

SUPREME COURT OF INDIA

H. S. E. B.

Vs.

Ram Nath

C.A.No.5577 of 1998

(H. K. Sema and S. N. Variava JJ.)

27.04.2004

ORDER

1. This appeal is against the judgment of the High Court dated 11-12-1997. It appears that a five-year-old child died as a result of coming into contact with a high-tension wire which passed over the roof of her house. The parents, therefore, filed a writ petition claiming compensation against the appellants. The High Court applying the principle of *res ipsa loquitur* directed payment of Rs. 1 lakh as compensation.

2. Reliance is placed upon the case of Chairman, Grid Corpn. of Orissa Ltd. (GRIDCO) v. Sukamani Das () wherein a person walking along the road came in contact with a live wire which was lying on the road after having got snapped from the overhead electric line. The writ petition was filed claiming compensation. The High Court directed payment of compensation. However, this Court held that disputed questions of fact arose and that a writ petition was not a proper remedy. On the basis of this authority, it is urged that even in this case disputed questions of fact arose and that, therefore, the High Court should not have entertained the writ petition.

3. In order to consider this submission, one has to look at the averments made in the petition and the reply to those averments. In para (2) of the petition it is stated as follows:

"(2) That the petitioners are residing in their house in Sakti Nagar Colony near Kabri Railway Crossing for over 15 years and a HT line is passing over the house of the petitioners at a much lower height than that prescribed under the Rules. The said line has become quite loose and drooping and touching the roof of the house of the petitioners for the last about two years. The petitioners as well as other inhabitants of the aforesaid colony have been requesting Respondents 3 and 4 to tighten the said HT line for the last about two years repeatedly in writing and verbally by calling on them in their respective offices but they did not bother for the same."

4. In the written statement there is no denial to these averments. All that is claimed is that the entire colony was an unauthorised colony and that unauthorisedly the height of the houses

had been raised. It is claimed that the wires were at the prescribed height of 20 feet from the ground level and that the height of the wire was as per the standard prescribed under the Rules.

5. It is submitted that these averments would show that there was a disputed question of fact as to whether or not the wires were touching the roof. We are unable to accept this submission. To the categorical averments set out hereinabove that the wires had become loose and were drooping and touching the roof of the houses, there is no denial. To the categorical averments that complaints had been made, both in writing and orally, requesting that the wires had to be tightened, there is no denial. A mere vague statement to the effect that the height was as per the prescribed limit does not detract from the fact that there is a deemed admission that the wires were drooping and touching the roofs.

6. The appellants are carrying on a business which is inherently dangerous. If a person were to come into contact with a high-tension wire, he is bound to receive serious injury and/or die. As they are carrying on a business which is inherently dangerous, the appellants would have to ensure that no injury results from their activities. If they find that unauthorised constructions have been put up close to their wires it is their duty to ensure that that construction is got demolished by moving the appropriate authorities and if necessary, by moving a court of law. Otherwise, they would take the consequences of their inaction. If there are complaints that these wires are drooping and almost touching houses, they have to ensure that the required distance is kept between the houses and the wires, even though the houses be unauthorised. In this case we do not find any disputed question of fact.

7. As the child has come in contact with a live wire and has succumbed to her injuries, in our view, the compensation of Rs. 1 lakh awarded by the High Court cannot be said to be unreasonable. We see no reason to interfere. The civil appeal is dismissed.