

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

OWP No. 1187/2014

**Reserved on :12.04.2023
Pronounced on : 27.04.2023**

Renu Bala & ors.

.... Petitioner/Appellant(s)

Through:- Mr. Sachin Dogra, Advocate

V/s

State & ors.

.....Respondent(s)

Through:- Mr. Amit Gupta, AAG

CORAM : HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

JUDGMENT

GIST

01. The present writ petition has been filed by the petitioners seeking an appropriate writ of mandamus directing the respondents to pay the compensation to the petitioners for the death of Jatinder Kumar S/o Sh. Kuldeep Raj (husband of petitioner No. 1, father of petitioner No. 2 and son of petitioner No. 3) due to rash and negligent act on the part of the respondents being employee of the Power Development Department working under the employment of respondent Nos. 1 to 5 at the time of death of the deceased.

BRIEF FACTS OF THE CASE

02. The deceased-Jatinder Kumar had been engaged by respondent Nos. 1 to 5 as casual labourer for the last more than seven years, who had been rendering his service to the entire satisfaction of his superiors and unfortunately on 23.09.2013, the deceased alongwith one Khaliq Khan was

directed by respondent Nos. 6 and 7 to affect the repair in a Transformer installed near Sughat Complex Janipur, Jammu.

03. The specific case of the petitioner is that as the deceased and Khaliq Khan, at one point of time, had disconnected illegal connection which was running under the verbal direction of respondent Nos. 6 and 7, as such, they had developed grudge and ill will against the deceased and said Khaliq Khan. The respondent No. 6 and 7 were apprehending some departmental inquiry against them for the act of willful commission and omission regarding the misuse of electricity under the instructions of respondent Nos. 6 and 7, as such, the said respondents were always in the search of occasion to see that the service of the deceased as also Khaliq Khan were disbanded and terminated.

04. Further specific case of the petitioners is that it was in the knowledge of respondent Nos.6 and 7 that the supply of the line had not been disconnected and disrupted, as such, they intentionally and deliberately compelled the deceased-Jatinder Kumar to climb on the Transformer and affect the required repairs, though the immediate repairs were not required nevertheless the deceased was compelled to affect the repair. The deceased before climbing on the transformer had asked respondents Nos.6 and 7 about the disconnection of power supply to the transformer situated near Sughat Complex, Janipur, Jammu. It was unanimously stated by respondent Nos.6 & 7 that the power supply had been disconnected and thereafter, the deceased-Jatinder Kumar was made to climb the transformer and made the repair and the moment, the said Jatinder Kumar started the repair, he got the

electric shock and died on the spot and due to the untimely death of Jatinder Kumar, whole of the family had been dragged and brought to starvation.

SUBMISSIONS OF THE PETITIONERS

05. Learned counsel appearing on behalf of the petitioners submits that petitioner No. 1 is unfortunate widow whereas petitioner No. 2 is minor daughter and petitioner No. 3 is the mother of the deceased, who were left with no source of income and the said Jatinder Kumar had been earning an amount of Rs.10,000/- not only by working as casual labourer but also rendering his service as an expert electrician in the society but due to the untimely death of said Jatinder Kurnar, the petitioners have been deprived their source of livelihood as also love and affection.

06. Learned counsel further submits that had the deceased not died, the deceased would have been in the department upto the age of 58 years and would have earned an amount of Rs. 25 lacs, out of which, the deceased would have spent more than Rs. 15 lacs on the welfare and betterment of his family members and the deceased at the time of death was aged about 28 years, as such, would have rendered his service in the department for another 30 years.

07. Learned counsel for the petitioners vehemently argued that the rash and negligent act on the part of respondents Nos. 6 and 7 is established from the fact that an FIR in respect of the occurrence has been registered in the Police Station, Janipur and the Police Station, Janipur after thorough investigation, prepared the charge-sheet against the said respondents under Section 304/34 RPC and had been presented in the Court of law. He further

argued that from the perusal of the police final report, it appears that said the respondents have been booked under Sections 304/34 RPC for their commission and omission of offences and the cause of death of the deceased-Jatinder Kumar had also been medically established through the postmortem report.

08. Lastly, learned counsel appearing on behalf of the petitioners argued that the deceased died in harness while discharging his duties in the capacity of lineman employed as casual labourer since 2005 and the petitioners immediately after the death of deceased-Jatinder Kumar approached the department and requested them for compensation on the death of deceased-Jatinder Kumar but the officials of the department did not pay any heed to their request and till date, compensation has not been paid to the petitioners. He further argued that the officials of the department were under legal obligation to pay the compensation to the petitioners on the death of the deceased-Jatinder Kumar, who died in harness but till date, nothing has been done by them and the petitioners are running from front pillar to post for the compensation on account of the death of deceased-Jatinder Kumar.

SUBMISSIONS OF THE RESPONDENTS

09. Mr. Amit Gupta, learned AAG appearing on behalf of the respondents submits that the respondents have not committed any act which would warrant payment of compensation and the petitioners by no stretch of imagination can claim compensation as a matter of right. Besides, learned AAG appearing on behalf of the respondents submits that the J&K

Government has come up with the policy in such like cases of Electrocution, where the government grants ex-gratia amount to the tune of Rs. 3.00 lacs in the case of death of likewise structure has been prepared and crystallized in cases of grievous injuries and disability. The petitioners have not submitted any document to access their case for compensation permissible under rules. Learned AAG further submits that the respondents have considered the case of the petitioners and detailed report has been submitted by Chief Electrical Inspector, J&K PDD to Secretary, Technical, J&K PDD vide communication No. CEI/JKPDD/1195-99 dated 03.11.2021.

10. Mr. Amit Gupta, learned AAG has argued that as per the report of the Assistant Executive Engineer, Sub Division-II Janipur vide communication No. SD-II/J/496-99 dated 28.09-2013, a fatal accident happened on 28.09.2013 at about 10.30 AM where one need based worker- Jatinder Kumar died on spot while carrying out power restoration work on BSNL transformer and on 28.09.2013 at 8.10 AM, Sh. O. P. Mangotra Foreman and Sh. Sanjeev Khajuria, Technician took the shutdown of J2 & J9 Feeder deployed Sh. Jatinder Kumar, need based worker (deceased) and Sh. Khaliq Khan, Lineman to carry out power restoration work to BSNL exchange during the course while working on BSNL transformer, a flash over occurred and Jatinder Kumar fell down from the electric pole and died on spot.

11. Learned counsel further argued that Sh. Sanjeev Khajuria, who was also reportedly present at the accident site and witnessing the tragic accident and seen the body of the deceased laying on the ground with pool of

blood immediately rushed to Sub Division office to inform his officer regarding the accident, the concerned Junior Engineer after receiving the information about the accident at about 10.30 am reached 33/11KV R/Station Janipur and confirmed that both the feeders i.e. J2 & J9 were shut down as he saw the shutdown plates for the said feeders hanging there. The power to the said BSNL transformer/exchange is being fed from J9 feeder emanating from the said Receiving Station, Janipur. He further submits that answering respondents are denying any negligence or any liability of electrocution of the deceased in the present case, as such, the present writ petition is required to be dismissed.

12. Lastly, Mr. Amit Gupta, learned AAG appearing on behalf of the respondents argued that the deceased Sh Jatinder Kumar was engaged as need based worker from time to time as and when required and the case of ex-gratia compensation relief has been submitted to Secretary Technical, J&K PDD vide communication No. CEI/JKPDD/1195-99 dated 03.11.2021 by Chief Electrical Inspector, J&K PDD and registration of FIR/Challan *ifso-facto* does not make the respondents liable and the petitioners have to prove that the accident occurred due to the fault of the respondents and the respondents are negligent.

13. The learned counsel for the respondents has placed reliance on a judgment rendered by Ho'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.

LEGAL ANALYSIS

14. With a view to appreciate the controversy in question, it would be apt to refer the detail report submitted by the Chief Electrical Inspector J&J PDD dated 03.11.2021 which has been placed on record as Annexure-R1 with the objections. From bare perusal of the report, it is apt to reproduce the remarks submitted by the Executive Engineer Electrical Inspection Division Jammu with regard to cause of the electric accident in question:-

- (i) *On the perusal of records and on spot observations made by the joint Inspection team, it is evident that in the Instant case electrical accident occurred when a need-based worker (deceased) carried out the repair work on the electric system which was seemingly not electrically isolated. While carrying out the said work, the essential Work Place carrying precautions like local earthings and other SOPS may also seem to have not been followed by the Operation and Maintenance (O&M) staff which are necessary even if the system is isolated from the sending end (L.e. the Receiving Station from where the feeders emanate), to ensure safety of the personnel from any electric hazard resulting due to leakage at any point/crossings/ low clearance area enroute the HT line. Further, the inherent system limitations like low clearance crossings without guardnetting/earthing as pointed out by the inspection team require due attention by the department.*
- (ii) *Further it has been observed that old/existing HT/LT lines do not have sufficient earthing as mandated under regulation 72 of Central Electricity Authority (Measures relating to Safety & Electric Supply) Regulations, 2010 which should be taken up Immediately by the department to ensure safety of both the individuals and the equipment. Permit to work before taking any work In hand should be followed in letter and spirit. Further, in case of electrical networks having mesh of lines and multiple/ different feeders feeding nearby DTS, the line staff needs to exhibit extra care while carrying out O&M works.*
- (iii) *In order to reduce such type of accidents in the near future, the concerned territorial sub-divisional officer not only conduct electrical safety programme for the subordinate staff from time to time but advised: them regularly to examine the site conditions related to LT/HT network before Initiating any kind of restoration/repairs work. This accident could have been averted, if the safety norms are followed like adequate isolation of LT/HT network. All these Issues need to be addressed on priority so as to ensure safety of life.*

However, in general, the technical/field staff should be advised regularly for safe and proper handling of repairs/replacement work after thorough examining of the site conditions.

As such, the report/case is submitted for appropriate action under rules.

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15. I have gone through the report submitted by the Chief Electrical Inspector and have also perused the documents with particular reference to the report of the Executive Engineer and perusal thereof makes it clear that

the instant accident is purely an electrical accident and the respondents have admitted their fault in the aforesaid report wherein the respondents have admitted that the accident is attributed to :-

1. *Non-adherence to proper "PERMIT TO WORK" system and SOPs like local earthings, Hand \ insulating gloves, proper isolation and other safety measures by the maintenance staff before starting of the restoration work.*
2. *Inadequate isolation of HT/LT Network before the start of repairs works*
3. *Lack of adequate knowledge for adherence to safety norms by the victim*

16. From the perusal of the aforesaid report, it can safely be concluded that the accident occurred when the deceased was carrying out the repair work on the electric system which was not electrically isolated. It was incumbent on the part of the respondents that before allowing the deceased to carry out the said work, the essential work place caring precaution like local or earthings and other SOPs were required to be followed by the operation and maintenance staff to ensure the safety of the personal from any electric hazard due to leakage at any point/crossing/low clearance area enroute the HT line.

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

17. On the date of death of the said Jatinder Kumar, 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.

18. 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.

- (I) *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 5.182 Mts. (17 Feet)*
 - (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.

19. 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.

20. The measure as laid down under the Regulation-72 of the Electricity Authority Regulation 2010 were required to be followed but the respondents have given a go-bye to the aforesaid mandatory provisions of law which resulted in death of Jatindra Kumar.

RES IPSA LOQUITUR

21. *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 prove 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, OWP No.**

902/2010 reported as **(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, 4th 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

22. 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 OWP No. 902/2010 Page 10 of 21 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.”

23. 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 OWP No. 902/2010 Page 12 of 21 Reports (3) HL 330). Blackburn J., the author of the said rule had observed thus in the said decision."

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"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."

24. 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.

25. Registration of FIR and after thorough investigations, challan against respondent Nos. 6 and 7 under section 304/34 RPC was produced which clearly established about the negligent act on the part of the respondent Nos. 6 and 7. It is evidently clear that cause of death of Jatinder Kumar was due to electrocution/negligent, which is completely attributable to the respondents, who have failed to take due care and caution in maintaining electric supply lines under the Electricity Act and Rules framed thereunder and as per report of the Executive Chief Electrical Inspector PDD, it can safely be concluded that the accident had occurred due to fault attributable to the respondents and thus, there is no disputed question of fact as alleged by the respondents to adjudicate the present writ petition.

26. 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 take away 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.

27. 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. The negligence of the Respondents in maintaining electric/service wires is writ large on the face of the record.

28. 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.”

29. 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.”

30. 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.

31. The rule of absolute liability does not require that claimants are 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 Jatinder Kumar has not occurred on account of electrocution. The claimants 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.

32. 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.

33. In view of the above quoted legal position, I hold the respondents liable to compensate the petitioners for the death of Jatinder Kumar, who has been electrocuted due to the negligence on part of the respondents.

34. The next question which falls for determination is regarding the quantum of compensation to which the petitioners may be entitled to, for the death of the said Jatinder Kumar.

35. 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 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 the POD, as verified by the Director, TTI&C;</p> <p>(iii) Domestic animals killed by electrocution, caused due to lapses, attributable to the Department and verified by</p>	DCP	<p>Full powers within the Budget 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</p>

	the Director, TTI&C.		Workman's Compensation Act, shall be adjusted while making payment of the Ex-gratia relief.
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36. 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 No. 1's husband 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.

37. In the present case, petitioner No. 1 is the unfortunate widow of the deceased whereas petitioner No. 2 is a minor daughter (at the time of filing of the petition) and petitioner No. 3 is the mother of the deceased, who left with no source of income and family has been put to starvation due to death of sole earning member of the family as the deceased was earning Rs.10,000/- by working as casual labour in the respondents-Department and due to untimely death of husband of petitioner No. 1, the petitioners have deprived of their source of livelihood and also love and affection of the deceased. Had the deceased not met with an accident, he would have served the department up to the age of 58 years and at least would have earned, as per the stand of the petitioners, an amount of Rs. 25 lakh, out of which the deceased would have spent more than Rs. 15 lakh on the welfare and betterment of his family members. The deceased at the time of his death was

28 years of age and would have rendered his services in the department for another 30 years but due to rash and negligent act on the part of the respondent Nos. 6 and 7 which has been established from the fact that the charge-sheet has been produced against respondent Nos. 6 and 7 under section 304/34 RPC before the competent Court for their commission and omission of offences. Besides, the cause of death of the deceased has been medically established through the postmortem report which has been placed on record along with the instant writ petition.

CONCLUSION

38. In view of the aforesaid peculiar facts and circumstances of the case and admitted position by the respondents in the report submitted by the Chief Electrical Inspector J&K PDD admitting the negligence and fault on the part of the respondents, I hold the instant petition maintenance for awarding compensation and State was under duty/obligation to see that the SOPs like local earthings, hand insulating gloves, proper isolation and other safety measures by the maintenance staff were taken before starting the restoration work and in the instant case, the accident is attributed to the respondents for non-adherence to proper “PERMIT TO WORK” system and SOPs.

39. The case of the petitioners for compensation needs to be considered for assessment of compensation on the basis of the policy promulgated vide Government Order No. 454-F of 2019 dated 24.10.2019 to grant the ex-gratia relief in favour of the employees of the PDD including

the deceased, who falls in the category of the employees of PDD being casual labour.

40. In these circumstances and keeping in view the fact that the deceased has left behind his mother, wife and daughter, an amount of Rs.10 lakh in total would be in my view appropriate, just and fair compensation for the petitioners for deprivation of the life of their beloved and for the damage which has been caused due to the quality of their life inconformity with the Policy of payment and ex-gratia relief which covers the civilian and departmental employees of the PDD, who have died or injured due to electricity related incident from promulgated vide Government Order No. 454-F of 2019 dated 24.10.2019.

41. The writ petition is, therefore, allowed and the respondents are directed to pay the petitioners an amount of Rs.10 lac within a period of two months starting from the date of passing of this order. Out of total compensation, petitioner No. 1, being widow of the deceased, is entitled to an amount of Rs. 03 lac, whereas petitioner No. 3, being oldaged mother of the deceased, is entitled to an amount of Rs. 2 lac and petitioner No. 2, being daughter, is entitled to Rs. 5 lac and out of Rs. 5 lac, an amount of Rs. 3 lac shall be kept in a fixed deposit for a period, she attains the age of majority and rest of the amount i.e., Rs. 2 lac shall be released in favour of petitioner No.2, for her studies and other basic amenities, through petitioner No. 1 i.e., her mother.

42. Before parting, it would be of relevance to mention that '*The Electricity Act 2003*' has been made applicable to Union Territory of Jammu

and Kashmir w.e.f 31st October 2019. Further, in exercise of powers conferred by Section 177 of the Electricity Act 2003, Central Electricity Authority has enacted regulations for measures relating to safety and electric supply, namely, Central Electricity Authority (Measures relating to Safety and Electric Supply) Regulations, 2010, which have been further amended from time to time. These rules have been framed with the object that while providing robust electricity infrastructure, safety measures are provided to prevent humans and animals from being electrocuted. However, this court has recently come across various cases, wherein, people died due to electrocution across Union Territory of Jammu and Kashmir. It appears that deaths due to electrocution as well as bodily injuries due to electric shocks are ignored as mere accidents, also it appears that safety measures, *at all times*, related to the installation of electricity infrastructure like installation of transmission lines, transformers are usually ignored. In order to save precious lives, this Court deems it appropriate to constitute committee of three members, headed by Commissioner/Secretary, Power Development Department, Government of Jammu and Kashmir and Chief Engineer, Power Development Department Jammu and Chief Engineer, Power Development Department Kashmir, Chief Engineer, Power Development Department, Union Territory of Ladakh as three members of the committee. The composition of the committee will be as follows.

1. Commissioner/Secretary, PDD (Chairman)
2. Chief Engineer, PDD Jammu (Member)
3. Chief Engineer, PDD Kashmir (Member)
4. Chief Engineer, PDD Ladakh (Member)

43. The committee shall meet twice every month and monitor/ensure implementation of **statutory** safety measures and regulations as enshrined in Central Electricity Authority (Measures relating to Safety and Electric Supply) Regulations, 2010 in letter and spirit. Further, it is a matter of common knowledge that maximum cases of electrical accidents arise due to live wires lying on the ground or hanging at arms length, overhead wires passing within reachable distance of human hands, in this regard, District Magistrates of all districts in Jammu & Kashmir and Ladakh shall ensure compliance of Regulation 58 of Central Electricity Authority (Measures relating to Safety and Electric Supply) Regulations, 2010 on war footing i.e. within a period of three weeks, which provides for clearance above ground level of conductors of overhead lines including electricity service lines.

44. The colossal loss of human lives and especially children is totally unacceptable, grim and heart rending, such unfortunate deaths continue to occur and the statutory regulations are being flouted with impunity which is the root cause of such deaths/accidents. Article 21 of constitution ensures fundamental rights to each citizen of the country which are inalienable in nature and guarantees citizens right to live and to be treated as an individual of worth. It is in this backdrop, all stake holders should affirm to a fact that payment of compensation cannot be a substitute for loss of life and limbs. Death caused due to failure to follow electricity safety measures by authorities infringes upon the indefeasible constitutional rights of citizens. It is expected that aforesaid directions shall be implemented forthwith without a fail in an endeavour to save and protect the lives of citizens. In absence of

safety measures, it can safely be presumed that authorities have the knowledge of danger which the live wires can cause and such negligence will be an act beyond mere mistake or excusable accident, which will fasten criminal negligence on concerned authorities.

45. The Registrar Judicial, Jammu is directed to forward the copy of this judgment to Commissioner/Secretary, Power Development Department, Government of Jammu and Kashmir, Chief Engineer Power Development Department-Jammu, Chief Engineer, Power Development Department-Kashmir, Chief Engineer, Power Development Department, Union Territory of Ladakh and District Magistrates of all districts in Union Territory of Jammu and Kashmir and Ladakh for compliance.

46. The Petition stands disposed of with aforementioned directions.



(Wasim Sadiq Nargal)
Judge

JAMMU
27.04.2023
RAM MURTI

Whether the judgment is reportable ?	Yes
Whether the judgment is speaking ?	Yes