

Before Satish Kumar Mittal and Augustine George Masih, JJ.

PARAMJIT KAUR AND OTHERS,—Petitioners

versus

STATE OF PUNJAB AND OTHERS,—Respondents

C.W.P. No. 841 of 2008

20th August, 2008

Constitution of India, 1950—Art. 226—Death due to electrocution—Claim for compensation—Post mortem report corroborating and substantiating death due to electric current—No dispute with regard to place of occurrence—No dense guarding wire below high tension wire which was crossing road—Clear case of negligence, incompetent workmanship and supervision on part of Board and its officials—Petitioners held entitled to compensation.

Held, that the Punjab State Electricity Board being a statutory Authority under the Electricity Act 1910 read with the Electricity Supply Act, 1948, has the sole authority and due to transmit electricity and regulate its supply. It has its own officials to install and maintain its transmission and supply equipment and systems. It is expected of the Board to do whatever is required to be done to avoid an accident irrespective of the mandate of the statute. Its negligence whether attributable to some action or inaction on the part of its employees or its policies cannot be equated with the negligence of an individual or a situational negligence. There is thus a presumption of negligence when an accident of this nature, as in this case, occurs. Had there been dense guarding under the high tension wire it would not have fallen on the road resulting in death of Lajja Ram, the sole earning hand of the petitioner, who provided them with all the resources for their livelihood. The minimum caution required of the Board is missing.

(Para 12)

Further held, that this is a clear case of negligence, incompetent workmanship and supervision on the part of the Board and its

officials, which has resulted in the untimely sudden death of Shri Lajja Ram.

(Para 15)

Further held, that since there is nothing in the Acts governing the transmission and supply of Electricity which regulates the grant of quantum of compensation, the well settled and accepted principles adopted by the Courts for determination of compensation to be awarded in fatal accident cases under the Motor Vehicles Act, 1988 can be adopted, as the underlying principles for determination of the quantum of compensation are the same.

(Para 19)

J.S. Cooner, Advocate, *for the petitioners*.

Ms. Reeta Kohli, Addl. A.G Punjab, *for respondents No. 1 and 2*.

Sukhbir Singh Mattewal, Advocate, *for respondents No. 3 and 5*.

AUGUSTINE GEORGE MASIH, J.

(1) This is a case wherein one Sh. Lajja Ram aged 34 years was returning to his village from Chandigarh on his motor cycle after selling milk on the fateful day ie. 4th May, 2007 at about 10.30 P.M. on the road from Village Parol to Village Nangal. When he was some distance away from his village Chhoti-Bari Nangal a live electricity wire of 11 K.V., which was lying across the road came in contact with the motor cycle. Due to such high volt of electricity, the motor cycle got entangled resulting in death of Lajja Ram at the spot and the motor cycle damaged. Due to the electrical current, the body of the deceased was badly burnt. On hearing a noise, several villagers reached at the spot. Police also reached there and after getting the line disconnected, the body of the deceased was removed by the police and DDR No. 39 dated 5th May, 2007 was lodged at Police Station Mullanpur. Post-mortem was conducted on the deceased on 5th May, 2007 and the opinion of the doctor regarding cause of death is as follows :

“Opinion :—In my opinion death occurred due to cardio respiratory failure due to electric current. All injuries are

anti mortem in nature and sufficient to cause death in ordinary course of nature.

Probable time that elapsed :—

- (A) Between injury & death —Immediate
(B) Between death and —within 24 hrs.
post-mortem examination.

Dated 5th May, 2007.

Signature of Doctor,

Sd/- Dr. Harpeet
Place of posting
M.O.C.H., Kharar.”

(2) This petition has been filed by Smt. Paramjit Kaur, widow of Shri Lajja Ram, her three minor children, namely, Jaswinder Kaur, Parminder Singh, Parveen Kumar and Smt. Dropati, mother of deceased Shri Lajja Ram, praying for issuance of a writ of mandamus directing the respondents to pay compensation to the petitioners, who have lost their bread earner due to negligence of the Punjab State Electricity Board and its officials.

(3) It is stated that Shri Lajja Ram died on 4th May, 2007 due to electrocution when he came in contact with the live wire of 11 KV. Shri Lajja Ram deceased was a matriculate. By selling milk and running dairy as well as cultivating land of others on batai/theke, he was earning about Rs. 25,000/- per month. After the death of the deceased Shri Lajja Ram, the petitioners have been rendered moneyless with no earnings and their life has become miserable. They are finding difficult to make the ends meet. Their life has been ruined for no fault of theirs or that of Shri Lajja Ram deceased, due to negligence and ill maintenance of the electrical system by the Punjab State Electricity Board. The sole bread earner of their family has been killed. They have prayed for grant of compensation so that they are able to survive and live a life with reasonable dignity.

(4) It has been pleaded that they had served legal notice dated 31st July, 2007 on the respondent-Board for grant of compensation of

Rs. 25 lacs on account of death of Shri Lajja Ram but no response has been received from their side. Left with no hope, they have approached this Court.

(5) State of Punjab has filed reply to the writ petition through its Deputy Commissioner, S.A.S. Nagar (Mohali)—respondent No. 2 wherein it has been stated that the Punjab State Electricity Board is solely responsible for maintenance and supply of electricity throughout the State of Punjab. It is also stated that Punjab State Electricity Board is a specialized body dealing with supply of electricity independently and exclusively in the State of Punjab. The petitioners are entitled to compensation but respondent No. 2 is not the competent authority to grant compensation to the petitioners.

(6) Respondents No. 3 to 5 have filed reply to the writ petition through the Senior Executive Engineer, Operation and Distribution Division, Punjab State Electricity Board, S.A.S. Nagar (Mohali). It has been admitted that the petitioners are the legal heirs of Lajja Ram deceased. However, it has been denied that Shri Lajja Ram died by coming in contact with the five electric wire as it is pleaded that there should have been tripping at 66 KV Sub-Station, Mullanpur Garibdas from where the supply of electricity to this line was regulated. As per the record available at the sub station, there was no tripping at the relevant time, which shows that the said incident had not taken place. The registration of the DDR No. 39 dated 5th May, 2007 at Police Station, Mullanpur is admitted.

(7) Para-5 of the written statement filed by the Punjab State Electricity Board needs reproduction in this order, which would put forth the stand of the Electricity Board. The same reads as under :—

“5. That the contents of this para are wrong and denied. It is denied that the death of deceased has occurred due to negligence on the part of the answering respondent. It is submitted that a message was received form the Sarpanch of village Chhoti Bari Nangal that an electricity wire was broken and due to this a person namely Lajja Ram had died, therefore, the supply of electricity be stopped. Thereafter,

the supply of the electricity was stopped to Mullanpur feeder. In the morning, the spot was inspected and it was found that wire was broken due to puncture of Top Pin Insulation from the pole No. MP-227 due to heat and the wire winding was burnt from the said spot. The wire fell down and was lying near the sarkanda on the other side of the road. Though initially it came to the notice that the milk drum has come in contact with the wire and the accident took place. But after the record of sub-station was checked and found that there was no tripping at the relevant time so it was concluded that the accident might not have been taken place on coming into contact with the wire. On representation of the petitioner, the clarification was sent by the Superintending Engineer to the Deputy Chief Engineer, Operation Circle, Punjab State Electricity Board, Mohali,— *vide* memo date 9th May, 2007. A copy of the same is annexed as Annexure R-1 to this petition, which shows that there is no tripping at the time of incident. A copy of the letter written by Senior Executive Engineer, to the Superintending Engineer, Operation Circle Rupnagar is annexed as Annexure R-2 to this petition. Even Pritam Singh, the father of the deceased, in his representation/complaint filed with the police, has stated that the wire was broken due to natural affect and there is no fault of anyone in the alleged incident. A copy of the statement of Pritam Singh, on the basis of which DDR is registered in Police Station, Mullanpur, is annexed as Annexure R-3 to this writ petition. The wire was broken due to puncture in top pin of insulator due to high temperature in the month of June, which is beyond control of the answering respondent and is a natural affect. Rather, the deceased might be negligent while driving as he did not see the wire on the side of the road.”

(8) In reply to para-10 of the petition, the Board has admitted that the 11 K.V. line was passing through the three meter road. It has been further pleaded in reply to para-11 that the matter was brought to the notice of the Chief Electrical Inspector, Punjab, who gave the

report to the effect that there was no dense guarding under the wire and the time of occurrence was 01.03 a.m. dated 5th May, 2007, which is contrary to the stand of the petitioners regarding the occurrence. The respondent-Board is denying any negligence on its part but is stating that the wire was broken due to puncture of top pin insulator from the pole No. MP-227 due to heat and the wire winding was burnt from the said spot.

(9) From the pleadings of the parties, the facts, which come to light are, the 11 K.V. wire was broken. The same was lying across the road. The deceased-Lajja Ram died of electrocution. The report of Chief Electrical Inspector, Punjab proves that accident did take place on the fateful night. The only difference is of time that too of just two and a half hours as the petitioners claim the time of accident as 10.30 P.M. on 4th May, 2007 whereas the report says it to be 1.03 A.M. on 5th May, 2007 but that does not make any difference. The identity of the petitioner is also not disputed. The factum of petitioners being legal heirs of deceased Lajja Ram is admitted. The place of occurrence is admitted. The only stand of the respondents is that there was no negligence on their part, which would make them liable for payment of compensation.

(10) We have heard the counsel for the parties and have gone through the records of the writ petition with their assistance. Undisputedly, the person has died due to electrocution, which fact is corroborated and substantiated by the post-mortem report reproduced hereinabove. The occurrence is also not disputed in the light of the fact that the wire was lying across the road, the motor cycle and body of the deceased was lying next the electricity wire, the report of the Chief Electrical Inspector, Punjab, also accepts the occurrence, however, the time is disputed, which as discussed above hardly makes a difference. The only aspect which needs to be looked into, therefore is, whether Punjab State Electricity Board had taken due precaution and care while maintaining the equipment and whether there was any negligence on the part of the Board in maintaining its wiring system, spot equipment and other systems at the sub-station for proper supply of electricity.

(11) The reply filed by respondent No. 1 and 2 (State of Punjab) categorically and clearly states that the Board is solely responsible for maintenance and supply of electricity throughout the State of Punjab. It is a specialized body dealing with supply of electricity independently and exclusively in the State of Punjab. This aspect has not been denied nor can the Board deny since it is a statutory authority under the Electricity Act. What the Board in its reply pleads is that they are maintaining a system of tripping in case, there is any short circuit in the system. The pleadings as discussed above show beyond doubt that when the accident occurred, the system of tripping installed at the sub-station Mullanpur Garibdas did not function resulting in the death of a person. The electricity supply was only disconnected from the sub-station, when the Sarpanch of village Chhotti Bari Nangal informed them that an electricity wire has broken and due to this, a person, namely, Lajja Ram has died. These facts have come in reply to para-5 by the respondent-Board reproduced hereinabove. It has been admitted that the wire was broken due to puncture of top pin insulator from the pole No. MP-227 due to heat and burning of wire winding from the said spot. This clearly shows lack of skill and competence on the part of the staff of the Electricity Board. It further shows the lack of supervision by the officials of the Board. The report of the Chief Electrical Inspector, Punjab, an independent statutory authority under the Electricity Act, proves that there was no dense guarding under the high tension wire which was crossing the road at that spot. This leads to the conclusion that when such high voltage wire was crossing the road, there was no guard wire below the live wire, which is mandated as per the instructions of the Electricity Board. It is sheer negligence on the part of the Board. The Board is required to take into consideration all contingencies, which may arise due to natural or other reasons and, therefore, protective measures are required to be taken so that no harm is caused to anyone.

(12) The Punjab State Electricity Board being a statutory Authority under the Electricity Act, 1910 read with the Electricity Supply Act, 1948, has the sole authority and duty to transmit electricity and regulate its supply. It has its own officials to install and maintain its transmission and supply equipment and systems. It is expected of the Board to do whatever is required to be done to avoid an accident

irrespective of the mandate of the statute. Its negligence whether attributable to some action or inaction on the part of its employees or its policies cannot be equated with the negligence of an individual or a situational negligence. There is thus a presumption of negligence when an accident of this nature, as in this case, occurs. Had there been dense guarding under the high tension wire it would not have fallen on the road resulting in death of Lajja Ram, the sole earning hand of the petitioners, who provided them with all the resources for their livelihood. The minimum caution required of the Board is missing. It is the settled principle of law that where loss is caused due to negligence or inaction on the part of the authority, which is fully responsible to take care and caution, they cannot shirk responsibility.

(13) In this case, the minimum care and caution expected of a statutory Body is totally absent, which resulted in the death of a young man, who had a family of five to support. The innocent lives of these five dependents have been ruined because of the negligence and carelessness on the part of the Board. The Board cannot, therefore, run away from the responsibility and liability for its negligence.

(14) The Hon'ble Supreme Court in **M.P. Electricity Board versus Shail Kumari (1)**, has held that the Electricity Board is liable to pay compensation even in cases where there was no negligence on its part. The relevant extract of the judgment is reproduced herein :

“It is an admitted fact that the responsibility to supply electric energy in the particular locality was statutory 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 to his private property and that the electrocution was from such diverted line. It is the look out of the managers of the supply system to prevent such pilferage by installing necessary devices. At any rate, if any live wire got snapped

(1) 2002 (1) C.C.C. 685 (S.C.)

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.

7. 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 sub 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.”

(15) This is a clear case of negligence, incompetent workmanship and supervision on the part of the Board and its officials, which has resulted in the untimely and sudden death of Shri Lajja Ram.

(16) Counsel for the respondent-Board has relied upon a Division Bench Judgment of this Court in which one of us (Satish Kumar Mittal, J.) was a member titled as **Jogindro versus State of Haryana and others (2)**, to contend that the writ petition may not be entertained for grant of compensation as there are disputed questions of fact, which cannot be gone into by this Court in writ jurisdiction and the petitioners may be relegated to ordinary remedy of civil suit under the law of Torts. He contends that the negligence, if any of the Board cannot be taken as a sole criteria for grant of compensation.

(17) The judgment is not applicable to the case in hand as there were seriously disputed questions of facts involved with regard to the factum of death due to electrocution of the husband/son of the petitioners. It was pleaded that there was no negligence on the part of the Electricity Department as the electrical wires were broken because of the illegal act of cutting of the trees by the husband/son of the petitioners and the Electricity Department was in no way responsible for the death. Even by the enquiry conducted in the incident by the Chief Electrical Inspector to the Government of Haryana under the electricity Act, 2003, it was found that the deceased himself was responsible for the accident. The place of occurrence was also disputed as it was found that the son of the petitioner was electrocuted somewhere else with his own installations and subsequently the petitioners tried to create the record afterwards to get compensation. The Court had thus observed that there were disputed questions of fact.

(18) This goes to show that the Court had proceeded on the basis that there were disputed questions of fact with regard to the electrocution, the negligence, the place of accident, the contributory negligence of the deceased and illegal act of the deceased themselves. None of these questions arise in this case as held above. Therefore, no benefit can be extracted by the counsel for the respondents to state that this writ petition may not be entertained.

(19) Having held that this is a clear case of negligence, incompetent workmanship and supervision on the part of the Board and its officials, which has resulted in the untimely and sudden death of Shri Lajja Ram, we proceed to assess the amount of compensation to which the petitioners would be entitled to in the present case. Since there is nothing in the Acts governing the transmission and supply of Electricity which regulates the grant or quantum of compensation in our considered view the well settled and accepted principles adopted by the Courts for determination of compensation to be awarded in fatal accident cases under the Motor Vehicles Act, 1988 can be adopted, as the underlying principles for determination of the quantum of compensation are the same.

(20) It has been pleaded that the deceased Lajja Ram was earning Rs. 25,000/- per month. The respondents have simply denied this on the ground for want of knowledge but have neither disputed it

or asserted as to what the earnings were, especially when this is a petition for grant of compensation. A material fact having a direct bearing on the merits of the case, when not specifically denied, would be deemed to have been admitted by necessary implication. The photographs show that he was having two big metal drums of milk one each saddled on the side of the motor cycle and was also cultivating land on batai/theka.

(21) It is a well known and accepted fact that farmers engaged in the vocation of dairy farming and growing seasonal vegetables on the outskirts of Chandigarh are prosperous and earning reasonably well. The amount of milk he was selling daily (two big metal drums) in Chandigarh and using a motor cycle to ferry them to the city daily speak for itself. Even if we accept the statement of the counsel for the Board that the monthly income has been inflated to claim enhanced compensation and we reduce it to half this amount the monthly income comes to Rs. 12,500/- per month. We are of the considered view that he would not be earning less than Rs. 12,500/- per month as he was running a dairy and using a motor cycle to ferry milk to Chandigarh and was also cultivating land. If we take dependence of the family members to be half, keeping in view the fact that the deceased would be spending some amount on the petrol, maintenance and repair of the motor cycle and other personal expenses, the amount comes to Rs. 6250/- per month and annual dependance would be Rs. 75,000/-. Keeping in view the fact that the widow is a young lady with three minor children to support and an old mother-in-law to care for, we accept and hold this to be their dependence on the deceased per annum. Lajja Ram was 34 years of age when he died and by applying a multiplier of 15 by restricted scales, the compensation comes to Rs. 11,25,000/-.

(22) We allow this writ petition and direct the Punjab State Electricity Board to pay compensation of Rs. 11,25,000/- to the petitioners, who are the legal heirs of the deceased Lajja Ram. The amount be disbursed to the petitioners within six weeks from the receipt of copy of this order.

(23) Disposed of accordingly.

R.N.R.