

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/FIRST APPEAL NO. 1406 of 2002**

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GEB  
Versus  
NIRMAL RAJENDRA MANDELA,WD/O RAJENDRA SITARAM MANELA &  
ORS.

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Appearance:

MS LILU K BHAYA(1705) for the Appellant(s) No. 1

DELETED for the Defendant(s) No. 2

MR. SHALIN J PATEL(14556) for the Defendant(s) No. 1,3,4

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**CORAM:HONOURABLE MR. JUSTICE J. C. DOSHI****Date : 15/04/2026****JUDGMENT**

1. By way of this First Appeal, the appellant has challenged the judgment and decree passed by the learned 2<sup>nd</sup> Joint Civil Judge (SD), Surat dated 6.12.2001 passed in Special Civil Suit No.250 of 1989.

2. Brief facts of the case are as under:-

2.1 It is an unfortunate incident dated 30<sup>th</sup> October 1988, wherein two brothers, namely Nitin Sitaram and Rajendra Sitaram having been electrocuted have lost their life. The incident took place on the terrace of Flat No. 9/53, Gujarat Housing Board, near Rupali Cinema, Rander Road, Surat. At the time of the incident, Nitin was repairing the television antenna on the terrace, and Rajendra was assisting him.



2.2 The high tension electric line was passing over the terrace of the flat. During the repair work, the iron pipe of the antenna came into contact with the overhead electric wire, resulting in a severe electric shock. Due to the said electrocution, both individuals died on the same day i.e. 30<sup>th</sup> October, 1988.

2.3 Subsequently, Special Civil Suit No. 250 of 1989 was filed by the heirs and legal representatives of deceased Rajendra Sitaram, seeking compensation of Rs.5 lakh along with interest for tortuous liability of the GEB. The suit was filed against the concerned electricity authority, alleging negligence on their part in maintaining proper safety measures.

2.4 On being served with the summons, the GEB appeared and contested the claim. Their primary contention was that there was no negligence on their part and that the accident occurred due to the negligence of the deceased themselves. It was argued that the deceased were aware that the antenna consisted of iron material, which could conduct electricity, and despite having no technical qualifications, they undertook the work of repairing the antenna near a high-tension electric line.

2.5 It was further contended by the appellant that the HT electric line had been installed prior to the construction of the building, and proper distance as required under the applicable rules had been maintained. Therefore, the electricity board could not be held liable for the accident.



2.6 Special Civil Suit No. 250 of 1989 was filed by the heirs and legal representatives of deceased Rajendra Sitaram was partly decreed in their favour, whereby the appellants were directed to pay Rs.3 lakh at the rate of 6% with accrued interest from the date of suit till realization.

2.7 The appellant appealed the aforesaid judgment u/s 96 of the Code of Civil Procedure, 1908 (in short “the Code”).

3. Ms. Lilu Bhaya, learned advocate appearing for the appellant assailed the impugned judgment mainly on the ground that the heirs of deceased Nitin filed Special Civil Suit No.249 of 1989 before the very same Court for getting the compensation of Rs.1 lakh and it was considered as lead suit and all evidence were recorded in the said suit. She would further submit that the very same judge i.e. learned 2<sup>nd</sup> Joint Civil Judge (SD), Surat, dismissed the said suit believing that Nitin and Rajendra both were negligent in accident. She would further submit that the issue of principle of res judicata applies in the present case and therefore, in Special Civil Suit No.250 of 1989 arose from same incident, the learned trial Court is required to hold that deceased Rajendra is also negligent in the accident as it has been held in Special Civil Suit No.249 of 1989.

3.1 The second contention of learned advocate Ms. Bhaya is that the HT electric line had been installed prior to the construction of the building and therefore, in view of the provisions of the Indian Electricity Act, since the lines were



properly maintained, proper distance as required under the applicable rules is also properly maintained, the electricity board could not be held liable for the accident.

3.2 Upon above submissions, learned advocate Ms. Lilu Bhaya prays to allow this First Appeal.

4. On the other hand, learned advocate Mr. Shalin Patel appearing for the claimants relied on judicial precedents, including decisions in First Appeal No. 844 of 2015 and Second Appeal No. 13 of 2020, to contend that in cases of electrocution, the principles of strict or absolute liability should not be applied where proper safety measures and statutory distances have been maintained. He would further submit that in the present case, the electricity company failed to take adequate precautions while dealing with a hazardous activity such as transmission of electricity. It was submitted that if proper safety distance had been maintained, the antenna would not have come into contact with the electric line, and the accident could have been avoided. He would further submit that whether adequate distance was maintained or not is a question of fact to be determined in each case. However, it was emphasized that electricity is a hazardous substance, and the authority responsible for its transmission has a duty to exercise a high degree of care.

4.1 Upon above submission, he prays to dismiss the First Appeal.



5. I have heard learned advocates for both the sides, perused the impugned judgment so also perused the record and proceedings along with the paper book.

6. At the outset, I may refer to findings of this Court in Second Appeal No.13 of 2020. Para 10, 11, 12, 13 reads as under:-

*“10. There is no cavil that the appellant is engaged in business of selling hazardous product viz. Electricity. It is the liability of the appellant – PGVCL to maintain all the wires to have insulated them to prevent the incident. If any incident occurs, the principle of absolute liability shall be attracted.*

*11. 11. The Honble Apex Court in the case of M.C. Mehta v/s. Union of India [AIR 1987 SC 1086] extended principle of strict liability involved in Rylands (supra) to absolute liability. In this case, claim for compensation was sought on behalf of persons who had suffered consequent to escape of oleum gas from the units of Sriram Foods & Fertilizers Industries. The Honble Apex Court has laid down the law as regards consequences of accidents where inherently dangerous activities are carried on. The principle of absolute liability was laid down whereby liability was made absolute i.e., strict liability sans defences. The observations of the Apex Court at Para 31 is self-explanatory and reads as follows: “...We would therefore hold that where an enterprise is engaged in a hazardous or inherently dangerous activity and harm results to anyone on account of an accident in the operation of such hazardous or inherently dangerous activity resulting, for example, in escape of toxic gas the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident and such liability is not subject to any of the exceptions which operate vis-avis the tortious principle of strict liability under the rule in Rylands v. Fletcher.”*



12. It is worth to refer judgment of the Honble Apex Court in the case of *H.S.E.B. v/s. Ram Nath* [2004 (5) SCC 793], the Honble Apex Court has extend same principle of absolute liability in case where liability was sought to be disowned by the Power Supply Company by contending that the unauthorized structure near the electric line hand contributed to the accident. The facts of the case is quite similar to the facts of the case on hand. The Honble Apex Court overruled such submission in the following words :

-"6. The appellants are carrying on a business which is inherently dangerous. If a person were to come into contact with a high-tension wire, he is bound to receive serious injury and/or die. As they are carrying on a business which is inherently dangerous, the appellants would have to ensure that no injury results from their activities. If they find that unauthorised constructions have been put up close to their wires it is their duty to ensure that that (2004) 5 SCC 793 construction is got demolished by moving the appropriate authorities and if necessary, by moving a court of law. Otherwise, they would take the consequences of their inaction. If there are complaints that these wires are drooping and almost touching houses, they have to ensure that the required distance is kept between the houses and the wires, even though the houses be unauthorised. In this case we do not find any disputed question of fact.

13. This Court had occasion to examination principle of absolute liability in the case of *PGVCL v/s. Heirs of Chandrikaben Harpalsinh* [AIR 2017 Gujarat 177]. Para 6 is relevant which reads as under :-

6. The submissions have been made by learned Advocate Shri S.P. Hasurkar referring to the judgment of both the courts below and also the material and evidence particularly Exh.35 to support his contention about the negligence. Therefore, the moot question is whether any negligence could be attributed to the deceased and whether any such contentions could be entertained to avoid the liability for the incident and the compensation as a result thereof. The aspect of negligence has been considered by both the courts below. Though the



*submissions have been made by learned Advocate Shri S.P.Hasurkar that from the pole the wire was brought to the premises which was passing from a pipe to the meter and that the pipe was fitted with the angle. Therefore the wire for spreading the clothes could not have been fitted with the angle and therefore it is the negligence of the consumer, is throughly misconceived. The installation and maintenance is the responsibility and obligation of the licensee like the Appellants herein. When the line is taken from the pole right up to the premises, it is their obligation to see that it is in such a manner covered and the wire is fitted with the pipe that it does not result in any accident and it is safe. These precautions are required to be taken by the supplier as they have installed the line and they have to maintain the line. There is a periodical supervision and when there is a checking for Regular Civil Appeal No. 15/2017 Page 19 the meter, the representative would also visit the premises. Therefore the submission that because the wire for spreading the clothes was attached to the angle, it was the main cause for the accident and attributed the negligence to the consumer, is misconceived. The trial court has referred to and relied upon the judgment of the Hon'ble Apex Court in case of M.P. Electricity Board v. Shailkumar and Ors., reported in (2002) 2 SCC 162 and made the observations which has been quoted referring to the "principal of strict liability". The concept of strict liability assumes its different dimension that the liability is strict once the accident has occurred and in any case the onus is on the licensee who is obliged to take precaution at the time of installation and maintenance of line to see that no accident occurs or the chances are minimized. Therefore the submissions which have been made referring to the aspect of negligence has a reference to the negligence in Law of Torts where a person could show that reasonable precautions were taken. However, once the "principal of strict liability" is attributed, the liability would be incurred irrespective of the fact that whether the precautions were taken or not. It is in these circumstances, the concurrent findings of facts arrived at by both the courts below cannot be said to be perverse or erroneous. The substantial questions of*



*law posed as stated above are only referring to the aspect of Regular Civil Appeal No. 15/2017 Page 20 appreciation of evidence. The first question refers to the statutory provision in regard to liability of accident which again is vague as there are specific rules qua the Electricity Supply Rules and the Electricity Supply Code, which again referred to the statutory provisions and the obligation of the licensee to take precaution for installation and maintenance of such line. The reference and reliance on Exh. 35 would not justify any such submission which are sought to be made by learned Advocate Shri S.P. Hasurkar for the Appellants. Therefore it can hardly be said that there is any substantial question of law is involved.”*

7. In the present case, two brothers have lost their life and the learned trial Court has valued the loss of human life at a very meager amount of Rs.3 lakh only. Thus, without touching the merits of the case considering the fact that the GEB is engaged in selling the hazardous substance, is required to pay compensation for loss of human life resulted from electrocution applying the principles of strict and absolute liability.

8. Be that as it may, let me address the contentions of learned advocate Ms. Bhaya. In Special Civil Suit No.249 of 1989, the learned 2<sup>nd</sup> Joint Civil Judge (SD), Surat dismissed the suit filed by the heirs and legal representatives of deceased Nitin on the ground considering him as negligent in causing the accident. According to this Court, the finding arrived at by the learned trial Court is not breathing with the legal principles. This Court finds such finding an abrasive of judicial discipline. The Court holding Special Civil Suit Nos.249 of 1989 and 250 of 1989 arise from the same incident cannot give two different and



contradictory finding. Secondly, it appears that the learned trial Court has weighed away with the factual aspect that deceased Nitin was fixing the television antenna and deceased Rajendra was assisting him. The iron pipe being part of antenna came in contact with the HT electricity line when it was hold by deceased Nitin and therefore, the learned trial Court held deceased Nitin negligent, but deceased Rajendra, who was assisting deceased Nitin, was not held negligent. But since the finding and outcome of Special Civil Suit No.249 of 1989 has been accepted by the heirs and legal representatives of deceased Nitin, it would venture further to decide the illegality of said judgment and order.

9. As far as present case is concerned, deceased Rajendra cannot be held negligent. The issue of negligence cannot be attributed to the deceased as the HT electricity line was passing just above the building constructed by the Gujarat Housing Board. It is pertinent to note that deceased Nitin was minor at the time of accident and therefore, no negligence can be attributed to the minor.

10. As far as submission that the Gujarat Housing Board has carried out the construction subsequent to electricity line laid by the GEB and thus, the GEB could not be held liable is concerned, I am not impressed with such submission.

11. In H.S.E.B. v/s. Ram Nath [2004 (5) SCC 793], the Hon'ble Apex Court reiterated the extension of principles of strict and



absolute liability especially where negligence in maintaining safe conditions is established, even if there are contributing factors such as proximity of structures to electric lines. In para 6, the Hon'ble Apex Court held as under:-

*"6. The appellants are carrying on a business which is inherently dangerous. If a person were to come into contact with a high-tension wire, he is bound to receive serious injury and/or die. As they are carrying on a business which is inherently dangerous, the appellants would have to ensure that no injury results from their activities. If they find that unauthorised constructions have been put up close to their wires it is their duty to ensure that that (2004) 5 SCC 793 construction is got demolished by moving the appropriate authorities and if necessary, by moving a court of law. Otherwise, they would take the consequences of their inaction. If there are complaints that these wires are drooping and almost touching houses, they have to ensure that the required distance is kept between the houses and the wires, even though the houses be unauthorised. In this case we do not find any disputed question of fact."*

12. Resultantly, present First Appeal fails and dismissed. Impugned judgment and decree is upheld and confirmed.

13. The learned trial Court is directed to disburse the amount forthwith the claimants with accrued interest if lying with it.

14. Registry is directed to return back the R & P, if any, to the concerned Court forthwith.

SHEKHAR P. BARVE

**(J. C. DOSHI,J)**