

(2013) 11 MAD CK 0181

Madras High Court

Case No: Writ Petition No. 32405 of 2012

P. Sundari

APPELLANT

Vs

The Chairman, Tamil Nadu
Generation of Energy and
Distribution Corporation

RESPONDENT

Date of Decision: Nov. 29, 2013

Hon'ble Judges: K.K. Sasidharan, J

Bench: Single Bench

Advocate: S. Jayakumar for M/s. T. Fennwalter Association, for the Appellant; G.
Vasudevan, for the Respondent

Final Decision: Partly Allowed

Judgement

@JUDGMENTTAG-ORDER

K.K. Sasidharan, J.

This writ petition, at the instance of an unfortunate widow of a poor man, who was electrocuted on 14.04.2011, seeks a writ of mandamus directing the Tamil Nadu Generation of Energy and Distribution Corporation (TANGEDCO), to pay her compensation.

BRIEF FACTS:

The petitioner along with her husband and two children resided at 338, Karamani Medu Village, Natham Panchayat, Gummudipoondi. While so, on 14.04.2011, at about 4.45 p.m., a high voltage wire broke and came into contact with another wire. The husband of the petitioner died instantaneously by electrocution. Similarly so many others were also injured. The house hold articles like television, fan and other electrical items were also damaged. The death was reported to the Arambakkam Police Station and a crime was registered.

2. The petitioner lost the breadwinner of the family on account of electrocution. According to the petitioner, it was only on account of the negligence of the respondent, the incident took place and as such, the TANGEDCO is liable to give her compensation. The deceased was working as a coolie and he was survived by the petitioner and two minor children. The petitioner therefore wanted the respondent to pay a sum of Rs. 5,00,000/- by way of compensation with interest.

3. The respondent filed a counter affidavit contending that the accident happened inside the house and as such they are not liable to pay compensation. According to the respondent, the enquiry revealed that one Radhakrishnan, the adjacent land owner, was trying to tap electricity illegally for his bore well and in that process, the line got short circuited and twisted causing high voltage in the area and resulted in the failure of distribution transformer and structure fault. The deceased made an attempt to remove the broken fuse carrier at his premises and as a result, he came into contact with the live part of the carrier and sustained electrical shock. The respondent further contended that only three persons injured in the said incident in addition to the deceased.

4. I have heard the learned counsel for the petitioner and the learned counsel for the respondent.

DISCUSSION:

5. There is no dispute that Palani, husband of the petitioner, was electrocuted on 14.04.2011. The police registered a case in Crime No. 118 of 2011 on the file of Arambakkam Police Station. The petitioner, in the affidavit filed in support of the writ petition, indicated the manner in which the incident happened. The respondent has come up with a defence that the adjacent land owner made an attempt to tap supply illegally for his bore well and that was the cause for the incident.

6. The incident is therefore very clearly admitted by the respondent. The respondent has taken up a defence in support of its contention that TANGEDCO is not liable for compensation.

7. The respondent, being the licensee, should take all precautionary measures taking into account the element of danger. The Board has to maintain the live wire and other electrical systems used for the purpose of providing electricity. The reason given by the respondent to avoid liability is far from convincing. There are no records produced by TANGEDCO before this Court to show as to how they arrived at a conclusion that Radhakrishnan, the adjacent agricultural land owner, made an attempt to tap supply illegally and in that process, the LT line got short circuited and twisted. These are all clearly an afterthought made with a view to avoid payment of compensation. The Board, being the supplier, should have taken all necessary measures to curtail illegal tapping of electricity. The counter affidavit is silent as to how such illegal tapping of electricity would automatically lead to short circuit and twisting causing high voltage. These are all technical matters which can be

answered only by the respondent. The respondent miserably failed to prove the defence.

8. The concept of strict liability in the context of snap electrocution came up for consideration before the Supreme Court in [Madhya Pradesh Electricity Board Vs. Shail Kumari and Others](#), . The Supreme Court interpreted the rule of strict liability and directed the Electricity Board to pay compensation to the dependents of the deceased, after arriving at a finding that the live wire got snapped and fell on the public road which was partially inundated and the deceased rod over the wire, which twitched and snatched him resulting in his instantaneous electrocution. The Supreme Court indicated the theory of foreseeable risk in the following words:

7. It is an admitted fact that the responsibility to supply electric energy in the particular locality was statutorily conferred on the Board. If the energy so transmitted causes injury or death of a human being, who gets unknowingly trapped into it the primary liability to compensate the sufferer is that of the supplier of the electric energy. So long as the voltage of electricity transmitted through the wires is potentially of dangerous dimension the managers of its supply have the added duty to take all safety measures to prevent escape of such energy or to see that the wire snapped would not remain live on the road as users of such road would be under peril. It is no defence on the part of the management of the Board that somebody committed mischief by siphoning such energy to his private property and that the electrocution was from such diverted line. It is the lookout of the managers of the supply system to prevent such pilferage by installing necessary devices. At any rate, if any live wire got snapped and fell on the public road the electric current thereon should automatically have been disrupted. Authorities manning such dangerous commodities have extra duty to chalk out measures to prevent such mishaps.

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 case on such person is known, in law, as "strict liability". It differs from the liability which arises on account of the negligence or fault in this way i.e. the concept of 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.

9. The petitioner in a matter of this nature cannot be expected to give details as to how the incident happened. In case, death on account of electrocution is reported,

the responsibility is on the respondent to explain as to how the accident actually happened. Mere statement in the counter affidavit would not serve the purpose. The available materials are sufficient to arrive at a conclusion that it was only on account of negligence of the respondent, the husband of the petitioner was electrocuted. Therefore, the respondent is liable to pay compensation to the petitioner.

QUANTUM:

10. The computation and quantification of compensation in a matter of this nature is a difficult process. The precious and valuable life of a human being cannot easily be computed in terms of money. The wife in this case lost the pillar of support. The children lost their affectionate father once for all. Any amount of compensation would not be sufficient to compensate the loss of the legal representatives.

12. The deceased was originally working as an operator in Madras Lamps (P) Limited till the closure. He was receiving a salary of Rs. 6,235/- per month. It was only after the closure of the factory, the deceased began his carrier as a coolie. Since the deceased was a qualified mechanic, he would have earned a minimum sum of Rs. 6,000/- per month. The annual income can be fixed at Rs. 72,000/-. The deceased was aged 36. The deceased would have spent 1/3rd of his income for his personal expenses. Therefore, the total income would be a sum of Rs. 48,000/-. In case, it is multiplied by 15 in accordance with the second schedule to the Motor Vehicles Act, the total amount would be a sum of Rs. 7,20,000/-.

12. The respondent is directed to pay a sum of Rs. 7,20,000/- towards compensation to the petitioner with interest at 9% from 14 April 2011. The petitioner should be given a sum of Rs. 4,00,000/- with interest and the remaining amount should be deposited in a nationalised Bank at Goomidipoondi in the name of minor daughters of the petitioner equally (two fixed deposits for a sum of Rs. 1,60,000/- each) for a period of three years, with direction to renew till the minors attain majority. The payment should be made on or before 31.01.2014. The writ petition is allowed to the extent indicated above. No costs.