

(2016) 04 KAR CK 0048

KARNATAKA HIGH COURT

Case No: Writ Petition No. 9667 of 2014 (GM-KEB).

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

APPELLANT

Vs

RESPONDENT

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 Vasantrao 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 monetary 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.