

W.A.(MD).No.938 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 29.01.2024

CORAM

**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
AND
THE HON'BLE MR.JUSTICE C.KUMARAPPAN**

W.A.(MD).No.938 of 2016

1.The Tamil Nadu Electricity Board,
Represented by its Chairman,
Annasalai,
Chennai – 600 002.

2.The Superintending Engineer,
Tamil Nadu Electricity Board,
Nagercoil,
Kanyakumari District.

3.The Junior Engineer (Distribution),
Tamil Nadu Electricity Board,
Kaliyakkavilai,
Kanyakumari District.

.. Appellants/Respondents

Vs.

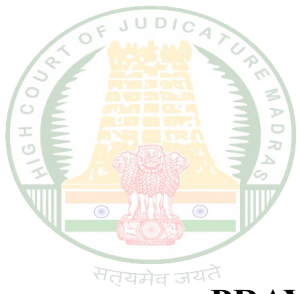
1.Zainulabdeen @ Jayanuladeen

2.Rehmath Beevi

.. Respondents 1 & 2/Petitioners

3.The State of Tamil Nadu,
Represented by its Secretary,
Department of Electricity,
Fort St.George,
Chennai – 600 009.

.. 3rd Respondent/1st Respondent



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PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, praying to set aside the order dated 16.12.2014 passed in W.P.(MD).No.10140 of 2008.

For Appellants : Mr.S.Deenadhayalan

For R-1 & R-2 : Mr.K.N.Thampi

For R-3 : Mr.D.Sachikumar
Additional Government Pleader

JUDGMENT

DR.G.JAYACHANDRAN,J.
and
C.KUMARAPPAN,J.

The present Writ Appeal is filed by the Tamil Nadu Electricity Board being aggrieved by the order passed by the learned Single Judge in W.P. (MD).No.10140 of 2008 dated 16.12.2014, wherein, the writ petitioners sought for compensation for the death of their son due to electrocution.

2. According to the writ petitioners, on 31.10.2002, when their son, Syed Mohammed and Najimudeen, both 18 years old, leaders and office bearers of actor Ajith Fans Association, while trying to fix a tin sheet in the second floor of the building owned by Abdul, they got in contact with

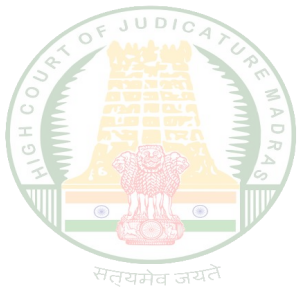


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hanging live electrical wire and died due to electrocution. Thereafter, FIR was registered narrating the manner in which the accident took place by the Inspector of Police, Kaliyakkavilai Police Station in Crime No.567 of 2002 under Section 174 Cr.P.C.

3. A Writ Petition was filed by the parents of the deceased Syed Mohammed seeking compensation of Rs.5,00,000/- for the accidental death of their son, alleging that due to improper maintenance of the electrical line, the incident has occurred and therefore, the Tamil Nadu Electricity Board is liable to pay compensation.

4. The learned Single Judge, after referring to the judgments of the Hon'ble Supreme Court and the High Court, held that in his considered view, the writ petitioners must be compensated for the accidental death of their son, Syed Mohammed and by taking into account the age and notional income of the deceased, had fixed a sum of Rs.3,50,000/- as compensation to be paid within a period of four weeks from the date of receipt of a copy of that order. The said compensation was apportioned between the petitioners in the ratio of Rs.2,00,000/- and Rs.1,50,000/- respectively.



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5. Being aggrieved, the Tamil Nadu Electricity Board has preferred the Writ Appeal on the ground that the principle of strict liability will not apply to the present case and the dictum in Rylands Vs. Fletcher case has been wrongly applied by the learned Single Judge. According to the learned counsel appearing for the appellants, the deceased Syed Mohammed has invited the accident and the writ petitioners had not proved any negligence on the part of the Tamil Nadu Electricity Board in respect of maintaining the electrical line. The learned counsel further submitted that exercise of Article 226 of the Constitution of India in case of awarding compensation for negligence is contrary to the law settled by this Court, particularly in the judgment rendered in the case of ***SDO, Grid Corporation of Orissa Ltd., and others Vs. Timudu Oram reported in (2005) 6 SCC 156.***

6. The learned counsel appearing for the writ petitioners/respondents 1 and 2, at the outset, submitted that he could not get instructions from his clients. The letter sent by him to the first respondent returned with an endorsement 'died' and the letter sent to the second respondent, though received, there is no instructions so far from the second respondent. However, the learned counsel vehemently argued in support of the order

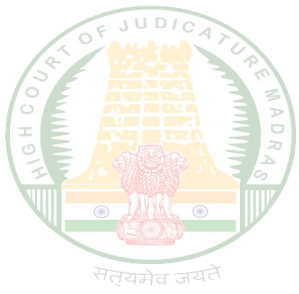


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passed by the learned Single Judge stating that the appellants have a statutory duty to maintain the hazardous electrical line and ought to have fixed it properly. He further submitted that the allegation of the writ petitioners that live wire was hanging unattended was the cause for the accident, is not disputed by the Electricity Board.

7. The learned counsel relied upon the judgment of the Hon'ble Supreme Court in the case of ***M.P. Electricity Board Vs. Shail Kumari and others reported in (2002) 2 SCC 162***, particularly, paragraph 8, which reads as follows:

“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 cast 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



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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.”

Further, the learned counsel, relying upon the judgment rendered in the case of ***Naseem Bano (Smt) Vs. State of U.P. and others reported in 1993 Supp (4) SCC 46***, wherein, the Hon'ble Supreme Court has held that the non-denial of the allegation is deemed to be admission of the fact, contended that the allegation of ill maintenance of the live wire, which is hazardous to the life of the general public, has been taken note by the learned Single Judge and therefore, the order of the learned Single Judge has to be sustained.

8. Heard the learned counsels and had the advantage of the dictum laid by the Hon'ble Supreme Court and the High Court, which have been referred extensively by the learned counsels.

9. No doubt, live electrical wire, if not maintained properly, will endanger the life of general public. There is a statutory duty on the part of the Electricity Board to maintain the live line properly and the principle of

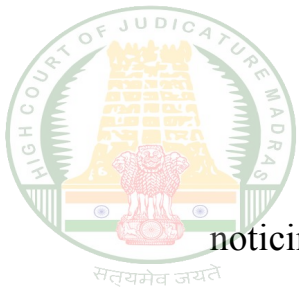


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strict liability would undoubtedly apply in case of electrocution. However, it is not a matter of presumption, there must be material to show that there was electrocution by negligence on the part of the Electricity Board to maintain the live wire. In the present case, the FIR is the contemporaneous document, which came to be registered soon after the incident. A perusal of the FIR would clearly show that on 31.10.2002, at about 9.30 PM in the night, the deceased along with his friend has carried a tin sheet to the second floor of the building owned by Abdul to fix a flex board to celebrate the film release of his favourite actor. The tin board has contacted the live wire causing electrocution and death.

10. Can Electricity Board be held responsible for this act of voluntary injury sustained by the deceased Syed Mohammed? Mere omission to deny that the live wire was hanging can be a reason to fix liability on the Electricity Board to pay compensation. However, this Court firmly views that it cannot. Electricity Board, which provides power supply to the public, is carrying on a public service and diligence should be shown what a prudent man can expect. If somebody climbs two floors, carry a tin sheet, which is an electrical conductor and touches a live wire in the night not



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noticing the passing of electricity line, can Electricity Board be fixed responsibility for this act of gross negligence and injury sustained voluntarily? By exercising power under Article 226 of the Constitution of India, this Court cannot show misplaced sympathy and cause loss to the exchequer.

11. Therefore, this Court on facts as well as on law holds that the dictum laid down by the Hon'ble Supreme Court in the case of ***Tamil Nadu Electricity Board Vs. Sumathi and others reported in (2000) 4 SCC 543***, relying upon the earlier judgment of the Hon'ble Supreme Court rendered in the case of ***Chairman, Grid Corporation of Orissa Ltd. (Gridco) and others Vs. Sukamani Das (smt) and another reported in (1999) 7 SCC 298***, applies to the facts of the present case. For the disputed fact, Article 226 of the Constitution of India cannot be invoked without testing the facts by proper trial.

12. However, in this case, we find that nearly 22 years have lapsed from the date of occurrence. One of the writ petitioners, i.e., the father of the deceased Syed Mohammed, is no more and the mother of the deceased



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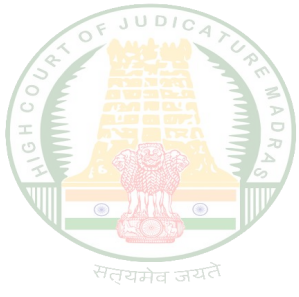
has also gone out of contact. The Electricity Board has already paid one lakh each to the writ petitioners by way of cheque dated 04.07.2016 and the same has been encashed by them. Therefore, without disturbing the money already paid to the writ petitioners, the Writ Appeal stands allowed. There shall be no order as to costs.

(G.J.,J.) (C.K.,J.)
29.01.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
Lm

To

The Secretary,
The State of Tamil Nadu,
Department of Electricity,
Fort St.George,
Chennai – 600 009.



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