

Chairman, Grid Corporation on Orissa Ltd. (Gridco) and Others

Vs

Sukamani Das (Smt) And Another

Civil Appeals No. 5074 of 1999

15.09.1999

JUDGMENT

G. T. NANAVATI, J. –

1. Leave granted. Heard learned counsel for the parties.

2. In this batch of 10 appeals the question which arises for consideration is whether the High Court was justified in exercising its power under Article 226 of the Constitution and awarding compensation to the writ petitioners even though the appellants - who were the respondents in the said writ petitions - had denied their liability on the ground that the deaths had not occurred as a result of their negligence, but because of an act of God or of acts of some other persons.

3. In view of the final order that we propose to pass it is not necessary to state the facts of all these cases. We shall, therefore, narrate the facts of only one case - the civil appeal arising out of SLP (C) No. 5909 of 1998. A writ petition being OJC No. 3351 of 1997 was filed by one Sukamani Das claiming to be the widow of Pratap Chandra Das of Village Odangi seeking compensation for the death of her husband due to electrocution. It was averred in the writ petition that on 4-8-1996 Pratap Chandra Das, while he was proceeding from his village to another place for marketing, decided to return to his village as dark clouds gathered in the sky and there were thunderbolts also. While he was returning it had started raining and when he was walking along the Gosipatna-Amara Road he came in contact with an electric wire which was lying across the road after getting snapped from the overhead electric line. It was further averred that the electric wire had snapped because of the negligence of GRIDCO and its officers (the appellants) in not properly maintaining the electricity transmission line and, therefore, they were liable to pay damages for their negligent act. In support of her claim the petitioner had produced a copy of the FIR, the inquest report and the postmortem notes. It was further stated that even though she had made representations to GRIDCO for payment of compensation it had disputed its liability and refused to pay any compensation. She claimed compensation of Rs. 3,00,000 for the death of her husband, as her husband was 53 years old when he died, was running a grocery shop and earning Rs. 3000 per month. In their counter-affidavit the appellants stated that because of the thunderbolt and lightning one of the conductors of the 12 W LT line had snapped even though proper guarding was provided. As soon as the information regarding the snapping of line was received from the line-helper residing at Village Amara the power was disconnected. The officers of the appellant had thereafter rushed to that spot and had noticed that one shackle insulator had broken due to lightning and the conductor had also snapped from that shackle insulator along with the guarding and the sub-station fuse had also blown out. It was further stated in their counter-affidavit that on enquiry the officers had learnt that Pratap Chandra Das had died due to lightning and not because he had come in contact with the snapped live wire. It was stated by way of defence that the 12 W LT line had snapped because of an act of God and not because of any negligence on the part of the appellant and its officers. Thus, the appellants had

denied the fact that Pratap Chandra Das had died as a result of coming in contact with the live electric wire and also raised a defence that even if Pratap Chandra Das had died as a result of coming into contact with the live electric wire it was a pure case of accident arising out of an act of God and his death was not because of any negligence on the part of the appellant and its officers in maintaining the transmission line. It was also contended before the High Court on behalf of the appellants that the writ petition was not a proper remedy as the facts stated by the writ petitioner were disputed by them and the dispute between the parties could not be decided without evidence being led by both the sides. The High Court, however, decided to proceed with the matter on its merits and awarded compensation of Rs. 1,00,000 for the following reasons :

"Patiently, we have considered the submissions made by the respective parties. On perusal of the record, police report and the post-mortem report our clear finding is that death of the deceased was due to coming in contact with a charged electric wire which was lying across the village path after being snapped off, without being attended to and thus the Grid Corporation was negligent. The petitioner is legally entitled to the compensation due to death of her husband. From the averments in the writ petition, which do not appear to be controverted, it transpires that the deceased was the only breadwinner of the family and he died leaving behind the petitioner. Regard being had to the social status including potentiality, dependency of the family and the quantum of compensation claimed we are of the view that a consolidated compensation of rupees one lakh will be the appropriate amount."

4. In the other writ petitions also compensation was claimed for the deaths alleging negligence on the part of the appellants. In those cases also the appellants had denied any negligence on their part and had pleaded that the electric lines concerned had snapped in spite of their taking proper care and because of circumstances beyond their control. In two cases it was specifically pleaded that it was because of the acts of unauthorised persons that the deaths had taken place. In one case a person had tried to hook the line for committing theft of electricity and in the other some persons had entered the sub-station after breaking open the lock and had switched on the power of that particular line. The High Court mainly relying on the fact that the deaths had taken place because of the electrocution held that negligence was thus proved and then granted compensation. In the civil appeal arising out of SLP (C) No. 19651 of 1998, another Division Bench of the High Court (P. C. Naik and P. K. Mohanty, JJ.), while appreciating that a writ petition is not a proper remedy in such cases and that an opportunity has to be given to the appellants to discharge their burden of proving that they had taken all precautionary measures in accordance with rules and that the death was not due to the sole negligence of the appellants, granted an interim relief of Rs. 30,000 and directed the writ petitioners to approach the civil court for establishing their case for compensation.

5. It was contended by the learned counsel for the appellants that it was highly improper on the part of the High Court to have entertained the writ petitions in view of the specific defences raised by the appellants and to arrive at the conclusion of negligence on the basis of the scanty material placed before the High Court by the writ petitioners and which was not subjected to cross-examination. He submitted that apart from establishing that the deaths had occurred because of electrocution it was also required to be established by the writ petitioners/claimants under what circumstances electrocution had taken place and that the deaths had taken place not because of any negligence of the deceased. He further submitted that it could not be said in these cases that the facts stated by the writ petitioners were disputed by the appellants just for the sake of disputing them and that there was no substance in the defence raised on behalf of the appellants. The learned counsel for the respondents, on the other hand, tried to support the judgments of the High Court for the reasons stated therein.

6. In our opinion, the High Court committed an error in entertaining the writ petitions even though they were not fit cases for exercising power under Article 226 of the Constitution. The High Court went wrong in proceeding on the basis that as the deaths had taken place because of electrocution as a result of the deceased coming into contact with snapped live wires of the electric transmission lines of the appellants, that "admittedly/prima facie amounted to negligence on the part of the appellants". The High Court failed to appreciate that all these cases were actions in tort and negligence was required to be established firstly by the claimants. The mere fact that the wire of the electric transmission line belonging to Appellant 1 had snapped and the deceased had come in contact with it and had died was not by itself sufficient for awarding compensation. It also required to be examined whether the wire had snapped as a result of any negligence of the appellants and under which circumstances the deceased had come in contact with the wire. In view of the specific defences raised by the appellants in each of these cases they deserved an opportunity to prove that proper care and precautions were taken in maintaining the transmission lines and yet the wires had snapped because of circumstances beyond their control or unauthorised intervention of third parties or that the deceased had not died in the manner stated by the petitioners. These questions could not have been decided properly on the basis of affidavits only. It is the settled legal position that where disputed questions of facts are involved a petition under Article 226 of the Constitution is not a proper remedy. The High Court has not and could not have held that the disputes in these cases were raised for the sake of raising them and that there was no substance therein. The High Court should have directed the writ petitioners to approach the civil court as it was done in OJC No. 5229 of 1995.

7. Reliance placed by the learned counsel for the respondents on the decision of this Court in *Shakuntala Devi v. Delhi Electric Supply undertaking* ((1995) 2 SCC 369) is really of no avail to the respondents. Even while entertaining a writ petition under Article 32 of the Constitution, in view of the peculiar facts of that case, this Court observed in clear terms (at SCC p. 370, para 5) that "the question of negligence of officials of Respondent 1 can be properly examined in a suit where correct facts can be established". In that case, Respondent 1 was directed to make payment of a reasonable amount *ex gratia* in exercise of the power under Article 142 of the Constitution and that too because Respondent 1 had agreed to that course being adopted. The power which is available to this Court under Article 142 is not available to the High Courts, as observed by this Court in *Sanchalakshri v. Vijayakumar Raghuvirprasad Mehta* ((1998) 8 SCC 245 : JT (1998) 8 SC 55).

8. As the High Court did not exercise its power under Article 226 of the Constitution without properly appreciating the nature of its jurisdiction, the impugned judgments deserve to be set aside. However, in view of the fair stand taken by the appellants that these appeals have been filed as test cases only and in view of the long lapse of time they will not recover the amounts already paid to the respondents, we do not think it necessary to set aside the impugned judgments because that may again expose the appellants to actions in civil courts by the persons claiming to be the heirs and legal representatives of the deceased. With the observations made above, we dismiss all these appeals.