

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU.

OWP No. 308/2002

CMP No. 215/2005

Date of Decision: 14.07.2008

---

Chuni Lal & Ors.

Vs.

State & anr.

---

Coram:

Mr. JUSTICE J. P. SINGH, JUDGE.

---

Appearing Counsel:

For Petitioner(s) : M/s U.K.Jalali, Sr.Advocate &  
M.M.Gupta, Advocate.

For Respondent(s): Mrs. Shaista Hakim, Dy.A.G.

---

- |     |   |        |
|-----|---|--------|
| i)  | Whether to be reported<br>In Press/Journal/Media: | Yes/No |
| ii) | Whether to be reported<br>In Digest/Journal:      | Yes/No |
- 

Petitioners are the husband and minor daughters of Mrs. Kailasho Devi who had been electrocuted in the noon of November 14, 2000 in the compound of her house situated at Village Nagulta Tehsil Chenani of District Udhampur when a live electric wire laid by respondent Nos. 1 and 2 over the house of her compound, for the carriage of electricity, had fallen resulting in her instantaneous death because of the burn injuries she received from the live electric wire. She is stated to be a house wife, doing tailoring work as well, from where she would earn Rs.1000/- per month.

Petitioners have filed this petition seeking an amount of Rs. 2 lac as compensation for her electrocution, from the respondents.

Denying their liability to compensate the petitioners, and accusing petitioner No.1 of using the electricity illegally by siphoning it off from the transmission line and thereby weakening the strength of the transmission line, the State respondents say that the petitioners are not entitled to any compensation, as the transmission line had snapped because of its illegal use by petitioner No.1.

Looking to the contentious factual issues raised by the respondents, to the petitioners' claim of compensation, this Court, in the interest of justice, had decided to have a factual report regarding the incident before proceeding further with the writ petition.

Chief Judicial Magistrate, Udhampur was accordingly directed to hold an enquiry in the matter and determine as to whether Kailasho Devi had died on account of negligence on the part of the respondents or, in the manner suggested by the respondents in their objections.

Learned Chief Judicial Magistrate, accordingly, held an enquiry in the matter after allowing full opportunity to the parties to project their view point and lead evidence in support thereof.

After going through the evidence in detail, and appreciating it in view of the law laid-down by Hon'ble Supreme Court of India in M.P.Electricity Board versus Shail Kumar and others and other judgments on the point, learned Chief Judicial Magistrate came to the conclusion that the respondents were guilty of carelessness and negligence, as due care and caution had not been taken by them for maintenance of the electric wires used for supply of electricity passing over the compound of the house of the petitioner No.1. He had found that Mst. Kailasho Devi (deceased) wife of petitioner No.1, resident of Village Nagulta, Tehsil Chenani, had died on 14.11.2000 when a live electric wire, got detached from the electric pole and fell on her who was sitting in the compound of her house resulting in her electrocution.

Respondents have filed objections to the report of learned Chief Judicial Magistrate whereas petitioners are satisfied therewith.

Though not disputing that the snapping of the live electric wire passing over the compound of the petitioner's house had resulted in the death of Kailasho Devi by electrocution, the respondents have, while reiterating their earlier stand that the transmission line had snapped because of the acts of petitioner No.1's continuous fiddling with it to

procure illegal electricity for his house, thereby weakening it, denied their liability to compensate the petitioners.

Questioning the report of the enquiry officer, all that they have said is that it was not based on proper appreciation of evidence.

Learned Senior Counsel appearing for the petitioner, Mr. U.K.Jalali, submitted that the respondents had failed to discharge the onus which lay on them to ensure that the transmission line which they had laid over the house of the petitioners for carrying electricity was properly maintained, and in the absence of any evidence or material placed on records in this behalf before the enquiry officer to show that they had taken due care and caution in the maintenance of transmission line, the respondents cannot avoid their liability to compensate the petitioner who had been proved before the enquiry officer to have been earning an additional amount of Rs.1000/- per month by stitching clothes and that the petitioners were entitled to Rs.2 lacs as compensation for the death of Kailasho Devi.

Mrs. Shaista Hakim, learned Deputy Advocate General, appearing for the respondents submitted that as the writ petition raises disputed questions of fact regarding respondents' liability and the amount of compensation they had claimed in the writ petition, so the writ petition would not be maintainable.

I have heard learned counsel for the parties and considered their submissions.

I do not find any merit in respondents' counsel's first submission that the writ petition involves disputed questions of facts which may not be gone into by this Court because this objection may not be available to the State at this stage when they had accepted July 6, 2005 order passed by this Court whereby Chief Judicial Magistrate, Udhampur had been directed to hold an enquiry on facts to determine as to whether or not Kailasho Devi had died on account of the negligence of the respondents or in the manner suggested by the respondents in their objections, had participated in the enquiry by cross-examining the witnesses produced by the petitioners and had produced their own evidence as well in the case.

In view of the detailed enquiry conducted by the learned Magistrate and his coming to the conclusion that respondents were guilty of carelessness and negligence as due care and caution had not been taken by them for maintenance of electric wires used for supply of electricity passing over the compound of the house of petitioner No.1 and Mst. Kailasho Devi, his wife, I am not inclined to agree with the submission of learned counsel for the State that the initial dispute between the parties as to because of whose negligence the transmission wire had snapped and resulted

in Kailasho Devi's electrocution, still subsists because the enquiry held by learned Chief Judicial Magistrate, sets at rest, the controversy which had initially been raised by the respondents in the writ petition. The case projected by the respondents that the transmission line had snapped because of petitioner No.1's fiddling with the electric wire to get illegal electric supply has not been proved before the enquiry officer by the respondents by producing any cogent and reliable evidence.

Learned counsel for the respondents has not been able to point out any infirmity in the report of learned Magistrate on the basis whereof it may be said that the learned Magistrate had misappreciated the evidence and his finding on facts, in view of the law laid-down by Hon'ble Supreme Court of India, was not justified. Respondents have not produced any material in this Court too on the basis whereof any opinion, other than the view, taken by the learned Magistrate, may be formed.

Responsibility to supply electric energy in the area where Kailasho Devi had died was that of the State-respondents, is a position which has not been disputed by the State. If the energy so transmitted by the respondents causes 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, and to see that the wires carrying this energy function well and do not permit escape of energy either by their snapping or otherwise. It is no defence on the part of the respondents that somebody had committed mischief by siphoning such energy to his private property and that the electrocution had taken place because of such siphoning. It is the lookout of the suppliers of electric energy to prevent pilferage or siphoning of energy by devising such measures as may be necessary. Authorities responsible for dealing in dangerous commodities have an extra duty to chalk out measures to prevent mishaps.

Even assuming (which, however, is not the position in the case in hand), that such measures had 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 those responsible for supplying electrical energy. 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 a defendant had done all that could be done for avoiding the harm he may not be held liable when the action is based on any negligence attributed; But such consideration is irrelevant in cases of strict liability where the defendant is held liable irrespective of whether he could have avoided the particular harm by taking precautions. This doctrine of strict liability owes its origin in English common law when it was propounded in *Rylands versus Fletcher*, (1868) 3 HL, 330; (1861-73) All ER Rep1.

“The true rule of law is that the person who, for his own purposes, brings on his land, and collects and keeps there anything likely to do mischief if it escapes, must keep it at his peril, and if he does not do so, he is *prima facie* answerable for all the damage which is the natural consequence of its escape.”

Although there are exceptions to the rule of strict liability, yet what has come to be accepted by Courts in India including by Hon’ble Supreme Court of India may briefly be stated as follows:

“Where an enterprise is engaged in a hazardous or inherently dangerous activity and harm is caused on any one 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; such liability is not subject to any of the exceptions to the principle of strict liability under the rule in *Rylands versus Fletcher* (N.C.Mehta versus Union of India, reported as (1987) 1 SCC, 395).”



In view of the above legal position, I am of the view that respondents are liable to compensate the petitioners for the death of Kailasho Devi who had been electrocuted because of snapping of transmission line laid over the compound of her house by the respondents for carriage of electrical energy.

The next question which arises for consideration is as to how much compensation the petitioners would be entitled to for the death of petitioner Kailasho Devi.

According to the post-mortem report, Kailasho Devi was 25 years of age at the time of her death. Had she died in a motor vehicular accident, her dependents would have been entitled to compensation under Section 163-A of the Motor Vehicles Act by adopting 16 or 18 as the multiplier to her income at the time of her death.

Kailasho Devi was a house wife who would augment the income of the family by stitching clothes as well. Going by the law laid-down by Hon'ble Supreme Court of India in *Lata Wadhwa versus State of Bihar*, reported as 2001 ACJ, 1735, the modest estimation about the income of a house wife, keeping in view the services which a house wife renders to the family should be Rs.3000/-. Even if Kailasho Devi's additional income of Rs.1000/- is not taken into consideration, yet by applying the multiplier method which has come to be recognized as an accepted method of

determination of just compensation under the Motor Vehicles Act, the petitioners may be entitled to compensation much more than what has been sought for in the present petition.

Petitioner No.1 has been deprived of the Company of his wife and rest of the petitioners of the love and affection of their mother. All of them have been deprived of the contribution, the deceased had been making to the family.

Had Kailasho Devi died in a motor vehicular accident, petitioners would have been entitled to compensation on the basis of formula suggested in the Schedule issued under Section 163-A of the Motor Vehicles Act which amount, when calculated by adopting 16 or 18 as the multiplier would be much more than the one which has been claimed by them in this petition. Petitioners' claim for an amount of Rs.2 lacs along with interest thus needs to be allowed. The petitioners are, accordingly, entitled to recover an amount of Rs.2 lacs along with interest @ 7.5% per annum from the respondents.

This writ petition, therefore, succeeds and is accordingly allowed. A direction is issued to the respondents to pay an amount of Rs.2 lacs along with interest @ 7.5% per annum from the date of filing of the petition till its realization to the petitioners who shall receive it in equal shares. Rs.1.50 lac out of this amount shall be kept in a fixed deposit in the name of petitioner Nos. 2, 3 & 4 till they attain

majority. Liberty is allowed to these petitioners to move this Court in case any early release of the amount is required for the benefit of the minors.

Respondents are directed to deposit this amount in the Court within a period of six weeks.

(J. P. Singh)  
Judge

JAMMU:  
14.07.2008  
Pawan Chopra