundamental rights of the

people, but the said jurisdiction should not be invoked by this Court when disputed question of facts, which require oral and documentary

evidence, are raised. Since the present case involves disputed question of facts, this Court is not inclined to invoke its writ jurisdiction.

12. Though Mr. Nanjunda Reddy has prayed that this Court should grant an interim compensation to the petitioners in order to tie over the

financial crisis being faced by them, the said relief cannot be granted by this Court. Firstly, the petitioners have not revealed their financial position

before this Court. Secondly, considering the fact that Mr. Patil was a Vice-President of a Company for sixteen long years, obviously the family

would have a saving of its own. Thirdly, the petitioners have not indicated the death benefits received by them either from M/s. Sundaram Auto

Components Limited, or from the Insurance Policies which Mr. Patil may have had in his name. In the absence of these crucial facts, this Court

would not be justified in granting an interim compensation to the petitioners. Fourthly, considering the fact that the cause of Mr. Patil's death is

rather unclear, it would be highly unfair to saddle the respondents with a liability of interim compensation to be paid to the petitioners. Therefore,

the prayer made by the learned Senior Counsel for the petitioners is unacceptable.

13. As far as the prayer that this Court should direct the learned Civil Court to grant an interim compensation is concerned, suffice it to say that it

would be in the interest of justice to leave the issue of grant of interim compensation to the discretion of the learned Civil Court itself. It is for the

learned Civil Court to decide whether the petitioners have succeeded in establishing a prima facie case, the balance of convenience, and an

irreparable loss to them before the Court or not. Hence, this Court refrains from issuing such a direction.

14. For the reasons stated above, this writ petition is unacceptable. It is, hereby, dismissed.

However, it is clarified that the observations, made above, by this Court are merely prima facie in nature. Therefore, they should not influence the

opinion and finding of the learned Civil Court, in case the petitioners were to file a civil suit for damages.