

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

LPA No.92/2019

State of J&K and others ..... Appellant(s)

Through: Mr. Dewakar Sharma, Dy. AG

**Vs**

Smt. Manjeet Kour and others

..... Respondent(s)

Through: Mr. Rameshwar P. Sharma, Advocate

**Coram: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE  
HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE**

**JUDGMENT**

21.08.2023

**Sanjeev Kumar-J**

1. This intra Court appeal by the then State of Jammu & Kashmir (now UT of Jammu & Kashmir) and four others is directed against the judgment dated 01.02.2017 passed by the learned Single Judge [“the Writ Court”] in OWP No.192/2004 titled *Manjeet Kour and others v. State of J&K and others*. In terms of the judgment impugned, the respondents herein have been held entitled to a lump sum compensation of Rs.11,50,000/- minus a sum of Rs.50,000/-, already granted by way of interim compensation, along with interest @ 7.5% to be apportioned among the respondents as per the detail given in the judgment itself.

2. Before we advert to the grounds of challenge urged by the learned counsel for the appellants to assail the judgment impugned, we deem it appropriate to give brief factual background leading to the filing of this appeal.

Predecessor-in-interest of the respondents, namely, Raghuvir Singh got electrocuted on 05.03.2003 at about 5 a.m. when he inadvertently came

into contact with live/exposed electric transformer. The incident was reported to the police and FIR No.23 dated 05.03.2003 came to be registered in Police Station, Miran Sahib Tehsil R.S.Pura. The body of the deceased was subjected to postmortem wherein the doctors found the deceased having died due to burn injuries received at different parts of the body. The respondents approached the appellants with a claim for compensation but the same was refuted by the appellants on the ground that the deceased Raghuvir Singh had lost his life due to his own negligence and, therefore, the appellant-department was not obliged to compensate them. Feeling helpless and dejected, the respondents filed OWP No.192/2004, which was considered by the Writ Court and disposed of vide judgment impugned dated 01.02.2017.

3. The impugned judgment is assailed by the appellants primarily on the ground that the Writ Court has allowed the writ petition and granted compensation to the respondents without returning a specific finding as to the negligence of the appellant-department. It is argued that the incident of electrocution, which consumed life of the deceased happened due to the negligence of the deceased, who had strayed into the live electric transformer kept away from the road at a secured place. The appellants have also found fault with the judgment impugned in respect of the computation of compensation made by the Writ Court, in that, it is contended that in view of the settled legal position enunciated in *National Insurance Company Ltd. v. Pranay Sethi and others*, (2017) 16 SCC 680, the wife and four minor children were entitled to Rs.40,000/- each on account of loss of consortium whereas the Writ Court has granted 1.00 lakh to the wife and Rs.50,000/- each to the children under this head.

4. Having heard learned counsel for the parties and perused the material on record, we are of the considered opinion that the judgment passed by the Writ Court is perfectly legal and unquestionable. The Writ Court has returned a clear finding with regard to the negligence of the appellants in maintaining and securing the exposed electric transformer installed on the roadside.

5. The aforesaid finding has been returned by the Writ Court on the basis of report submitted by the Enquiry Officer i.e. Munsiff, R.S.Pura, who was directed by the Writ Court to conduct such enquiry and submit a report to it. It has clearly come out in the enquiry that the appellant-department had not put up any signboard or marking in front of the transformer to caution the people to stay away. The Enquiry Officer also found that the transformer was not properly fenced and, therefore, posed a serious threat to the life of citizens living around it.

6. That apart, it is well settled that when an enterprise or a department of the Government is engaged in inherently dangerous activity and loss of life and property is caused on anyone on account of an accident that may occur in operation of such activity, the enterprise or the department of the Government, as the case may be, is strictly and absolutely liable to compensate those, who are affected by such accident.

7. The plea that the accident happened due to the negligence of the injured or deceased, as the case may be, is not available to such enterprise or department engaged in hazardous or inherently dangerous activity. At this juncture, it would be relevant to recall the observations made by the Supreme Court in the case of **M.C.Mehta and others v. Union of India**,

**1987 (1) SCC** 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, for example, in escape of toxic gas the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident; such liability is not subject to any of the exceptions to the principle of strict liability under the rule in Rylands v. Fletcher.*”

8. Indisputably, the department of Power Development, which is engaged in transmission of electricity, is engaged in an activity, which is hazardous and inherently dangerous. Greater care and caution is required to be observed in the operation of such activity. The maintenance of electric wires and transformers in such a way that it does not pose any danger to the life and property of the citizens is a solemn duty of the department of the Power Development and any remissness or negligence in maintaining such utility would invite, both, civil as well as penal action in law. The deceased husband of respondent No.1 and father of respondent Nos. 2 to 5 got electrocuted when he suddenly came in contact with an exposed electric transformer kept on one side of the road by the appellants. As is rightly concluded by the Writ Court, not only electric transformer had been kept on the road side unguarded but the department had also failed to put up a danger sign so as to warn the people to avoid coming near the transformer.

9. In view of the aforesaid, we are of the considered opinion that the findings of fact returned by the Writ Court in respect of negligence of the appellant in maintaining electric transformer is unquestionable and need not be interfered with. The Writ Court has also applied the general principles

laid down under the Motor Vehicles Act, 1988 for computation of compensation in motor accidents cases. We, however, find that the Writ Court has gone little overboard in granting a sum of Rs.1,00,000/- as loss of consortium to the wife and Rs.50,000/- each to the minor children of the deceased.

10. Hon'ble the Supreme Court in the case of Pranay Sethi (supra) has already laid down the parameters to be kept in mind while assessing compensation payable in the cases of deaths in motor vehicle accidents. The Writ Court has, by and large, followed the aforesaid parameters but erred in granting amount under the head loss of consortium. We are in agreement with the learned counsel for the appellants that in terms of the law laid down by the Supreme Court, the respondents were entitled to Rs.40,000/- each on account of loss of consortium. To the aforesaid extent, we are inclined to modify the judgment.

11. For the foregoing reasons, the appeal is partly allowed and the amount of compensation awarded by the Writ Court is reduced by Rs.1,00,000/- and rest of the judgment is kept intact.

Disposed of, accordingly.

**(Rahul Bharti)**  
**Judge**

**(Sanjeev Kumar)**  
**Judge**

**Jammu**  
21.08.2023  
Vinod, PS

Whether order is speaking: Yes  
Whether order is reportable: Yes/No