

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

...

OWP no.1759/2018

Pronounced on: 22.07.2024

Abrar Ahmad Tantray (21) S/o Fayaz Ahmad Tantray R/o Kujjar, Kulgam,
Kashmir (J&K)

.....Petitioner(s)

Through: Mr Ateeb Kanth, Advocate

Versus

1. State of J&K through Secy, Deptt of Power Dev. Deptt Civil Sectt
Sgr/Jmu
2. Dy. Commr. Kulgam
3. Chief Engineer, EM&RE Wing, Kashmir, Srinagar
4. Executive Engineer, ED Kulgam, Kashmir
5. Superintendent Engineer, Electric M&RE Circle, Bijbehara, Kashmir

.....Respondent(s)

Through: Mr Alla ud din Ganai, AAG with
Ms Shaila Shameem, Assisting Counsel

CORAM:

HON'BLE MR JUSTICE VINOD CHATTERJI KOUL, JUDGE

JUDGEMENT

1. Petitioner prays to direct respondents to release compensation of Rs.20.00 Lacs in his favour which would include his hospitalization charges, operation, so long treatment, diet, transportation, care taking, mental pain and agony, future prospects and element of permanent disability. He also prays to direct official respondents to consider objectively and sympathetically petitioner for a suitable job in the said department as per his qualification so that he may not feel dependent

and handicapped in his life because of aforesaid incident and can be rehabilitated permanently.

2. I have heard learned counsel for parties and considered the matter.
3. Brief facts summarized by petitioner in instant writ petition are that on 9th March 2007, petitioner was eight years of age. He along with other children was playing near live wire electric transformer which was uncovered/uninsulated. The child/petitioner received electric shock due to a snapped 11 KV line at village Kujjar Kulgam as it was open uncovered/uninsulated electric wire which resulted in severe burn injuries on left side of his head, arm and other parts of body. He was immediately admitted to SKIMS, Srinagar. Police station Yaripora Kulgam entered a report no.4 of 11th March 2007. Statement of witnesses was recorded by police and FIR was registered. Due to high degree of electric shock, petitioner's left arm was amputated and he obtained grievous injury in left side of head. Medical Board, Kulgam, declared him 75% disabled. District Superintendent of Police, Kulgam, got the matter verified and submitted a report to Deputy Commissioner, Kulgam, on 15th December 2009. Thereafter nothing was done by respondent, while petitioner was undergoing treatment even when his father had very little resources, yet still continued petitioner's treatment. Plastic surgery, burns, reconstructive and micro-surgery, was being conducted by SKIMS Srinagar, which according to petitioner is evident from letter (Annexure B to writ petition). On representation of petitioner, Executive Engineer, ED Kulgam, in 2017 ordered AEE, Kulgam, to submit concrete report. It is being stated by petitioner that respondent-State admits that

petitioner received a severe electric shock due to a snapped 11 KV line at village Kujjar. However, till date he has not been compensated by respondents.

4. The stand taken by respondents 1,3&4 (Power Development Department), in their Reply is that petitioner while was playing near electric transformer installed in village Kujjar, got struck with electric transformer/electric wire, resulting in serious burn injuries on hand, arm and other body parts. Respondents admit that police station of Yaripora entered a report vide DD no.04 dated 11th March 2007, after which a police party was deputed to SKIMS Hospital, Srinagar, where petitioner was admitted for treatment and that statement of some of the witnesses was recorded and medical record was obtained. As per statement of Superintendent of Police, Kulgam, vide no.CRB/ INJ/ 09/ 15410 dated 15th December 2009, it has been found that there was no fault on the part of anyone, but the child got stuck with electric transformer/wire while playing with other children. Due to electric shock, the child received grievous injuries, amputation of left mid-fore arm and hand. Respondents state that writ petition has been filed after nine years, which is hit by delay and laches. In view of permanent damage suffered by petitioner and serious injuries, Assistant Executive Engineer, EM&RE, Sub Division, Kulgam, has recommended the case of petitioner for relief and rehabilitation on humanitarian grounds that has been forwarded by Chief Engineer, EM&RE, vide letter dated 11th October 2007 to Development Commissioner, Power.

5. In compliance to the order dated 30th January 2024, passed by this Court, petitioner has filed supplementary-affidavit. Petitioner has placed on record an Inpatient Estimate dated 31st January 2024, issued by Plus Medicare Hospital Private Limited/Paras Hospital Durganag, Dalgate, Srinagar. The estimate shows Rs.1,66,598/- for neurological surgery. So far as artificial arm with robotic hand is concerned, the cost therefor would be Rs.7.40 Lacs.
6. A status report, directed by this Court vide Order dated 17th October 2023, has been filed by Principal/Dean, Government Medical College, Srinagar, in which it is stated that the matter/case was referred to Standing Medical Board, before which petitioner appeared on 28th November 2023. After thorough examination of petitioner, the Board arrived at the consensus, which is reproduced as under:

“Orthopedic Opinion:- “Patient has trans-elbow amputation left side with scarring/puckering of over lung skin. The percentage of disability is around 75% from orthopedic side.
Plastic Surgery Opinion: “HT Electric Burn injury involving (L) side with absent underlying bone, Patient has scars in B/L thighs. Deformity disability amounts to 15%.”

7. Disability Certificate has been produced and placed on record by petitioner. It has been issued on 31st March 2023 by Department of Empowerment of Persons with Disabilities, Ministry of Social Justice and Empowerment, Government of India. It is certified in Disability Certificate that petitioner has been carefully examined and it has been found that he is a case of locomotor disability; the diagnosis in his case is Electric Burn injury with Below Elbow Amputation (Lt) (Upper 1/3) with Deep Burn Scalp with Scar (L) Arm/Thigh; he has 78% permanent disability as per guidelines (Guidelines for the

purpose of assessing the extent of specified disability in a person included under RPWD Act, 2016 notified by Government of India vide S.O. 76(E) dated 4th January 2018).

8. In the case in hand, there is no quarrel about 78% disability of petitioner due to electric shock, when he had been eight years of age on 9th March 2007. This resulted in amputation of his trans-elbow left side with scarring/puckering of over lung skin. He has 75% disability from orthopedic side whereas he has 15% deformity disability.
9. In *M. C. Mehta v. Union of India, AIR 1997 SC 734*, the Supreme Court has held that “*where an enterprise is engaged in a hazardous or inherently dangerous activity and harm is caused on any one on account of the accident in the operation of such activity, the enterprise is strictly and absolutely liable to compensate those who are affected by the accident; such liability is not subject to any of the exceptions to the principle of strict liability under the rule in Rylands v. Fletcher.*”
10. In the above backdrop, computation of compensation is to be settled, which can be taken care of on the auspices of guidelines for assessment of compensation as is being followed in MACT cases concerning injuries by victims.
11. As said above, petitioner was eight years when he suffered 78% permanent disability, which fact is evident from the certificate(s) on record.
12. The law about non-earning persons has been laid down by the Supreme Court in *Kishan Gopal and others v. Lala and others, (2014) 1 SCC 244*, in which the deceased was a minor of the age of 10 years.

The Supreme Court directed to pay Rs.5.00 Lacs with 9% interest per annum from the date of filing of application till the date of payment.

13. In *Master Mallikarjun v. Divisional Manager, the National Insurance Company Limited & anr, 2014 (14) SCC 396*, the Supreme Court directed to pay compensation of Rs.3.75 Lacs along with 6% per annum to appellant of the age of 12 years with 18% disability.

14. A reference has been made by counsel for petitioner to a judgement dated 25th November 2022, passed by a Bench of this Court in OWP no.1669/2014 titled as *Mst. Mala Begum v. State of J&K and others*, in which Rs.24.00 Lacs along with interest @ 6% per annum has been given.

15. In the case in hand, petitioner has trans-elbow amputation left side with scarring/puckering of over lung skin and percentage of disability is around 78% from orthopedic side. It has also been certified by Standing Medical Board that petitioner has scars in B/L thighs and deformity disability amounts to 15%. In such circumstances, petitioner cannot be said that he is not entitled to any compensation as has been tried and stated by respondents.

16. For the reasons discussed above, writ petition is allowed to the extent that respondents shall pay Rs.20.00 Lacs to petitioner along with interest @ 6% per annum from the date of presentation of this petition, viz. 17th September 2018 till final realization.

17. Disposed of.

(Vinod Chatterji Koul)
Judge

Srinagar

22.07.2024

Ajaz Ahmad, Secy.

Whether approved for reporting? Yes/No.