

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Reserved on: 10.11.2022
Pronounced on: 25.11.2022

OWP No.16692014

MST. MALA BEGUM

... PETITIONER(S)

*Through: - Mr. M. A. Wani, Advocate, with
Mr. Z. A. Wani, Advocate.*

Vs.

STATE OF J&K & OTHERS

...RESPONDENT(S)

Through: - Mr. Asif Maqbool, Dy. AG.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) The petitioner has filed the instant petition seeking a direction upon the respondents for providing compensation to her for the permanent disability caused to her due to electrocution. A further direction has been sought upon the respondents to appoint son of the petitioner on compassionate grounds and to regularize services of husband of the petitioner

2) It is averred by the petitioner that she is a house wife and on 25th August, 2011, while she was working in the field cultivating vegetables, 33000 kv power transmission

line fell down, as a result of which she received severe burns and injuries. FIR No.216/2011 for offence under Section 285/337 PC came to be registered against the officials of the respondent Department with Police Station, Parimpora. The petitioner was shifted to hospital where she was diagnosed as high voltage electric burns case and she remained in the hospital for more than three months. She was discharged from SKIMS, Srinagar on 02.11.2011. It has been submitted that on account of burns suffered by the petitioner due to electrocution, both the legs of the petitioner below the knees were amputated.

3) The petitioner is stated to have suffered 100% disability and in this regard she has placed on record a copy of the certificate issued by the Medical Board. It has been submitted that the petitioner has to bear the expenses of Rs.1,85,250/ for installation of artificial limbs. It is averred that on account of disability suffered by the petitioner, she is unable to perform any job and that she needs help of an attendant for attending to day-to-day chores. It has been submitted that the petitioner has spent more than Rs.15.00 lacs on her treatment. The petitioner further submitted that she has been paid only an amount of Rs.1.00 lacs as exgratia relief but the respondents have not acceded to her request for engaging her husband as a

permanent employee. According to the petitioner, she was 38 years old at the time of the accident and that because of negligence of the respondents, she has been crippled for whole of her life. On the basis of these assertions, the petitioner has sought compensation of Rs.50.00 lacs from the respondents.

3) The writ petition has been resisted by the respondents by filing a reply thereto. In their reply, the respondents have submitted that the petition raises disputed questions of fact which cannot be gone into or considered in the writ proceedings. It has been submitted that on 25.08.2011 at around 11.00 am, Bemina-Budgam transmission line tripped down and after ascertaining the reason, it was observed that one wooden cross of HT Frame near Goripora Hamdania Colony was broken which resulted in sagging of conductor to a lower level. It has been further submitted that a lady who was working in the paddy field beneath 33 KV line received electric shock during the said incident and she was hospitalized for treatment. It has been further submitted that an FIR was registered with Police Station, Bemina, and on humanitarian grounds, an amount of Rs.20,000/ was given to the husband of the victim for meeting the medical expenses during hospitalization of his wife. The respondents further contend that an amount of

Rs1.00 lac has been sanctioned as ex-gratia relief by the respondent department in favour of the petitioner, which stands released in her favour. It is also submitted that husband of the petitioner has been engaged on casual basis by the respondent department. The respondents have denied any negligence on their part and claimed that all safety measures to safeguard the life and property of the people were taken.

4) I have heard learned counsel for the parties and perused the pleadings and the material on record.

5) The respondents have raised a preliminary objection with regard to maintainability of the writ petition on the ground that disputed questions of fact are involved in this case and, as such, the petitioner should avail the remedy of civil suit instead of invoking the extraordinary writ jurisdiction of this Court. In this regard, learned counsel for the respondents has relied upon the judgment of the Supreme Court reported in 2005(6) SCC 156.

6) The objection raised by the learned counsel appearing for the respondents is without any substance for the reason that there is no dispute with regard to the fact that the petitioner has suffered permanent disability of 100% as a result of electric shock/burns. The only question which is

required to be determined is due to whose negligence the petitioner suffered permanent disability and what amount of compensation is required to be awarded in favour of the petitioner.

7) The question whether there is any limitation on the powers of the High Court for exercise of writ jurisdiction under Article 226 of the Constitution came up for discussion before the Supreme Court in the case of **UP State Co-operative Land Development Bank Ltd. V. Chandra Bhan Dubey**, (1999) 1 SCC 741. The Court observed as under:

"It may not be necessary to examine any further the question if Article 226 makes a divide between public law and private law. Prima facie from the language of the Article 226 there does not appear to exist such a divide. To understand the explicit language of the Article it is not necessary for us to rely on the decision of English Courts as rightly cautioned by the earlier Benches of this Court. It does appear to us that Article 226 while empowering the High Court for issue of orders or directions to any authority or person does not make any such difference between public functions and private functions. It is not necessary for us in this case to go into this question as to what is the nature, scope and amplitude of the writs of habeas corpus, mandamus, prohibition, quo warranto and certiorari. They are certainly founded on the English system of jurisprudence. Article 226 of the Constitution also speaks of directions and orders which can be issued to any person or authority including, in appropriate cases, any Government. Under clause (1) of Article 367 unless the context otherwise requires, the General Clauses Act, 1897, shall, subject to any adaptations and modifications that may be made therein under Article 372 apply for the interpretation of the Constitution as it applies for the interpretation of an Act of the Legislature of the Dominion of India. "Person" under Section 2(42) of the

General Clauses Act shall include any company, or association or body of individuals, whether incorporation or not. Constitution is not a statute. It is a fountain head of all the statutes. When the language of Article 226 is clear, we cannot put shackles on the High Courts to limit their jurisdiction by putting an interpretation on the words which would limit their jurisdiction. When any citizen or person is wronged, the High Court will step in to protect him, be that wrong be done by the State, an instrumentality of the State, a company or a cooperative society or association or body of individuals whether incorporated or not, or even an individual. Right that is infringed may be under Part III of the Constitution or any other right which the law validly made might confer upon him. But then the power conferred upon the High Courts under Article 226 of the Constitution is so vast, this court has laid down certain guidelines and self-imposed limitations have been put there subject to which High Courts would exercise jurisdiction, but those guidelines cannot be mandatory in all circumstances. High Court does not interfere when an equally efficacious alternative remedy is available or when there is established procedure to remedy a wrong or enforce a right. A party may not be allowed to by-pass the normal channel of civil and criminal litigation. High Court does not act like a proverbial 'bull in china shop' in the exercise of its jurisdiction under Article 226."

8) From the foregoing enunciation of law on the subject, it is clear that the power conferred upon the High Court under Article 226 of the Constitution is of wide amplitude. The High Courts that have imposed upon themselves certain limitations in the matter of exercise of writ jurisdiction otherwise there is no limit to the jurisdiction of the High Court under Article 226 of the Constitution of India. One of the self-imposed limitations on the power of the High Court under Article 226 is that it would not go into intricate questions of fact which require leading of oral evidence but in the instant case, as already noted, the

incident, which is subject matter of the writ petition, has been admitted by the respondents in their replies. Therefore, the contention of the respondents that the writ petition is not maintainable is without any merit.

9) That takes us to the question as to who was responsible for the injuries suffered by the petitioner. According to the reply filed by the Power Development Department, the occurrence did not take place due to negligence of its officers/officials. It has been claimed by the respondent Department that all safety measures to safeguard the life and property of the people were taken. At the same time the respondents have admitted in their reply that on the fateful day, Bemina-Budgam transmission line tripped down and after ascertaining the reason, it found was that one wooden cross of HT Frame near Goripora Hamdania Colony was broken which resulted in sagging of conductor to a lower level. Thus, even as per the case of the respondents, the reason for happening of the occurrence is sagging of conductor of transmission line to a lower level. This had happened because the wooden cross of HT Frame had broken.

10) It is the duty of officers/officials of the Power Development Department to regularly check all electric connections, particularly vital installations, high tension

wires and transformers. It is their statutory duty to ensure that no mishap takes place on account of lack of proper maintenance of these installations. The fact that the wooden cross of HT Frame of the transmission line had broken which resulted in sagging of conductor to a lower level shows that the field officials of the respondent Department have failed in their duty to check and supervise the transmission line. Thus, the facts projected by the respondent Department in its reply clearly indicate that there was no regular supervision of the transmission line on their part which was their statutory duty.

11) The Supreme Court has, in the case of **M. P. Electricity Board v. Shail Kumari and Others**, AIR 2002 SC 551, while dealing with a similar situation, observed as under:-

"It is an admitted fact that the responsibility to supply electric energy in the particular locality was statutorily 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 or to see that the wire snapped would not remain live on the road as users of such road would be under peril. It is no defence on the part of the management of the Board that somebody committed mischief by siphoning 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 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.”

12) From the analysis of the law laid down by the Supreme Court in the aforesaid judgment, it is clear that the authorities manning dangerous commodity like electricity current have extra duty to take all measures to prevent any mishap. High voltage electric current passing through transmission lines are invariably pass above agricultural and other cultivable/uncultivable lands. If the authorities of the respondent Department are allowed to wash off their hands from a case where some mishap has taken place due to the falling of transmission line on the fields where people are working, it will have dangerous consequences and no one would allow the transmission lines to pass over his/her fields. It is, thus, bounden duty of the officers/officials of the Power Development Department to manage prevent and check the transmission lines from being falling down by installing necessary devices and keep regular check on the same, which in the instant case they have failed to do. Thus, negligence of the officers/officials of the Power Development Department is writ large in the instant case.

13) Having held that the officers/officials of the Power Development Department were negligent in performance of their duties which resulted in serious injuries to the petitioner, the question that would arise is as to how the compensation due to the petitioner would be assessed. It is a settled law that in such matters the Court may seek guidance from the principles governing assessment of compensation in MACT cases or fatal accidents. Baseline is that the amount assessed must be just compensation and not an excuse for undue enrichment. The guidelines for assessment of compensation in MACT cases relating to injuries sustained by the victims have been laid down by the Supreme Court in **Jakir Hussein vs. Sabir And Others**, (2015) 7 SCC 252, and **Anant vs. Pratap & Anr**, 2018 (3) J.K.J. 101 [SC]. The basic judgment which has been relied upon by the Supreme Court in the aforesaid cases is the judgment rendered in the case of **Raj Kumar vs. Ajay Kumar**, (2011) 1 SCC 343.

14) On the basis of the guidelines laid down by the Supreme Court in the aforesaid judgments, let us now proceed to assess the compensation payable to the petitioner.

15) So far as the income of the petitioner is concerned, it has been submitted by her that she was functioning as a

household lady before the accident. In **Latta Wadhwa vs. State of Bihar**, (2001) 8 SCC 197, the Supreme Court observed that considering the multifarious services rendered by the housewives, even on a modest estimation, the income of a housewife between the age group of 34 to 59 year who were active in life should be assessed in at Rs.36,000/ per annum.

16) In **Arun Kumar Agarwal vs. National Insurance Co. Ltd.** (2010) 9 SCC 218, the notional income of the housewife was taken as Rs.5000/ per month. In the instant case the occurrence has taken place in the year 2011. Therefore, notional income of the petitioner for the purposes of calculation is taken as Rs.5000/ per month.

17) As per the case of the petitioner, she was aged 38 years at the time of accident. There is no rebuttal to the said statement of the petitioner in the reply filed by the respondents. Therefore, the age of the petitioner is taken as 38 years.

18) Loss of future income is to be calculated in terms of the judgment of the Supreme Court in the case of **Raj Kumar vs. Ajay Kumar** (supra), wherein the Supreme Court has held that where the claimant suffers a permanent disability as a result of injuries, the assessment

of loss of future earnings would depend upon the impact and effect of permanent disability on his/her earning capacity. In the instant case, as per the material placed on record by the petitioner, both her legs were amputated and she has suffered 100% permanent disability. With this state of affairs, the petitioner is definitely not in a position to perform her duties as a housewife. In fact, having regard to the nature of disability suffered by the petitioner, she has become dependent upon others. Thus, in the instant case, loss of earning capacity of the petitioner has to be taken as 100%. The compensation which has to be awarded under the head 'loss of future earning' is calculated as follows:

- (i) Annual income of the petitioner: $5000 \times 12 = 60,000/$
- (ii) Loss of future income at the level of her disability i.e. $100\% = 60,000/$ per annum.
- (iii) Having regard to the age of the petitioner, the multiplier of 15 has to be applied. Total loss of future earnings comes to $60,000 \times 15 = 9,00,000/$.

The petitioner has claimed that she has incurred Rs.15.00 lacs on her treatment but she has not placed on record any document to support her claim. However, having regard to the fact that the petitioner has remaining admitted in the hospital from

25.08.2011 to 02.11.2011, which is clear from the medical record coupled with the fact that the petitioner has undergone surgery for amputation of her both lower limbs, it can safely be stated that the petitioner must have incurred a huge amount of money on her treatment. In these circumstances, interests of justice demand that an amount of Rs.5.00 lacs is required to be awarded in favour of the petitioner on account of medical expenses.

The petitioner has suffered 100% disability of both her legs. Keeping in view the injuries suffered, her movement has severely got restricted with permanent impairment of her legs, she would require the services of an attendant throughout of her life for the purpose of helping her in discharging her daily chores. Having regard to the age and life expectancy of the petitioner, a sum of Rs.2.00 lacs is required to be awarded in her favour on account of attendant charges.

The petitioner must have incurred conveyance charges during her treatment in the hospital as also during her follow up treatment. An amount of Rs.50,000/ is awarded in her favour under the head conveyance charges.

Having regard to the nature of injuries suffered by the petitioner and the period during which she has remained under treatment, the petitioner must have incurred expenses on special diet and nutrition. A sum of Rs.50,000/ is required to be awarded under this head.

It has been submitted in the petition that the petitioner needs artificial limbs, the cost of which comes to Rs.1.85,250/. To support this contention, the petitioner has placed on record a copy of the invoice. It is a fact of common knowledge that these artificial limbs are to be replaced periodically. Having regard to the life expectancy and the age of the petitioner, she will have to replace these artificial limbs at least three times during her life time. Accordingly, a sum of Rs.6.00 lacs is awarded as cost of artificial limbs in favour of the petitioner.

The petitioner as a result of the accident has been rendered crippled for rest of her life. She would remain dependent upon others for even performing her daily activities like going to bathroom for attending call of nature. Thus, she has suffered loss of amenities of life. Having regard to the nature of disability suffered by the petitioner, a sum of Rs.1.00

lacs is awarded in her favour for having suffered loss of amenities of life.

Given the fact that the petitioner has suffered a horrific accident which has resulted in amputation of her lower limbs, it can safely be assumed that she must have undergone a lot of pain and suffering. A sum of Rs.2.00 lacs is awarded in favour of the petitioner on account of pain and sufferance.

19) Accordingly, the compensation to which the petitioner is held entitled to us assessed as under:-

1. Loss of future earnings	=9,00,000/
2. Medical expenses	=5,00,000/
3. Attendant charges	=2,00,000/
4. Conveyance charges	=50,000/
5. Diet & nutrition charges	=5,00,000/
6. Cost of artificial limbs	=6,00,000/
7. Loss of amenities of life	=1,00,000/
8. <u>Pain and suffering</u>	=2,00,000/
Total	=26,00,000/

19) Taking note of the fact that the petitioner has already been paid Rs1.00 lac as ex-gratia relief and her husband has been engaged as a casual labourer by the respondents, a sum of Rs.2.00 lacs is required to be deducted from the compensation assessed above in favour of the petitioner.

20) Accordingly, a sum of Rs.24.00 lacs (rupees twenty-four lacs) along with interest @6% per annum, except upon the component of future earnings, from the date of filing of

this petition till its realization is awarded in favour of the petitioner against the respondents. The other reliefs sought by the petitioner in the petition are declined for the reason that compensation stands awarded in her favour.

21) The petition stands disposed of in above terms.

(SANJAY DHAR)
JUDGE

Srinagar,
25.11.2022
"Bhat Altaf, PS"

Whether the order is speaking: Yes/No

Whether the order is reportable: Yes/No

