

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

Case: OWP No. 118/2003 & CMP No. 143/2003

Date: 15.10.2009

Tara Chand and others

Vs.

State and others

Coram:

Hon'ble Mr. Justice Virender Singh, Judge

Appearing counsel:

For petitioner(s) : Mr. O. P. Thakur, Advocate.

For respondent(s) : Mr. S. Hakim, Dy. Advocate General.

i) Whether approved for reporting in Press/Journal/Media : No

ii) Whether to be reported in Digest/Journal : Yes

Parents of one Romesh Kumar (aged 12 years) who died due to electrocution have knocked at the door of this Court through the medium of instant petition for compensation to the tune of Rs.3 lacs with interest at the rate of 12% per annum. This amount is taken from the relief clause, whereas in the memo of petition, the petitioners ask for Rs.5 lacs. This fact is noted to avoid any confusion. Mr. Thakur otherwise restricts his claim to Rs.3 lacs only.

It needs to be mentioned here that initially the petition was filed on behalf of Tara Chand, his wife Smt. Taro Devi and son Sanjay Kumar, but at the request of Mr. Thakur, name of Sanjay Kumar-petitioner No.3 has been deleted from the array of petitioners. The instant petition, thus, survives qua Tara Chand and Smt. Taro Devi only.

One Mangat Ram, maternal grandfather of Romesh Kumar (father of Taro Devi) had also died in the said occurrence. However, no compensation is being sought for his death.

On the fateful day i.e. 13.08.1997, aforesaid Mangat Ram went to his fields for agricultural pursuits. He was accompanied by Romesh Kumar. In the said field, an electric wooden pole was erected by the Power Development Department and a live electric wire was tied to it for the supply of electricity. All this was under the control and maintenance of respondents. The wooden pole had bent on one side, resultantly the height of the live wire had reduced to a great extent towards the ground level. It is averred specifically that it was less than four feet. Romesh Kumar suddenly came in contact with the said live wire and suffered a severe electric shock. Mangat Ram immediately rushed to save him, but he too was caught and received electric shock. Both of them died at the spot. The matter was reported to the police, upon which a formal F.I.R. was registered against one Romesh Chander, Junior Engineer and Mohd. Afzal, Lineman, under Section 304-A of the Ranbir Penal Code. They, however, earned acquittal as per the judgment Annexure R-1 dated 19.08.1999.

The petitioners assert that this incident had occurred solely because of the negligence of the respondents, who took no pains to maintain the wooden electric pole properly from time to time and resultantly the live wire became accessible to the child, who in routine came in contact with the same and

succumbed to the electric shock. To explain the delay in filing the present petition is that the respondents had been assuring them that they would appoint their other son on permanent basis and restrained them from filing any claim petition for compensation. Hence, this petition now for adequate compensation.

After admission the objections already filed by the respondents at pre admission stage have been treated as counter. However, no rejoinder has been filed by Mr. Thakur.

The preliminary objection taken by the respondents is with regard to the maintainability of the instant petition on the ground that it involves disputed questions of facts, which cannot be agitated by invoking extra ordinary jurisdiction of this Court. On merits as well the respondents have refuted the case of the petitioners stating that the death of Romesh Kumar (since deceased) has taken place not because of the negligence on the part of the answering respondents in maintaining High Tension line, but because of the negligence of the deceased himself by touching the electric wire. They also take the advantage of the judgment passed by the learned Judicial Magistrate, Ramban, dated 19.08.1999 (Annexure-R1) whereby two officials of the Electricity Department booked in the criminal case have already earned acquittal.

Heard learned counsel for both the sides and perused the record.

In the first instance, I am entering into discussion with regard to the maintainability of the instant petition, which is

the preliminary objection of Mrs. Hakim. In order to strengthen her stand, she has heavily relied upon a judgment of Hon'ble Supreme Court in case titled '**SDO, Grid Corporation of Orissa Ltd. Vs. Timudu Oram'** AIR 2005 SC 3971, and also a judgment of a coordinate Bench of this Court rendered in case '**Nazir Ahmed Vs. State of Jammu & Kashmir and others'** (OWP No. 53/2007 decided on 29.01.2008) in which the writ petition for compensation on account of electrocution, was dismissed following the ratio of **Grid Corporation**'s case (supra). She submits that the view taken by the learned Single Judge in **Nazir Ahmed**'s case (supra) has subsequently been upheld by the Hon'ble Division Bench of this Court in LPA(OW) No. 17/2008. Photo-stat copy of both the judgments have been produced by her and taken on record.

Mr. Thakur submits that **Grid Corporation**'s case (supra) will not be applicable to all the cases of this nature and it depends upon the facts of each case. In the present case, the negligence is writ large from facts itself and therefore the plea of preliminary objection of maintainability of the present writ petition is not available to the respondents.

In normal course, it can be said that the exercise of the power under Article 226 of the Constitution of India, though discretionary, has to follow certain well recognised norms and once the facts entitling the petitioner to compensation are not fully established, the matter should be adjudicated upon in the proper forum i.e. the Civil Court where the petitioner would have all opportunities to establish its case with regard to

negligence and the other side would also be afforded of an opportunity to rebut it. However, these well recognized norms, perhaps, would not be attracted in a case of 'strict liability' and the present case or the cases of such like nature have to be tested following the rule of 'strict liability'.

In **Grid Corporation**'s case (supra) their Lordships while leaving the matter to be adjudicated upon by the Civil Court, in para 6 of the said judgment observed thus:

"6. In Chairman, Grid Corpn. of Orissa Ltd. (GRIDCO) with which case these appeals were listed for hearing but could not be heard for want of service, this court took the view that the High Court committed an error in entertaining the writ petitions under Article 226 of the Constitution and were not fit cases for exercising the jurisdiction under Article 226 of the Constitution. It was held that action in tort and negligence were required to be established initially by the claimants. The mere fact that the wire of electric transmission line belonging to the appellants had snapped and the deceased had come into contact with it and died by itself was not sufficient for awarding compensation. The Court was required to examine as to whether the wire had snapped as a result of any negligence on the part of the appellants, as a result of which the deceased had come in contact with the wire. In view of the defence raised and the denial by the appellants in each of the cases, the appellants deserved an opportunity to prove that proper care and precautions were taken in maintaining the transmission line and yet the wires had snapped because of the circumstances beyond their

control or unauthorised intervention of their parties. Such disputed questions of fact could not be decided in exercise of jurisdiction under Article 226 of the Constitution. That the High Court could not come to the conclusion that the defence raised by the appellants had been raised only for the sake of it and there was no substance in it. ”

In the aforesaid judgment, the decision of the Apex Court in '**M.P. Electricity Board Vs. Shail Kumari**' AIR 2002 SC 551 was also considered and it was distinguished on the ground that in the said case a question of negligence was already determined by the Civil Court.

In so far as application of principle of 'strict liability' is concerned, in para 8 of the **M.P. Electricity Board**'s case (supra), their Lordships observed as under:-

“9. 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 precaution.”

The ratio of the judgment handed down by the Apex Court in **Grid Corporation**’s case (supra) and relied upon by Mrs. Hakim does not whittle down the law laid down by the Apex Court in **M.P. Electricity Board**’s case (supra) as in **Grid Corporation**’s case (supra) the Apex Court considered the earlier decision rendered in **M.P. Electricity Board**’s case (supra) and without affecting the principle of ‘strict liability’ distinguished the said judgment on the ground that the question of negligence was determined by the Civil Court. Therefore, it can be reasonably understood that the **M.P. Electricity Board**’s case (supra) has been distinguished on its own facts and, the Apex Court did not take any contrary view from the one already taken with regard to the rule of ‘strict liability’.

In another case titled ‘**H.S.E.B. Vs. Ram Nath**’ 2004 **STPL (LE) 33507 SC**, wherein H.S.E.B. filed an appeal against the compensation awarded by the Punjab & Haryana High Court to the claimants on account of death of a child, took the plea that since disputed questions of fact had arisen in the said case and, therefore, the High Court should not have entertained the writ petition, their Lordships of Apex Court while dismissing the appeal observed in para 2 to 6 as under:-

“2. Reliance is placed upon the case of Chairman, Grid Corp. of Orissa Ltd. (GRIDCO) v. Sukamani Das wherein a person walking along the road came in contact with a live wire which was lying on the road after having got snapped from the overhead electric line. The writ petition was filed claiming compensation. The High Court directed payment of compensation. However, this Court held that disputed questions of fact arose and that a writ petition was not a proper remedy. On the basis of this authority, it is urged that even in this case disputed questions of fact arose and that, therefore, the High Court should not have entertained the writ petition.

3. In order to consider this submission, one has to look at the averments made in the petition and the reply to those averments. In para (2) of the petition it is stated as follows:-

“(2) That the petitioners are residing in their house in Sakti Nagar Colony near Kabri Railway Crossing for over 15 years and a HT line is passing over the house of the petitioners at a much lower height than that prescribed under the Rules. The said line has become quite loose and drooping and touching the roof of the house of the petitioners for the last about two years. The petitioners as well as other inhabitants of the aforesaid colony have been requesting Respondents 3 and 4 to tighten the said HT line for the last about two years repeatedly in writing and verbally by calling on them in their

respective offices but they did not bother for the same.”

4. In the written statement there is no denial to these averments. All that is claimed is that the entire colony was an unauthorised colony and that unauthorisedly the height of the houses had been raised. It is claimed that the wires were at the prescribed height of 20 feet from the ground level and that the height of the wire was as per the standard prescribed under the Rules.

5. It is submitted that these averments would show that there was a disputed question of fact as to whether or not the wires were touching the roof. We are unable to accept this submission. To the categoric averments set out hereinabove that the wires had become loose and were drooping and touching the roof of the houses, there is no denial. To the categoric averments that complaints had been made, both in writing and orally, requesting that the wires had to be tightened, there is no denial. A mere vague statement to the effect that the height was as per the prescribed limit does not detract from the fact that there is a deemed admission that the wires were drooping and touching the roofs.

6. The appellants are carrying on a business which is inherently dangerous. If a person were to come into contact with a high-tension wire, he is bound to receive serious injury and/ or die. As they are carrying on a business which is inherently dangerous, the appellants would have to ensure that no injury

results from their activities. If they find that unauthorised constructions have been put up close to their wires it is their duty to ensure that that construction is got demolished by moving the appropriate authorities and if necessary, by moving a court of law. Otherwise, they would take the consequences of their inaction. If there are complaints that these wires are drooping and almost touching houses, they have to ensure that the required distance is kept between the houses and the wires, even though the houses be unauthorised. In this case we do not find any disputed question of fact.”

From the ratio of the aforesaid judgments, it can be comfortably said that simply for the sake of raising preliminary objection on the point of maintainability in each and every writ petition of this nature, it shall not call for dismissal outrightly on the strength of **Grid Corporation**’s case (supra) as an attempt has been made by Mrs. Hakim in this case also. Similarly, the other judgment cited by Mrs. Hakim rendered in **Nazir Ahmed**’s case (supra) which subsequently upheld in Letters Patent Appeal by this Court would also not be applicable to all the cases as in the said case, the official respondents had taken a specific stand that the petitioner therein had tried to remove the service line of his house from the L.T. line and during that process he received the electric shock and, therefore, his petition was dismissed on the strength of **Gird Corporation**’s case (supra).

Let us now examine the case on hand with regard to its maintainability on the touchstone of principle of 'strict liability' considering the averments made in the petition and the reply submitted thereto by the respondents. In this regard, it would be apt to reproduce the relevant part of paras 2 & 3 of the writ petition and the reply filed thereto by the respondents. Paras 2 & 3 of the writ petition read thus:-

"2. -----

That due to the negligence of the respondents the Electric pole was not fixed at a proper place. It is further submitted that respondent erected a wooden Electric pole on the land of father-in-law of petitioner No.1. The condition of the said wooden electric pole had become bad and because of wear and tear the said pole did not remain straight and the height of the live wire had been reduced.

3. That the son of the petitioners Sh. Romesh Kumar suddenly came in touch of the live wire which was less than 4' height from the ground. The father-in-law of petitioner No.1 who was also working in his field, when he was that the petitioners' son Romesh Kumar had been caught by Electric wire tried to save him, but as a result of this he also suffered the electric shock. Due to the electric shock both Sh. Romesh Kumar and Sh. Mangat Ram died on the spot."

Paras 2 & 3 of the reply read thus:-

"2. That the contents of para 2 it is submitted that the said para purely involves the question of

fact and cannot be agitated by way invoking the extra ordinary jurisdiction of Hon'ble Court and as such the contents of said para are denied.

3. That in reply to the contents of para 3 it is submitted that there was no negligence on the part of answering respondent in maintaining the electric pole as the said electric pole was in good condition and the averment of the petitioner that the height of the live wire was reduced because of the said pole being not straight is denied. The actual fact is that the said occurrence pertaining to the death of the deceased took place due to the negligence of the said deceased. The fact that the death of the deceased Ramesh Chander had taken place can be gathered from the finding given by the Learned Sub Judge Judicial Magistrate, Ramban by virtue of judgment dated 19.08.1999, the photocopy of which is annexed herewith for the perusal of the Hon'ble Court and is marked as R1. It is further submitted that the witnesses produced during the trial before the Hon'ble Court had also given a clear statement that there was no negligence on the part of answering respondent in maintaining the electricity pole and it was only because of the negligence of the deceased himself that the death had taken place and as such the contents of the said para being without merit are denied.”

From the perusal of the aforesaid averments made by either side, one fact is admitted that the High Tension live wire was fitted with a wooden electric pole. The stand of the respondents is that it was in a good condition. Factum of bending of the pole towards one side is also denied in para 3 of

the reply. A specific stand is taken by the respondents that the death took place due to the negligence of deceased-Romesh Kumar. Admittedly, Romesh Kumar was of the age of 12 years as is clear from the post mortem report Annexure-B annexed to the main writ petition. It is not understandable that how a boy of hardly 12 years could come in contact with the live electric wire, which was to be kept at a distance not accessible to any passer by. Therefore, it can be comfortably said that the Electricity Department had not cared to take all safety measures and allowed the live wire to go so down towards the ground level so as to pose a potential threat to the safety of living beings. Virtually, the factum of touching the live wire by the deceased-Romesh Kumar is admitted by the respondents may be projecting his own negligence, but from all the attending circumstances, there is no difficulty in observing that it (live wire) was within the physical reach of the deceased. General safety precautions were not taken in this case by the concerned department, which in turn would be violation of Jammu & Kashmir Electricity Rules, 1978. It is not the case of the respondents at all that the electric wire had snapped all of a sudden because of any other fault. Even that exception is not available to the respondents, if the present case is tested on the touchstone of 'strict liability'. To strengthen my view point, I am supported by a judgment rendered by one of the coordinate Benches of this Court in case '**Mushtaq Ahmad and others Vs. State of J&K and others' AIR 2009 Jammu and Kashmir 29,**

in which while dealing with this issue, this Court in para 14 of the judgment, observed as under:-

“14. Any act or omission of the State and its functionaries which takes away the life or otherwise impairs or injures it, would, in my opinion, amount to violation of such persons fundamental right to Life and Liberty flowing from Article 21 of the Constitution of India. Engaged in a hazardous and inherently dangerous activity of supplying electric energy, which if left uncontrolled would take away life or impair and injure it, the State cannot thus be heard to say that the victim aggrieved by the after effects of such discharge of electric energy, will be disentitled to invoke the writ jurisdiction of the Court to seek compensation. Therefore, determination whereof may not require decision on any complicated and disputed questions of fact.”

The plea of acquittal of official(s) of the Electricity Department in a criminal case on which the respondents are relying heavily, in my view, would be of no advantage to them for the reason that finding in a criminal proceedings cannot be binding in such like cases. Charge of the accused in a criminal case has to be proved by the prosecution beyond all reasonable doubts, whereas the cases of negligence can be decided on the doctrine of ‘res ipsa loquitur’ for which two requirements are necessary viz; first, that the thing causing the damage should be under the control of the respondents or his servant and the second is that the accident must be such as would have not in

the ordinary course of things have happened without negligence. In the case on hand, respondent-Electricity Department has failed to establish that it was not negligent in maintaining the electric wire and, therefore, it has to be held liable under this doctrine. The Apex Court in case '**Syad Akbar Vs. State of Karnataka' 1980 ACJ 38 (SC)**', while dealing with the doctrine of 'res ipsa loquitur' has observed thus:-

“ The rule of res ipsa loquitur in reality belongs to the law of Torts. Where negligence is in issue, the peculiar circumstances constituting the event or the accident, in a particular case, may themselves proclaim in concordant, clear and unambiguous voices the negligence of somebody as the cause of the event or accident. It is to such cases that the maxim res ipsa loquitur may apply, if the cause of the accident is unknown and no reasonable explanation as to the cause is coming forth from the defendant. The event or accident must be of a kind which does not happen in the ordinary course of things if those who have the management and control use due care. Further the even which caused the accident must be within the defendant's control. The reason for this second requirement is that where the defendant has control of the thing which caused the injury, he is in a better position than the plaintiff to explain how the accident occurred.”

As a sequel to the aforesaid discussion and in view of the settled legal position of law, I hold that not only the petitioners are entitled to invoke the writ jurisdiction of this Court to seek

compensation, the negligence of the respondents is also writ large causing two deaths in this occurrence.

The next question now arises for the consideration of this Court is that what should be the quantum of compensation to be awarded in favour of the petitioners, who are parents of the deceased-Romesh Kumar, aged 12 years.

Tara Chand was of the age of 48 years and his wife Taro Devi 30 years, at the time of filing of the instant petition. The compensation asked for is Rs.3 lacs. Mr. Thakur in this regard relies upon a judgment of Apex Court rendered in case '**Lata Wadhwa and others Vs. State of Bihar and others' AIR 2001 Supreme Court 3218**', in which for the purpose of awarding compensation in case of children, their Lordships have divided them into two groups; first group between the age group of 5-10 years and the second group between 10-15 years. In the first group, a uniform sum of Rs.50,000/- has been held to be payable by way of compensation and a conventional figure of Rs.25,000/- has been added. So far as the children in the second group i.e. between 10-15 years, their contribution to the family is assessed as Rs.12,000/- per annum with a multiplier depending upon the age of the claimant and another sum of Rs.25,000/- as conventional compensation. Mr. Thakur submits that if one applies the ratio of **Lata Wadhwa's** case (supra) in this case and applies the multiplier appropriately keeping in view the age of the parents, the amount of compensation (Rs.3 lacs) as asked for, is just and proper, as

such the same may be awarded alongwith the interest as claimed.

While determining the compensation in a case of child of tender age, their Lordships of Apex Court in a recent judgment rendered in case '**New India Assurance Co. Ltd. Vs. Satender & others**' AIR 2007 Supreme Court 324, observed as under:-

"9. There are some aspects of human life which are capable of monetary measurement, but the totality of human life is like the beauty of sunrise or the splendour of the stars, beyond the reach of monetary tape-measure. The determination of damages for loss of human life is an extremely difficult task and it becomes all the more baffling when the deceased is a child and/or a non-earning person. The future of a child is uncertain. Where the deceased was a child, he was earning nothing but had a prospect to earn. The question of assessment of compensation, therefore, becomes stiffer. The figure of compensation in such cases involves a good deal of guesswork. In cases, where parents are claimants, relevant factor would be age of parents.

12. In cases of young children of tender age, in view of uncertainties abound, neither their income at the time of death nor the prospects of the future increase in their income nor chances of advancement of their career are capable of proper determination on estimated basis. The reason is that at such an early age, the uncertainties in regard to their academic

pursuits, achievements in career and thereafter advancement in life are so many that nothing can be assumed with reasonable certainty. Therefore, neither the income of the deceased child is capable of assessment on estimated basis nor the financial loss suffered by the parents is capable of mathematical computation.”

In the aforesaid case, the deceased was of the age of 9 years and their Lordships while relying upon **Lata Wadhwa**’s case (supra) and keeping in view the fact that the compensation should not be a windfall for the victim and should be ‘just and not a bonanza’ or ‘a source of profit’, awarded a sum of Rs.1,80,000/- alongwith interest at the rate of 7.5%.

Keeping in view the facts of the present case, the age of the deceased-Romesh Kumar, the age of the petitioners who are parents of the deceased and following the ratio of the aforesaid judgments, in my considered view, a sum of Rs.2 lacs as compensation would meet the ends of justice. In addition to that the petitioners also held entitled to Rs.5,000/- as funeral expenses. The total amount shall also carry the interest at the rate of 7.5% from the date of filing of the petition till the payment is made. The respondents are directed to make the payment within a period of three months from today. In case the entire amount of compensation alongwith interest accrued thereon is not paid within the aforesaid stipulated period, in that eventuality the respondents shall have to pay interest at

the rate of 9% thereafter i.e. after the lapse of three months from today, till the award is satisfied in its fullness.

There shall, however, be no order as to costs.

Jammu.
15.10.2009
Narinder

(Virender Singh)
Judge