

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

LPAOW No.71/2010
CMA No.104/2010

Date of Order: 16.10.2012

State of J&K & ors.	Vs.	Tara Chand and anr.
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CORAM:
Hon’ble Mr. Justice Mansoor Ahmad Mir, Judge.
Hon’ble Mr. Justice J.P.Singh, Judge.

Appearing Counsel:		
For Appellant(s)	:	Ms. Seema Shekhar, AAG.
For Respondent(s)	:	Mr. O.P.Thakur, Advocate.

i)	Whether approved for reporting in Press/Media	:	Yes/No
ii)	Whether to be reported in Digest/Journal	:	Yes/No

J.P.Singh-J:

Allowing the respondents’ Claim of compensation for death of their son-Romesh Kumar, aged 12 years, a learned Single Judge of this Court, directed the State Government and its functionaries in the Power Development Department to pay them Rs.2,05,000/- along with interest @ 7.5% per annum.

Aggrieved by the judgment and order passed on the respondents’ Writ Petition OWP No.118/2003, the State has filed this Appeal questioning the judgment and order dated 15.10.2009 of the Writ Court.

The respondents’ Claim for compensation for the death of their son by electrocution was based on the plea that the wooden pole erected by the Power Development Department in respondent No.2’s father’s land on which a live electric wire stood tied, tilted reducing the height of the live wire

from the ground with which the 12 years old son of the respondents came in contact while he was in the fields along with his maternal grand father. The maternal grand father, who tried to rescue him, too got electrocuted.

The respondents' Claim was contested by the State Government, *inter alia*, on the ground that the functionaries of the Power Development Department, who were prosecuted by the State Government for their negligence in not maintaining the electric wire as a result whereof the respondents' son had died, having been acquitted by the Criminal Court, the State Government was not liable to compensate the respondents for the death of their son, in that, the death had taken place because of the negligence of the deceased in fiddling with the electric wire. It was additionally urged by the State Government that the Writ Petition raising disputed questions of fact was not maintainable, in that, the respondents' Claim could be considered for its allowance only on proof of facts which course was stated impermissible in exercise of jurisdiction of *Judicial Review*.

We have heard learned counsel for the parties, considered their submissions and perused the writ records.

The appellants' plea that the respondents' son died because of his own negligence, has been dealt with exhaustively by the learned Single Judge giving cogent reasons in not accepting the appellants' plea attributing respondents' son's death to his own negligence.

The learned Single Judge allowed the Writ Petition relying on the judgment delivered by this Court in *Mushtaq Ahmed and others v. State of J&K and others* reported as AIR 2009 J&K 29, where while dealing with the issue of ‘*strict liability*’, the Court held as follows:-

“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 view taken by the learned Single Judge that there was no merit in the appellants’ plea that the wooden pole had not tilted reducing the height of the live electric wire from the ground level, is well reasoned. Even otherwise, the appellants have not placed any material on records to support their plea that the pole had not tilted reducing the live electric wire tied therewith.

Be that as it may, the fact of 12 years old child coming into contact with the electric wire without there being any allegation of his climbing the pole while working in the fields, speaks eloquently of State’s failure to take requisite measures in keeping the electric wire at requisite height so that no human being comes in contact therewith in ordinary course of things. Its failure to prove that all safety measures were taken by it to ensure that the electric energy transmitted

by it through the electric wire, did not cause any harm to anyone, renders it liable to compensate the respondents for the loss caused to them because of State's omission to ensure that there was controlled supply of the electric energy lest it impairs or injures anyone coming in contact therewith.

In such cases of strict liability, the onus lies on the authority carrying on the hazardous activity such as dealing in electric energy of high voltage to prove that it had taken all safety measures ensuring controlled transmission of electric energy avoiding any damage or harm to others therewith. The appellants have, however, failed to discharge their onus.

The appellants' plea that the Writ Court has erred in not taking into consideration the Criminal Court's acquittal of the functionaries of the Power Development Department, who were accused of negligence in maintaining the electric wire, which had resulted into the electrocution of the respondents' son, too is found untenable, for, the acquittal of those who were otherwise responsible, under law, for controlled transmission of electric energy, by the Criminal Court, would not absolve the State of its *Strict Liability* i.e. *civil liability* to compensate those, who suffer because of its omission to take requisite safety measures to avoid damage or loss caused due to the transmission of electric energy.

In the facts and circumstances of the case, no other view than the one which the Writ Court has taken in the present case, could have been so taken.

We, therefore, do not find any merit in the submissions made by the appellants' learned counsel questioning the judgment of the Writ Court.

This Appeal is, accordingly found without merit, hence dismissed.

(J. P. Singh)
Judge

(Mansoor Ahmad Mir)
Judge

JAMMU :
16.10.2012
Vinod.