

GAHC010065742021



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/2557/2021

REJINA KHATUN AND 4 ORS

W/O- LT. RAFIKUL ISLAM @ RAFIKUL ALI, PERMANENT R/O- GAURIPUR
WRD NO. 4 (JALAL HAJI ROAD), P.O. AND P.S. GAURIPUR, DIST.- DHUBRI
(ASSAM), PIN- 783331

2: RIYAJUL ALI

S/O- LT. RAFIKUL ISLAM @ RAFIKUL ALI
BEING MINOR REP. BY HIS MOTHER REJINA KHATUN
PETITIONER NO. 1
PERMANENT R/O- GAURIPUR WARD NO. 4 (JALAL HAJI ROAD)
P.O. AND P.S. GAURIPUR
DIST.- DHUBRI (ASSAM)
PIN- 783331

3: ROKIYA KHATUN

D/O- LT. RAFIKUL ISLAM @ RAFIKUL ALI
BEING MINOR REP. BY HER MOTHER REJINA KHATUN
PETITIONER NO. 1
PERMANENT R/O- GAURIPUR WARD NO. 4 (JALAL HAJI ROAD)
P.O. AND P.S. GAURIPUR
DIST.- DHUBRI (ASSAM)
PIN- 783331

4: RIJU ALI

S/O- LT. RAFIKUL ISLAM @ RAFIKUL ALI
BEING MINOR REP. BY HIS MOTHER REJINA KHATUN
PETITIONER NO. 1
PERMANENT R/O- GAURIPUR WARD NO. 4 (JALAL HAJI ROAD)
P.O. AND P.S. GAURIPUR
DIST.- DHUBRI (ASSAM)
PIN- 783331

5: MALEKA BIBI

W/O- LT. RAHMAN ALI AND M/O- LT. RAFIKUL ISLAM @ RAFIKUL ALI

PERMANENT R/O- GAURIPUR WARD NO. 4 (JALAL HAJI ROAD)
P.O. AND P.S. GAURIPUR
DIST.- DHUBRI (ASSAM)
PIN- 78333

VERSUS

THE STATE OF ASSAM AND 6 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, DEPTT. OF
POWER, DISPUR, GHY-06

2:THE ASSAM STATE ELECTRICITY BOARD
REP. BY ITS CHAIRMAN
BIJULI BHAWAN
PANBAZAR
GHY-01

3:THE DY. COMMISSIONER
DHUBRI DISTRICT AT DHUBRI P.O. DHUBRI
783301

4:THE GENERAL MANAGER
ASSAM POWER DISTRIBUTION COMPANY LTD. (APDCL)
BONGAIGAON ZONE AT BONGAIGAON
ASSAM
PIN- 783380

5:THE SENIOR ELECTRICAL INSPECTOR
GOVT. OF ASSAM
RAJGARH ROAD
GHY-08

6:THE ASSTT. GENERAL MANAGER
DHUBRI ELECTRICAL SUB DIVISION
GAURIPUR APDCL (LAR)
P.O. GAURIPUR
DIST.- DHUBRI (ASSAM)
PIN- 783331

7:THE SUB DIVISIONAL ENGINEER
GAURIPUR ELECTRICAL SUB DIVISION APDCL (LAR)
GAURIPUR
P.O. AND P.S. GAURIPUR
DIST.- DHUBRI (ASSAM)
PIN- 78333

Advocate for the Petitioner : MR Z HUSSAIN, MR. M TALUKDAR

Advocate for the Respondent : SC, APDCL, GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY**

ORDER

Date : 30.09.2024

1. Heard Mr. Z Hussain learned counsel for the petitioner. Also heard Mr. S Baruah learned Junior Government Advocate, Assam appearing for respondent Nos.1, 3 & 5 and Mr. A Baruah learned counsel for the respondent Nos.2, 4, 6 and 7.
2. The present petitioners are the wife, children and widowed mother of deceased namely, Rafikul Ali @ Rafikul Islam, who died due to electrocution on 04.09.2020 at about 2-2.20 PM at Goibazar area of Gauripur Town, while he was standing near a shop and touched the Tin wall of the shop wherein high voltage electricity transmission active wire was falling and remained unattended by the electricity department. The deceased was a young man of 32 years.
3. The Gouripur Police Station on the basis of the information received made a GD entry vide GD Entry No.118 dated 04.09.2022 and Post Mortem was also conducted on 05.09.2022. In the Post Mortem report the expert opined that death has been caused due to electrocution and after that Gauripur PS case No.992/2020 under section 304 IPC was registered. Claiming compensation and alleging negligence, the present writ petition is filed.
4. An affidavit has been filed by the respondent No.5, who is Chief Electrical Inspector-cum-Adviser (i/c), Govt. of Assam. From the affidavit it is reflected that an enquiry was conducted, documents were collected from the

authorities of the APDCL and information's were gathered from the witnesses by visiting the place of accident and after the aforesaid enquiry a detailed Electrical Accident Enquiry Report dated 06.03.2023 was submitted by the Deputy Chief Electrical Inspector, Govt. of Assam. The important findings recorded in the report is quoted herein below:

“12. CAUSES LEADING TO THE ACCIDENT: *From the above stated facts and circumstantial evidences, it appears that due to contact between the 33KV overhead line and the tree branches, the metallic tin wall of the shop was energized and the victim show how came in contact with the live metallic tin wall of the said shop and got fatal electric shock.*

Had appropriate safety preventive measures been taken and had there been regular and proper checking of the line by the owner of the overhead line, the instant electrical accident resulting to death of the victim would not have taken place.

13. CONTRAVENTION: *From the facts and circumstances leading to the accident it appears that there occurred contravention of regulation 64(3) of the central Electricity Authority (Measures relating to safety and Electric Supply) Regulations, 2010 is on part of the owner of the overhead line i.e., the Assam Power Distribution Company Limited (APDCL).”*

5. In the backdrop of the aforesaid determination, in the considered opinion of this Court, the petitioner shall be entitled for compensation in terms of the provision of Assam Electricity Regulatory Commission (Compensation to Victims of Electrical Accidents) Regulation, 2019 (hereinafter referred to as Regulation, 2019).

6. Rule 5 of the Regulation 2019 deals with liability of compensation and such provision prescribes that notwithstanding anything contained in any other law in force, the licensee/generating company including CPP shall be liable to pay compensation as specified in the

Regulation to the persons affected or his dependents for loss of animal or human lives or injury to human being and animals in consequence of an electrical accident attributable to the fault/negligence of the licensee/generating company/CPP.

7. Section 161 of the Electricity Act, 2003 empowers the Electricity Inspector to enquire into such accident and to find out the reasons. The enquiry report annexed by the Electrical Inspector also suggests that such enquiry was completed in exercise of power under Section 161 of the Electricity Act, 2003.

8. Section 162(2) of the Electricity Act, 2003 however, prescribes that the licensee/generating company/CPP shall have a remedy of appeal against the decision of an Electrical Inspector and such appeal is maintainable to the appropriate government or to the appropriate Commission as the case may be.

9. The quantum of the compensation has also been prescribed under Rule 6 of the Regulation 2019. Such quantum is prescribed in Schedule-B of the Regulation, 2019. Schedule-B prescribes that in case of loss of human life as a result of an electrical accident, the amount should be Rs. 4.00 lakhs per person.

10. In the aforesaid prescriptions of law as well as the factual position as ascertained by the Electrical Inspector, in his Enquiry Report submitted in exercise of power under Section 161 of the Electricity Act, 2003, this Court in exercise of its power of judicial review cannot but held, the petitioner shall be entitled for payment of compensation of Rs. 4.00 lakhs in terms of Schedule-B. Ordered accordingly. Such payment be made within a period of two weeks from receipt of a copy of this order to be furnished by the petitioner before the competent authority.

11. While parting with the record, it is made clear that this order may not be treated as a comment on the enquiry report inasmuch as the APDCL shall be at liberty to approach the appropriate forum under Section 162(2) of the Electricity Act, 2003, if so advised.

12. Writ petition stands disposed of.

JUDGE

Comparing Assistant