

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

**OWP No. 902/2010**

**IA No. 1229/2010**

**CM No. 6670/2021**

**Reserved on 22.12.2022**  
**Pronounced on 01.03.2023**

**Radha Sharma**

...Petitioner(s)

Mr. Rajiv K. Sharma, Adv.

**Vs.**

**State of JK & Ors.**

...Respondent(s)

Mr. Amit Gupta, AAG

**CORAM:**

**HON'BLE MR JUSTICE WASIM SADIQ NARGAL, JUDGE**

**JUDGMENT**

**GIST**

1. This writ petition is filed by the Petitioner seeking an appropriate writ of mandamus directing Respondents to pay a compensation of Rs. 20 Lacs along with interest to the petitioner.

**PRIMARY FACTS**

2. The case of the petitioner is that her son, Vishal Sharma lost his life due to electrocution when exposed to live electric wire hanging between the poles at the height of 3 to 4 ft. from the ground. This Act was totally attributable to the negligence of the Respondents. It is the specific case of the Petitioner that the matter was brought to the notice of Respondents, the Electricity Department and a request was made to straighten the electric lines/service lines and maintain the height at safe and required height in terms of Electricity Act and Rules framed thereunder, so that no one may come in contact with the live wires, however, needful was not done to rectify and remove the defects by

straightening the electric wires by keeping them at safe height, as a consequence of which, the son of the Petitioner died.

3. It is stated that the Petitioner's son was only 13 years old and was a brilliant student who had secured 88% marks as per the School Certificate and was studying at Jagriti Mission School, Talab Tillo, Jammu and had a very bright future ahead of him. However, due to the carelessness and negligence of the Respondents, the Petitioner lost her son at a very young age.

4. It is stated that Petitioner's, Son Vishal Sharma was on a visit to his maternal uncle's home. On 22-07-2009, while he was working in the village Panghor in the agriculture field, he came in contact with live electric wires hanging at the height of about 4 to 5 ft. above the ground level and suffered a massive electric shock and injuries on his neck. Consequently, he was shifted to Government Medical College Hospital, Jammu but as a result of the aforesaid electric shock, he died. The same is reflected on perusal of the post-mortem report conducted by GMC, Jammu.

5. In this context, FIR Bearing No. 05/2010 under section 304-A RPC has been registered against Respondents on 07-01-2010 at Police Station Gajansoo, Jammu.

#### **SUBMISSIONS OF THE PETITIONER**

6. The learned counsel for the Petitioner has vehemently argued that the Son of the Petitioner has died due to the negligent acts attributable to Respondents who failed to maintain the electric wires as provided under the provisions of the Electricity Act and Rules framed thereunder and thus, the state is under legal obligation to compensate the Petitioner because due to their negligent Act, a precious human life

was lost. The Learned Counsel for the Petitioner has vehemently argued that the state is under legal obligation to protect the life of its Citizens. It is further submitted that the state and its functionaries have failed to discharge the constitutional and statutory obligations by not taking requisite safety measures and as a consequence of which, precious life of a young son of the Petitioner has been cut short and accordingly, the erstwhile State of Jammu and Kashmir, now, Union Territory is under obligation to compensate the Petitioner by way of damages.

7. It is submitted, though Respondents have stated in their objections that the height of the wires at the relevant point of time was 15 ft, however, Learned Counsel of Petitioner has filed rejoinder affidavit to the objections filed by the Respondents and in the rejoinder affidavit at Para No. 2, it has been stated that challan in FIR, *supra* has been produced before the competent court of law and as per investigation conducted by the Investigating Officer, it has come to fore that the wires were at the height of 4 to 5 Ft. above the ground level and not 15 ft. at relevant point of time. Thus, the stand of the Petitioner stands vindicated. It is further submitted that it is practically impossible that the boy who was of 13 years of age will contact electric wire which is at a height of 15 ft as per the stand of the Respondent.

#### **SUBMISSIONS OF THE RESPONDENT**

8. *Per Contra*, Ld. AAG appearing on behalf of the Respondents, Mr. Amit Gupta, submits that the Respondents have not committed any act which would warrant payment of compensation and the Petitioner by no stretch of imagination can claim compensation as a matter of right. Besides, learned AAG appearing on behalf of the Respondents

submits that FIR has been registered after six months from the date of death and is an afterthought, thus, the finding recorded by the Investigating Officer cannot be relied upon in absence of any opportunity being given to the Respondents to rebut the finding recorded by the Investigating officer. Learned Counsel, with a view to substantiate his claim, has specifically submitted that the family members of the Petitioner never objected to the installation of the power supply and erection of poles and installing of the electric lines over it, as the same was done strictly in conformity with the scheme provided under the Electricity Act and Rules framed there-under. It is the specific case of the Respondents that the requisite height of the poles and wires was maintained at 15 feet from the ground level. Learned Counsel for the Respondents further submits that public in general was made aware and advised time and again not to come in contact with the live wires and fiddle with the electric wires but no heed was paid and as such death occurred due to the negligence on part of the son of Petitioner.

9. The Learned Counsel for the Respondents has placed reliance on a judgment rendered by Hon'ble Apex Court in a case titled *Chairman, Grid Corporation of Orissa Ltd. (GRIDCO) & Ors. V/s Sukamani Das & Anr.* "1999 AIR (SC) 3412". The said judgment however is not applicable in the present case as the distinguishable factor in that case is that there was no negligence and the incident was on account of the act of god, but in the present case, it is clear cut case of negligence on part of the Respondents.

10. Heard the learned counsel for the parties at length.

11. Admit.

12. Before this Court deals with the submissions made at the bar, it would be imperative to deal, appreciate and reiterate the general and settled principles of law while understanding the rules governing the present case.

**THE JAMMU AND KASHMIR ELECTRICITY ACT**  
**2010/ELECTRICITY RULES, 1978**

13. On the date of death of the son of petitioner, Jammu and Kashmir Electricity Act 2010/Electricity Rules, 1978 were applicable, as such, the Respondents had to take precautions, preventive measures as per the provisions of said Act and Rules, back then.

14. As per the Act, Section 2 (16) defines **Electric Line** to mean any line which is used for carrying electricity for any purpose and includes any support for any such line, that is to say, any structure, tower, pole or other thing in, or by or from which any such line is, or maybe, supported, carried or suspended; and any apparatus connected to any such line for the purpose of carrying electricity. Further, Section 2 (54) defines **Service Line** to mean any electric supply line through which electricity is or is intended to be, supplied to a single consumer either from a distributing main or immediately from the distribution licensee's premises and from a distributing main to a group of consumers on the same premises or on contiguous premises supplied from the same point of the distributing main. For the kind perusal of this Court Section 2 (16) and Section 2 (54) are reproduced hereunder:-

***2(16) "Electric Line" means any line which is used for carrying electricity for any purpose and includes:-***



- a. Any support for any such line, that is to say, any structure, tower, pole or other thing in, on, by or from which any such line is, or may be, supported, carried or suspended; and
- b. Any apparatus connected to any such line for the purpose of carrying electricity;

**2(54) “Service Line” means any electric supply line through which electricity is, or is intended to be, supplied,**

- a. To a single consumer either from a distributing main or immediately from the distribution licensee’s premises; or
- b. From a distributing main to a group of consumers on the same premises or on contiguous premises supplied from the same point of the distributing main;

Further, Rule 77 of Electricity rules, 1978 provide for clearance above ground of the lowest conductor including service lines. For the kind perusal of this Court, Rule 77 of Electricity Rules, 1978 is reproduced hereunder:

*“Clearance above ground of the lowest Conductor.*

- (1) *No conductor of an overhead line, including service lines, erected across a street shall at any part thereof be at a height less than:-*

(a) *For low and medium voltage lines      5.791 Mts (19 Feet)*

(b) *For high voltage lines                      6.069 Mts. (20 Feet)*

- (2) *No conductor of an overhead line, including service lines, erected along any street shall at any part thereof be at a height less than:-*

(a) *For low and medium voltage line      5.486 Mts. (18 Feet)*

(b) *For high Voltage Lines                      5.791 Mts. (19 Feet)*

- (3) *No conductor of an overhead line including service lines erected elsewhere than along or across any street shall be at a height less than:-*

(a) *For low, medium and high voltage lines up to and including 11,000 volts, if bare 4.572 Mts. (15 Feet)*

(b) *For low, medium and high voltage lines up to an including 11,000 volts, if insulated      3.963 Mts. (13 Feet)*

(c) *For high voltage lines above*

11,000 volts  
Feet)

5.182 Mts. (17

(4) *For extra-high voltage lines the clearance above ground shall not be less than 5.182 Mtrs. (17 Feet); plus 0.305 Mtrs. (1 Feet) for every 33,000 volts or part thereof by which the voltage of the line exceeds 33,000 volts.*

*Provided that the minimum clearance along or across any street shall not be less than (20 feet) 6.965 Meters.*

15. From the conjoint reading of the aforesaid provisions, the maximum clearance above ground of the conductor or service line has to be 20 ft. and minimum clearance above ground has to be 13 ft., in all cases.

### **RES IPSA LOQUITUR**

16. *Res ipsa loquitur* is a doctrine in a latin phrase that means a 'thing speaks for itself'. It is a doctrine under which a court can infer negligence from the very nature of an accident or injury. The maxim *Res ipsa loquitur* is resorted to when the thing is shown to be under the management of the Respondents or his servants and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of explanation by the Respondents, *that the accident arose from want of care*. The maxim does not embody any rule of substantive law nor a rule of evidence it is perhaps not a rule of any kind but simply the caption to an argument on the evidence. If the result, in the circumstances in which the Petitioners proves it, makes it more probable than not that it was caused by the negligence of the Respondents, the doctrine of *res ipsa loquitur* is set to apply. In this context reference maybe made to the judgment of Hon'ble Supreme Court in the case of *Shyam Sunder & Ors V/s State of Rajasthan*,

(1974) 1 SCC 690, where the concept of *res ipsa loquitur* was explained. Relevant portion of the said judgment reads as follows:

*“10. The Maxim is stated in its classic form by Erle, C.J*

*“... where the thing is shown to be under the management of the defendant or his servants, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of explanation by the defendants, that the accident arose from want of care.*

*The maxim does not embody any rule of substantive law nor a rule of evidence. It is perhaps not a rule of any kind but simply the caption to an argument on the evidence. Lord Shaw remarked that if the phrase had not been in Latin, nobody would have called it a principle. The maxim is only a convenient label to apply to a set of circumstances in which the plaintiff proves a case so as to call for a rebuttal from the defendant, without having to allege and prove any specific act or omission on the part of the defendant. The principal function of the maxim is to prevent injustice which would result if a plaintiff were invariably compelled to prove the precise cause of the accident and the defendant responsible for it even when the facts bearing on these defendant. But though the parties relative access to evidence is an influential factor, it is not controlling. Thus, the fact that the defendant is as much at a loss to explain the accident or himself died in it does not preclude an adverse inference against him, if the odds otherwise point to his negligence (see John G. Fleming, the Law of Torts, 4<sup>th</sup> Ed., p. 264) The mere happening of the accident may be more consistent with the negligence on the part of the defendant than with other cause. The maxim is based as common sense and its purpose is to do justice when the facts bearing on causation and on the care exercised by defendant are at the outset unknown to the plaintiff and are or ought to be within the knowledge of the defendant*

*11. The plaintiff merely proves a result, not any particular act or omission producing the result. If the result, in the circumstances in which he proves it, makes it more probable than not that it was caused by the negligence of the defendants, the doctrine of *res ipsa loquitur* is said to apply, and the plaintiff will be entitled to succeed unless the defendant by evidence rebuts that probability.*



## **RIGHT OF THE WRIT COURT TO AWARD COMPENSATION**

17. The Hon'ble Supreme Court of India in a case titled "*Nila Bath Behera alias Lalita Behera V/s State of Orissa*, (1993) 2 SCC 746" was dealing with the issues of award of compensation in proceedings under Article 32 and Article 226 of the Constitution. The Hon'ble Apex Court noted that remedy is available in public law based on strict liability for contravention of fundamental rights. The Court further held that this right is distinct from and in addition to the remedy in private law for damages resulting from contravention of the fundamental rights. The Court also held that the Supreme Court and High Courts have wide powers under Article 32 and Article 226 respectively to forge new tools that may be necessary for doing complete justice and enforcing the fundamental rights guaranteed in the Constitution. The relevant portion of the judgment reads as follows:-

*"21. We respectfully concur with the view that the court is not helpless and the wide powers given to this court by Article 32, which itself is a fundamental right, imposes a Constitutional obligation on this Court to forge such new tools, which may be necessary for doing complete justice and enforcing the fundamental rights guaranteed in the Constitution which enable the award of monetary compensation in appropriate cases, where that is the only mode of redress available. The Power available to this Court under Article 142 is also an enabling provision in this behalf. The contrary view would not merely render the court powerless and the Constitutional guarantee a mirage, but may, in certain situations, be an incentive to extinguish life, if for the extreme contravention the Court is powerless to grant any relief against the State, except by punishment of the wrongdoer for the resulting offence, and recovery of damages under private law, by the ordinary process. If the guarantee that deprivation of life and personal liberty cannot be made except in accordance with law, is to be real, the enforcement of the right in case of every contravention must also be possible in the constitutional scheme, the mode of redress being that which is appropriate in the facts of each case. This*

*remedy in public law has to be more readily available when invoked by the have-nots, who are not possessed of the wherewithal for enforcement of their rights in private law, even though its exercise is to be tempered by judicial restraint to avoid circumvention of private law remedies, where more appropriate.”*

*“21. We may also refer to Article 9(5) of the International Covenant on Civil and Political Rights, 1966 which indicates that an enforceable right to compensation is not alien to the concept of enforcement of a guaranteed right. Article 9(5) read as under:*

*“Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.”*

*“22. The above discussion indicates the principles on which the Court’s power under Article 32 and 226 of the Constitution is exercised to award monetary compensation for contravention of a fundamental right. This was indicated to earlier, which may tend to minimise the effect of the principle indicated therein, do not really detract from the principle. This is how the decisions of this Court in Rudul Shah and others in that line have to be understood and Kasturilal distinguished therefrom. We have considered this question at some length in view of the doubt raised, at time, about the propriety of awarding compensation in such proceedings, instead of directing the claimant to resort to the ordinary process of recovery of damages by recourse to an action in tort. In the present case, on the finding reached, it is clear case of award of compensation to the petitioner for the custodial death of her son.”*

18. In the given facts, I also look at another judgment of the Supreme Court in the case of *Madhya Pradesh Electricity Board V/s Shail Kumari & Anr*, AIR 2002 SCC 55, that was a case where the deceased was riding on a bicycle in the night while returning from his factory. There had been rain and the road was partially inundated in water. The cyclist did not notice the live wire on the road and hence he rode the vehicle over the wire, it twitched and snatched him and he was instantaneously electrocuted. The main defence raised by the Respondent was that the wire in question had been used by somebody to siphon energy for his own use and said act was done clandestinely behind the back of the electricity board. The line got unfastened from

the hook and it fell on the road over which the cycle driven by the deceased slid, resulting in the instantaneous electrocution. In those facts, the Supreme Court held as follows:-

*“7. It is an admitted fact that the responsibility to supply energy in the particular locality was statutorily conferred on the Board. If the energy so transmitted cause 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.”*

*“8. Even assuming that all such measures have been adopted, a person undertaking an activity involving hazardous or risky exposure to human life, is liable under law of torts to compensate for the injury suffered by any other person, irrespective of any negligence or carelessness in the part of the managers of such undertakings. The basis of such liability is the foreseeable risk inherent in the very nature of such activity. The liability case on such person is known, in law, as “Strict liability”. It differs from the liability which arises on account of the negligence or fault in this way i.e., the concept of negligence comprehends that the foreseeable harm could be avoided by taking reasonable precautions. If the defendant did all that which could be done without harm he cannot be held liable when the action is based on any negligence attributed. But such consideration is not relevant in cases of strict liability where the defendant is held liable irrespective of whether he could have avoided the particular harm by taking precautions.”*

*“9. The doctrine of strict liability has its origin in English Common Law when it was propounded in the celebrated case of Ryland’s v/s Fletcher (1868 Law*

*Reports (3) HL 330). Blackburn J., the author of the said rule had observed thus in the said decision.”*

*Xxxxx*

*“13. In the present case, the Board made an endeavour to rely on the exception to the rule of strict liability (Ryland’s v. fletcher) being “an act of stranger.” The said exception is not available to the Board as the act attributed to the third respondent should reasonably have been anticipated or at any rate its consequences should have been prevented by the appellant-Board. In North western Utilities, Limited V. London Guarantee and Accident Company, Limited (1936 Appeal cases 108), the privy Council repelled the contention of the defendant based on the aforesaid exception. In that case a hotel belonging to the plaintiffs was destroyed in a fire caused by the escape and ignition of natural gas. The gas had percolated into the hotel basement from a fractured welded joint in an intermediate pressure main situated below the street level and belonging to the defendants which was a public utility company. The Privy council held that the risk involved in the operation undertaken by the defendant was so great that a high degree care was expected of him since the defendant ought to have appreciated the possibility of such a leakage.”*

*“14. The privy Council has observed in Quebec Railway, Light Heat and Power Company Limited V/s Vandry & Ors. (1920 Law Reports Appeal Cases 662) that the company supplying electricity is liable for the damage without proof that they had been negligent. Even the defence that the cables were disrupted on account of a violent wind and high tension current found its way through the low tension cable into the premises of the respondent was held to be not a justifiable defence. Thus, merely because the illegal act could be attributed to a stranger is not enough to absolve the liability of the Board regarding the live wire lying on the road.”*

19. What follows from the aforementioned judgments is that the Supreme Court has in identical matters taken a view that this Court has powers in an appropriate case to award compensation and has also taken a view that the company/corporation/departments supplying electricity are liable for damages without proof that they have been negligent based on the principle of absolute liability.

## **DISCUSSION**



20. On the perusal of record, which includes registration of FIR against PDD Officials, Medical Opinion and Post-mortem report, it is evidently clear that the cause of the death of the son of the Petitioner was due to electrocution, negligence of which is completely attributable to the officials of PDD, who have failed to take due care and caution in maintaining electric supply lines at proper height as per Rule 77 of Electricity Rules, *supra*. The claim of the Respondents that they acted with due care and caution has been negated by the investigation report of the police, wherein it has emerged that the wires were not affixed properly. The contention of the Respondent that death was caused due to negligence of the child does not appear to be reasonable and is practically impossible. It is humanly not possible to fiddle with the wires placed at a height to 15ft from ground by a minor child who is 13 years of age and it is practically impossible to touch the wires at such a height and thus the plea raised by the Respondent cannot be considered to be reasonable and is liable to be rejected. Clearly, the specific averments of the Petitioner about the negligence of the Respondents have evoked a vague response from Respondents. In my opinion, facts speak for themselves and the principles of *res ipsa loquitur* will clearly apply on these facts. A clear averment has been made by the Petitioner that the Respondent was guilty of negligence. A young boy has died after coming in contact with a live electric wire that was hanging between poles at the height of 3 to 4 ft from the ground level. In the reply, a vague and an evasive denial based on surmises and conjectures has been made. As such, based on the above facts and the doctrine of *res ipsa loquitur*, it is clear that the



Respondents are guilty of negligence. The death of the deceased has occurred due to negligence of the Respondents.

**21.**It goes without saying that anyone generating, transmitting, supplying or using electric energy of high voltage, which is hazardous and inherently dangerous activity is required to ensure that no such energy was transmitted or discharged unless requisite measures had been taken to prevent its uncontrolled escape, which may injure, impair or takeaway life. Any omission in preventing the discharge of high voltage electric energy by anyone engaged in the activity of supplying such electric energy is liable to compensate for the damage caused to a human life because of such energy.

**22.**Under the Jammu and Kashmir Electricity Act read with Jammu and Kashmir Electricity Rules, the state is licensed to deal with electric energy. While doing so it is required to take requisite preventive measures as enshrined in Rule 77 and other provisions so that the electric energy does not cause any damage to life and property. Failure of the Respondents in this case to take requisite measures to ensure that electric/service lines are erected at a maximum height of 20 ft. and the minimum height of 13 ft., makes them liable to compensate for the damage because the escape of high voltage electric energy has taken the life of the son of the Petitioner. It is pertinent to note here, that a strange submission has been made by the Respondent who is in-charge of distribution of electricity in the area that the death could not have been caused by the electric line because electric line was at the height of 15ft. from the ground level. The submission of the Respondents cannot clearly be believed, as post-mortem report and Police Report

both state in unequivocal terms that the death of the son of the Petitioner has taken place due to electrocution on contact with electricity wires within the territory of Respondents. This vague belief of Respondents fortifies my conclusion of the negligence on part of the Respondents. The negligence of the Respondents in maintaining electric/service wires is writ large on the face of the record.

23. The Division Bench of this Court in the case of *Abdul Aziz Bhat v. State of Jammu and Kashmir*, 2013 (III) SLJ 786, after discussing the case law on the point in paragraph 2.2, concluded thus:

*“2.2 A Constitution Bench of Hon'ble the Supreme Court in the case of M.C. Mehta (Reported as 1987 AIR page 1086), after referring to the apt-quoted principles laid down by House of Lords in Rylands v. Fletcher, [L.R.] 3 H.L. 330, has proceeded to hold that the Court must move with the march of time and evolve principles befitting the cause of justice and that law has to grow in order to satisfy the needs of the fast changing society. It cannot afford to remain static. Keeping in view the aforesaid backdrop their Lordships opined as under:—*

*“.....We are of the view that an enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas owes an absolute and non-delegable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous nature of the activity which it has undertaken. The enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity in which it is engaged must be conducted with the highest standards of safety and if any harm results on account of such activity, **the enterprise must be absolutely liable to compensate for such harm and it should be no answer to the enterprise to say that it had taken all reasonable care and that the harm occurred without any negligence on its part.** Since the persons harmed on account of the hazardous or inherently dangerous activity carried on by the enterprise would not be in a position to isolate the process of operation from the hazardous preparation of substance or any other related element that caused the harm the enterprise must be held strictly liable for causing such harm as a part of the social cost of carrying on the hazardous or inherently*

*dangerous activity. If the enterprise is permitted to carry on an hazardous or inherently dangerous activity for its profit, the law must presume that such permission is conditional on the enterprise absorbing the cost of any accident arising on account of such hazardous or inherently dangerous activity as an appropriate item of its overheads.*

*..... This principle is also sustainable on the ground that the enterprise alone has the resource to discover and guard against hazards or dangers and to provide warning against potential hazards. 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-a-vis the tortious principle of strict liability under the rule in Rylands v. Fletcher.*

*A perusal of the aforesaid para in unmistakable terms shows that a hazardous or an inherently dangerous activity can be tolerated only on the condition that such an enterprise would indemnify all those who suffer on account of carrying on of such dangerous activity, regardless of whether it is carried on with reasonable and due care. Therefore, even in a case where due care and caution had been taken but on account of hazardous or inherently dangerous activities death or injuries have resulted, then indemnification is imperative. These principles have found full support from the view expressed by another Constitution Bench in Charan Lal Sahu's case (supra). Again in the case of **M.P. Electricity Board v. Shail Kumari (2002) 2 SCC 162** that can be fruitfully referred. This was case where a cyclist was fatally electrocuted on account of his cycle touching a live wire lying on road partially inundated with water. The Apex Court laid down the law which is reproduced as follows:*

*“These principles have been followed and applied as is evident from perusal of para 8 and 11 of the judgment which are quoted below in extenso:-*

*“8. Even assuming that all such measures have been adopted, a person undertaking an activity involving hazardous or risky exposure to human life, is liable under law of torts to compensate for the injury suffered by any other person, irrespective of any negligence or carelessness on the part of the managers of such undertakings. The basis of such liability is the foreseeable risk inherent in the very nature of such*

*activity. The liability cast on such person is known, in law, as “strict liability”. It differs from the liability which arises on account of the negligence or fault in this way i.e. the concept of negligence comprehends that the foreseeable harm could be avoided by taking reasonable precautions. If the defendant did all that which could be done for avoiding the harm he cannot be held liable when the action is based on any negligence attributed. But such consideration is not relevant in cases of strict liability where the defendant is held liable irrespective of whether he could have avoided the particular harm by taking precautions.”*

24. This court in case titled *State of JK & Ors. vs. Altaf Ahmad Ganai & Anr.* SLJ 2003 (1) has held as under:-

*“14. .... Thus, a person undertaking an activity involving hazardous or risky exposure to human life, is liable under law of torts to compensate for the injury suffered by any other person irrespective of any negligence or carelessness on the part of the managers of such undertakings. As indicated above, the basis of such liability is the foreseeable risk inherent in the very nature of such activity. Thus, in such cases, the negligence comprehends that the foreseeable risk would be avoided by taking reasonable precautions.”*

25. From the above, it is crystal clear that the rule of strict liability has been approved and followed in many subsequent decisions in England. This principle has also gained approval in India. A Constitution Bench of the Supreme Court of India in the case reported as *Charan Lal Sahu Vs. Union of India*. 1990 (1) SCC 613 and a two Judge Bench in the case of *Kaushunma Begum Vs. New India Assurance Co. Ltd.* 2001 (2) SCC 9 adopted this principle. As a matter of fact, in an earlier decision reported as *M.C. Mehta Vs. Union of India*, 1987 (1) SCC 395, the Supreme Court of India has gone even beyond the rule of strict liability and has held that where an enterprise is engaged in a hazardous or inherently dangerous activity and harm anyone 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.

26. The rule of absolute liability does not require that a claimant is under obligation to prove negligence. On account of hazardous and dangerous nature of enterprise the liability is fastened on the defaulter even when due and necessary care has been taken. The accident is admitted and it has not been disputed that death of Vishal Sharma has not occurred on account of electrocution. The claimant would become entitled to demand compensation in such like cases on account of violation of fundamental rights to life and liberty guaranteed under Article 21 of the Constitution.

27. The respondents, in the instant case, have also not provided any material that may lend support to the plea taken by them in their defence that the negligence was of the deceased and not the respondents.

28. In view of the above quoted legal position, I hold the respondents liable to compensate the petitioner for the death of her son who has been electrocuted due to the negligence on part of the respondents.

29. The next question which falls for determination is regarding the quantum of compensation to which the petitioner may be entitled to, for the death of her son.

30. The Finance Department of the erstwhile State of J&K (now UT) has framed a policy in this regard by carrying an amendment in the J&K Book of Financial Powers in pursuant to the SAC Decision No. 271/22/2019 dated 22.10.2019 by virtue of Government Order No. 454-F of 2019 dated 24-10-2019 whereby, sanction was accorded to the following amendments in the J&K Book of Financial Powers in



Chapter 5.9 against serial No. 123-A(1), the relevant column ‘Extent’ shall be recast as under:-

S. No.	Nature of Power	To whom delegated	Extent
123-A	<p>1)To grant Ex-gratia Relief in favour of the employees of the PDD, other persons or their heir and to the owners of Domestic Animals, who are electrocuted and die, or are rendered fully/partially disabled due to the negligence of the PDD, subject to the conditions that:</p> <p>(i) All the employees of the PDD, whether regular ,DRW/Casual labour, Work Charged, Contingent paid etc., engaged in the generation, transmission or supply of electrical energy in the Department, who are killed, incapacitated, wholly or partially, during the course of discharging their bonafide and</p>	DCP	<p>Full powers within the Budget</p> <p>Provisions with the following scales:</p> <p>A. Human Beings:</p> <p>I. In case of Death=Rs 10.00 lacs.</p> <p>II.Total Disability=Rs 7.50 lacs.</p> <p>III. .Partial Disability=Rs 2.00 lacs.</p> <p>In case of death of any employee, the Ex-gratia relief shall be paid to the legal heirs of the deceased. The payment shall be subject to the condition that the relief, granted by the Government under the Workman's Compensation Act, shall be adjusted while making payment of the Ex-gratia relief.</p>

	<p>legitimate duties;</p> <p>ii) Civilians, killed or injured, resulting in their partial or total disability, subject to the explicit condition that the accident is not attributable to them, but to the lapses, attributable to the POD, as verified by the Director, TTI&amp;C;</p> <p>iii) Domestic animals killed by electrocution, caused due to lapses, attributable to the Department and verified by the Director, TTI&amp;C.</p>		<p><b><u>B. Domestic Animals</u></b></p> <p>i. Cow ,bull, horse=Rs 20,000</p> <p>ii. Sheep/Goat=Rs 5,000.</p>
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31. Since the Government has already framed a policy vis-à-vis the death caused due to electrocution by virtue of the aforesaid Government Order, this Court need not to go into the parameters prescribed for awarding of compensation in case of death/injuries arising out of the motor vehicles accidents under the Motor Vehicles Act. The case of the death of the petitioner's son is fully covered by the aforesaid policy as the accident is not attributable to the deceased but to the lapses attributable to PDD as per the pleadings and record discussed herein above.

**CONCLUSION**

32. In view of the above, the writ petition is maintainable for award of compensation and the state was under obligation/duty to see that the

electric installations are properly fenced and are placed in a position and height so that these are not accessible to the general public and the children in particular. The state cannot claim immunity by shifting the burden on the deceased who was a minor child of 13 years of age.

33. Petitioner's case for compensation needs to be considered for assessment of compensation on the basis of policy promulgated, vide Government Order No. 454-F of 2019 dated 24.10.2019.

34. In the circumstances and keeping in view of fact that the deceased has left behind his mother, who has to lead rest of life in absence of the company, love and affection of the deceased, an amount of Rs. 10.00 Lacs in total would be in my view appropriate, just and fair compensation for the petitioner for deprivation of the life of her child and for the damage which has been caused to the quality of her life as well in conformity with the policy of payment of ex-gratia relief to civilians and departmental employees of PDD who have died or injured due to electricity related incidents promulgated vide order No. 454-F of 2019 dated 24.10.2019.

35. The writ petition is, therefore, allowed and respondents are directed to pay to the petitioner a sum of Rs. 10,00,000/- (Ten Lac Rupees) within a period of two months, starting today i.e., 01.03.2023.

36. Writ Petition is allowed and disposed of in the aforesaid manner.

**(WASIM SADIQ NARGAL)**  
**JUDGE**

**SRINAGAR**  
**01-03-2023**  
*Altaf*

*Whether Approved for Reporting: Yes*