

# **HIGH COURT OF JAMMU AND KASHMIR**

AT JAMMU

LPAOW No. 141/2011,  
CMA No. 164/2011

Date of order: 13.03.2013

State of J&K & ors.

v

Kulbir Singh & ors.

## **Coram:**

**Hon'ble Mr. Justice M. M. Kumar, Chief Justice**  
**Hon'ble Mr. Justice Dhiraj Singh Thakur, Judge**

## **Appearing counsel:**

For the appellant(s) : Mrs. Seema Shekhar, AAG.

For the respondent(s) : Mrs. Sindhu Sharma, Advocate.

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

## **M.M. Kumar, CJ**

1. The State of J&K and its officers have filed the instant appeal under Clause 12 of the Letters Patent challenging the judgment and order dated 25.03.2011 rendered by the learned Single Judge of this Court. Allowing OWP no. 91/2004, a sum of Rs. 4.00 lac has been awarded to the claimant-respondents who are unfortunate parents of one Parminder Singh. Their son Parminder Singh was killed on account of electrocution caused by overhanging live wires. The learned Single Judge has found that the appellants failed to maintain ground clearance/height of 1100 KV high voltage electric line on spot as required under

Rule 77 of J&K Electricity Rules 1978 notified vide SRO 396 dated 12.07.1978. It has also been found that the appellants allowed it to overhang at the height of less than 19 feet from the ground which resulted in unfortunate mishap consuming a precious life of Parminder Singh and, therefore, the learned Single Judge has held appellants guilty of negligence.

2. An imaginary defence set up by the appellants in their reply did not find favour at the hands of the learned Single Judge. It was pleaded that the deceased in the first place negligently parked the vehicle under the high voltage electric line and thereafter slept on the roof of the truck. In the morning of 11.08.2002 when he woke up he stretched his arms upwards and touched the electric live line at the height of 21 feet from the ground. The learned Single Judge over turned the defence by observing that *'the facts and events discernable from the record available on the file, however, belie the respondents' stand. The deceased cannot be said to have been negligent in parking his vehicle outside the Service Station on the side of Jammu-Pathankot Highway. The plea set up, unmindful of the fact that the high voltage*

*electric line was laid/erected by the respondents all the way on the side of the Highway and the deceased was not expected to park the vehicle in the middle of the road.....*’. The deceased in the circumstances cannot be held guilty of negligence in parking the vehicle at the place where the vehicle was parked. The learned Single Judge proceeded to observe that the plea of stretching of arms by the deceased is totally an imaginary stand taken by the appellants, and was not acceptable.

3. A reference has also been made to the police report no. 9 dated 11.08.2002 in (Roznamcha) daily Register maintained at Police Station Gangyal. The postmortem report reveals that the electrocution took place at 9.30 am on 11.08.2002 and the deceased died at about 10.00 am on his way to the Hospital. The postmortem was conducted at 12.15 P.M and report was entered in Roznamcha/daily Register, Police Station, Gangyal at 2.45 P.M. Learned Single Judge has opined that in the month of August when day starts 4.30/5.00 A.M and the sun rises half an hour thereafter, prompting everyone moreso the worker class to start the daily chore, it is highly

improbable that the driver, who has taken his vehicle to the Service Station a day before with the intention to stand in the queue for 10 to 12 hours before getting his vehicle serviced in early morning would sleep till 9.30 A.M. The version was rejected holding that the defence has been build up on pure imagination without their being any tangible evidence. The learned Single Judge believed the version of the claimants and also recorded a finding that there was no dispute with regard to the occurrence of accident and the death by electrocution. The place and time of occurrence had also remained undisputed, therefore, all facts in material particular were admitted.

4. It is well settled proposition of law by a catena of judgments of Hon'ble the Supreme Court that if there is no dispute on facts then public law claim for compensation for contravention of fundamental rights to life and liberty guaranteed under Article 21 of the Constitution of India is always sustained in addition to the remedy available in private law. Therefore, in exercise of writ jurisdiction adequate compensation can always be awarded by the Courts. In such like cases, the writ Court could also award compensation

where the accident is not disputed nor it is denied that the resultant death was caused by electrocution. In the present case even the negligence could not be successfully disputed. In that regard, reliance may be placed on the views of Hon'ble the Supreme Court expressed in para 2 of the judgment rendered in ***Parvati Devi & ors. v. Commissioner of Police, Delhi & ors. (2000) 3 SCC 754***; Para 10 of the judgment in the case of ***Tamil Nadu Electricity Board v. Sumathi & ors. (2000) 4 SCC 543*** and Para 8 of ***M. P. Electricity Board v. Shail Kumari & ors. (2002) 2 SCC 162. (Cf. Chairman, Grid Corporation of Orissa Ltd. (GRIDCO) & ors. Sukamani Dass & anr. (1999) 7 SCC 298.***}

5. As a sequel to the above discussion, we are unable to find any arguable issue which may warrant admission of the appeal. It is, accordingly, dismissed with costs of Rs.5,000/-. We further direct that the awarded amount be paid to the writ petitioner-respondents within four weeks from today.

6. At the end, learned counsel for the writ petitioner-respondents has requested that the name of

husband of respondent no. 2 be corrected to be Kulbir Singh which has been incorrectly typed as Surinder Singh. We accept the request and the name of party respondent no. 2 be read as Surinder Kour wife of Kulbir Singh.

**(Dhiraj Singh Thakur)**  
**Judge**

**(M. M. Kumar)**  
**Chief Justice**

**Jammu,**  
**13.03.2013**  
**Vijay**

