

ORISSA HIGH COURT : C U T T A C K

W.P.(C) NO.23491 OF 2010

*An application under Articles 226 & 227 of
the Constitution of India.*

Soli @ Sulachana Jena & anr.

: Petitioners

-Versus-

***Chief Executive Officer,
NESCO(Electrical), Balasore & anr.***

: Opposite Parties

For Petitioners : Mr.D.C.Swain, Adv.

For O.Ps. : Mr.P.K.Mohanty, Sr.Adv.

J U D G M E N T

CORAM :

★ JUSTICE BISWANATH RATH ★

Date of Hearing & Judgment : 03.01.2023

1. The Writ Petition involves the following prayer :-

“It is therefore prayed that your Lordships would be graciously pleased to admit this writ application and issue RULE NISI calling upon the Opposite Parties to show cause as to why the petitioners shall not be awarded compensation of Rs.3,00,000/- (Rupees three lakh) only immediately as claimed by them.

And if the Opposite Parties do not show cause or show insufficient cause, then issue a writ of Mandamus thereby directing the Opposite Parties to pay a sum of Rs.3,00,000/- (Rupees three lakh) only as compensation to the petitioners within a stipulated period.

And further direct the Opposite Parties to pay the interest @ 12% per annum from the date of accident till the date of payment and litigation expenses to the petitioners....”

2. Background involving the case is on 10.6.2001 during morning hour deceased, a poor man while cutting bamboo Kanis and its branches in order to repair his thatched house, he came in contact with the live electric line, which was in hanging position at lower level. Coming in contact, the deceased died instantly. F.I.R. being lodged, a case was registered, vide U.D.Case No.8 of 2001 corresponding to U.D.G.R. Case No.134 of 2001, vide Annexure-1. Police took up investigation. After completion of inquest process, the dead body was sent to the District Hospital, Jajpur for post-mortem. Final report was prepared indicating cause of death due to asphyxia caused by coming in contact with live electric wire otherwise suffered on account of electric shock. Document to this extent was filed, vide Annexure-2 & 3. On the premises that the deceased was strong and stout and middle aged man and was earning about Rs.4000/- per month from his agricultural land and Bhaga Chasi and seasonal business and through breeding domestic animals like cows and goats also involving sale of milk. His family members, such wife and son approached several times to the Department for appropriate compensation and finding no respite compelled to file the present Writ Petition ultimately in 2010.

3. The Writ Petition was entertained in 2011, undisputedly, disclosing pendency of a representation with the Electric Department involved herein, vide Annexure-4 series. In spite of notice, there is no counter as of now. However, on the basis of pleading and documents herein, the claim of the Petitioners being objected by Mr.Mohanty, learned counsel for the Establishment in charge presently on the premises that there has been no establishment of allegation that the deceased has died coming in contact of live electric wire belonging to the Department.

4. Keeping in view the claim and counter claim, this Court taking into account the F.I.R. finds, the F.I.R. has a clear allegation of death coming in contact with the live electric wire hanging at a lower level. The inquest report as well as post-mortem report reveals the reason of coming in contact with the electric wire and death out of electric shock. This Court finds, a representation was also filed by the Claimants requesting for grant of appropriate compensation appended to as Annexure-4 series since 12.7.2001. There is no filing of counter. There is no denial of any of the averments by the Petitioners herein including submission of representation even. Further for there is involvement of an F.I.R., it is not possible that for the disclosures through F.I.R., the Department did not choose at least to investigate such death. Besides, both the inquest report and the post-mortem report also confirm the death of the deceased

coming in contact with the live wire of the Department undisputedly. The representation claiming compensation was filed in 2001. It is not expected that the Department shut down its eyes even after filing of Writ Petition forget if to take steps for minimal enquiry on a representation being filed at least to have a fact finding report. The Writ Petition was even filed in 2010. There is no response to the pleading herein even assuming there may be requirement of adjudication of the issue of likelihood of the Electricity Department for loss of time of 20 years in the meantime, it may remain futile in asking the Petitioners to go to the Civil Court at this stage.

5. At this stage, this Court finds, in similar situation, this Court in disposal of OJC No.15558/97 by judgment dated 14.11.2014 has come to allow the Writ Application of this nature. Case of the Petitioners also gets support of another decision of this Court in ***Bhagaban Rout & anr. vrs. Executive Engineer, CESCO, Salipur*** reported in 2023(I) OLR 188, which is decided based on number of judgments of the Hon'ble apex Court. In the process, this Court was pleased to grant compensation, as appropriate.

6. Keeping in view the position settled with the above judgment being the support of judgments of the Hon'ble apex Court, this Court finds, the Petitioners at great suffering end are entitled to compensation.

In the process, taking into consideration the age of the deceased, the position of both the Claimants, Petitioner No.1 losing her husband at the age of 37 years and keeping in view the age of her son being 15 years at the time of death of the deceased though there is no proof of income of the deceased except a bald statement that the deceased was earning Rs.4000/- at the relevant point of time, this Court directs, at least a sum of Rs.2,00,000/- (rupees two lakh) be paid to the Claimants to mitigate the loss on account of suffering for all these years on account of the death of the deceased, the sole Earner. The amount, as directed, be released by the Company taking over NESCO, i.e., Tata Power Northern Odisha Distribution Ltd., as undertaken, within a period of one and half months from the date of communication of this judgment, failing which the Petitioners will be entitled to interest @ 7% per annum from the date of death of the deceased.

7. The Writ Petition succeeds. No cost.

(Biswanath Rath)
Judge

Orissa High Court, Cuttack.
The 3rd January, 2023/M.K.Rout, A.R.-cum-Sr.Secy.