

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

W.P. (C) No. 470 of 2017

Shri Gainichung Dangmei, aged about 35 years, S/o Kaninga Dangmei, a permanent residence of Siangai Namdai (Parengba), P.O. Nungshai, P.S. Bishnupur, Senapati District, Manipur.

... Petitioner

-Versus-

- 1.** The State of Manipur, represented by the Commissioner (Power), Government of Manipur, Secretariat, Bapubra. P.O. & P.S. Imphal, Imphal West, Manipur.
- 2.** The Managing Director, MSPDCL, Near 2nd MR, North A.O.C., P.O. Lamlong, P.S. Imphal, Imphal East District, Manipur.
- 3.** The Secretary, MSPDCL, Near 2nd MR, North A.O.C. P.O. Lamlong, P.S. Imphal, Imphal East District, Manipur.
- 4.** The Deputy General Manager, MSPDCL, Senapati Headquarter, P.O. & P.S. Senapati, Senapati District, Manipur.

... Respondents

**B E F O R E
HON'BLE MR. JUSTICE AHANTHEM BIMOL SINGH**

For the petitioner	::	Mr. Aaron Keishing, Advocate
For the respondents	::	Mr. A. Vashum, GA
Date of Hearing	::	13-09-2023
Date of Judgment & Order	::	22-11-2023

JUDGMENT & ORDER

[1] Heard Mr. Aaron Keishing, learned counsel appearing for the petitioner and Mr. A. Vashum, learned GA appearing for the respondents.

[2] The present writ petition had been filed on behalf of a three years old boy claiming compensation for the injuries and physical disabilities suffered by him due to electrocution caused by sheer negligence of the authorities.

[2]

[3] The petitioner is the natural father of the minor victim boy, namely, Lansingam Dangmei, and residing at an interior hill Village called Siangai Namdai (Parengba), in Senapati District of Manipur State. The petitioner and his minor son are Scheduled Tribes and belongs to a very poor family, who are below the poverty line. The petitioner is a Cultivator and a wage earner for daily food. According to the petitioner, the respondents installed a high voltage electric transformer (Transformer-II) nearby a road side within the residential areas of the petitioner's village without any protected fencing or precautionary notice against possibility of danger of electric shock. On the fateful day, i.e., on 13-11-2014, the petitioner's son, who was only three years old at that time, was playing a ball with his friends and he accidentally touched the said electric transformer when he went near the high voltage electric transformer to pick up the ball and he was electrocuted when he came in contact with the said high voltage electric transformer.

[4] The victim boy received grievous burn and injuries in his right hand and face due to electrocution and he was admitted at Regional Institute of Medical Sciences (RIMS), Hospital at Imphal on the same day of the incident. As per the diagnosis given by the Doctor after clinical examination, the victim boy suffered full thickness burn scalp, 3° burn in right palm and wrist, 2° burn at right cubital and axillary fold (anterior), 1° burn at face, etc. Due to the high voltage electric burn injuries suffered by the victim boy, his right hand below the elbow was amputated and he suffered 100% disability of his right hand and 70% permanent disability for his whole life.

[5] According to the petitioner, his son remained hospitalized w.e.f. 13-11-2014 to 02-02-2015 in RIMS Hospital for his treatment, though there were interim discharge in between. According to the petitioner, the hospitalization and treatment of his son was very expensive and in addition to the expenditure for treatments, tests and medicines of his son, there were other expenditures which cannot be recorded during the miserable situation and the expenditure in the form of energy, labour and time were potentially huge. The unfortunate incident caused immense misery to the victim boy and his poor family members in various forms and the petitioner had to leave his daily labours for earning his livelihood as the petitioner was running here and there for hospitalization and treatment of his minor son. After the said incident, the victim boy was in need of special care and attention and the victim boy and his parents and family members have suffered pain, agony and trauma and he cannot continue his future life as a normal person and he became totally dependent upon his family members even for day to day activities for his entire life due to amputation of his right hand.

[6] It is the case of the petitioner that the Transformer-II at Siangai Namdai village was installed by the authorities without any fencing and with no precautionary notice for preventing any unwanted incident of electrocution and as such the petitioner's minor son suffered his injuries and physical disabilities on account of the gross negligence of the respondents and accordingly the respondents are liable to pay just and fair compensation to the victim boy

According to the petitioner, his son would normally have started earning at least Rs. 35,000/- per month after attaining the age of 25 years and his life expectancy can safely be taken as per the prevailing trends as 70 years and that his son would have safely work for 38 years and his annual income would be Rs. 4,20,000/- and that his total future income would be Rs. 1,59,60,000/-. The petitioner also claimed that as the right hand of his son below the elbow had been amputated, the earning potential of his son would be reduced by at least $\frac{1}{3}^{\text{rd}}$ of the actual capacity of earning if he was not electrocuted and suffered his physical disabilities and as such his earning potentiality would be only Rs. 23,333/- instead of Rs. 35,000/- per month. According to the petitioner, the reduction of his son's future earning potentiality per month due to his physical disabilities comes at Rs. 11,666/- and Rs. 1,40,000/- per annum and he would have safely work for at least 30 years and thus the minimum total future loss of income of the petitioner's son comes to Rs. 42,00,000/- and the respondents are liable to pay such amount to his son as compensation for the injuries suffered by him due to the electrocution.

[7] The petitioner also claimed that his son is also entitled to the standard damages of Rs. 3,00,000/- towards loss of companionship, life amenities/ pleasures and loss of happiness, Rs. 3,00,000/- for the pain and suffering including mental distress, trauma, discomfort and inconvenience and Rs. 3,00,000/- towards Attendant/ Nursing expenses for his entire life and a further sum of Rs. 2,00,000/- for securing artificial/ robotic limbs and future medical expenses. The total compensation amount claimed by the petitioner for his son comes to Rs. 53,00,000/-.

[5]

The petitioner made several representations to the concerned authorities of the State Government for payment of just and fair compensation to his son for the injuries and physical disabilities suffered by his son due to the electrocution caused by the negligence of the authorities, however, no positive response was given by the authorities till today and as such, the petitioner approached this court by filing the present petition for redressing his grievances.

[8] The stand taken by the respondents in their affidavit-in-opposition is that the alleged electrical accident took place on 13-11-2014, however, no complaint was registered either by the petitioner or relative of the victim boy before the concerned police station or before the Office/ Division Office of the Electricity Department and that since the information relating to the alleged accident was not reported/ intimated to the concerned office, it has been reported from the concerned office, i.e., Bishnupur Division, MSPDCL that no electrical accident complaint was available in the Bishnupur Division and hence no enquiry could be made in that regard. It has also been stated that only on 07-05-2017, the petitioner submitted representations to the concerned authorities for payment of compensation for causing amputation of the right hand of his son due to electrocution and as such the claim of the petitioner for payment of compensation is a belated claim.

[9] The other stand taken by the respondents in their affidavit-in-opposition is that there was no negligence on the part of the Electricity Department as the transformer at Siangai Namdai (Parengba-II) village was already fenced and danger notice boards were affixed on the supporting

poles of the said transformer as mandated under Section 53 of the Electricity Act, 2003 and its Rules, 2005. The specific statements made by the respondents at para 13 of their affidavit-in-opposition are reproduced hereunder for ready reference.

“13. That with respect to the content of Para No. 20 of the writ petition, it is respectfully submitted that the transformer at the Siangai Namdai (Parengba-II) village was already fenced along with the danger boards affixed on the supporting poles of the said transformer. Relating to fatal & non electrical accidents, Vide O.M. No. 12/65/GM (Plg)/2016-MSPDCL dated 22/12/2017, Managing Director, MSPDCL directed all the sub-divisional Managers under revenue divisions to execute/ implement minimum of 10 (ten) distribution transformer security fencing where the conditions are mostly susceptible/ prone to accidents in order to prevent casualty to human and animals. Thereafter, the concerned sub-divisional Managers after identification of accident prone areas/ transformer and proposal to the higher authority, started fencing work in certain areas with the approval of the authority. Consequently, the Deputy General Manager & Manager of Bishnupur Division took up additional measure to protect the said transformer at Siangai Namdai (Parengba-II) from any human / animal entry.”

[10] In the rejoinder affidavit filed by the petitioner, the petitioner strongly denied the statements made by the respondents that the incident of electrocution was not intimated to the competent authority. The petitioner categorically stated that the incident of electrocution took place on 13th of November, 2014 and the incident was immediately reported to the Bishnupur Division, MSPDCL and that the staff of Bishnupur Division, MSPDCL visited and inspected the petitioner's son, however, they never extended any kind of assistance to the victim and his family members. The petitioner further stated that the incident of electrocution was already reported to the competent authority, however, the petitioner and his family members could not pursue the matter as they are illiterate and busy while taking care of the victim child and earning their daily wages for their survival

and accordingly the petitioner strongly denied the claim made by the respondents that the claim for compensation made by the petitioner is a belated one.

[11] The petitioner also strongly denied the statements made by the respondents in their affidavit-in-opposition that the said transformer at Siangai Namdai village was already fenced along with the danger board affixed on the supporting poles of the said transformer. In the rejoinder affidavit filed by him, the petitioner stated that there was sheer negligence on the part of the respondents as the said high tension transformer was never fenced and no danger notice board was affixed thereto as mandated under Section 53 of the Electricity Act, 2003 and its Rules, 2005 during the relevant point of time and that the transformer was fenced only recently after the incident took place and that the Deputy General Manager of Bishnupur Division never took up any measure to protect the transformer at Siangai Namdai village from any human/ animal entry.

[12] The counsel for the petitioner submitted that all the issues raised in the present writ petition is squarely covered by the judgment dated 09-01-2015 rendered by the Division Bench of the High Court of Himachal Pradesh in CWP No. 475 of 2013 "**Naval Kumar alias Rohit Kumar Vs. State of Himachal Pradesh & ors**". The relevant paragraphs of the said judgment relied on by the counsel for the petitioner are as under:-

"5. Sections 53, 68 and 161 of the Act read as under:

"Section 53. (Provisions relating to safety and electricity supply): The Authority may in consultation with the State Government, specify suitable measures for –

(a) protecting the public (including the persons engaged in the generation, transmission or distribution or trading) from dangers

arising from the generation, transmission or distribution or trading of electricity, or use of electricity supplied or installation, maintenance or use of any electric line or electrical plant;

- (b) eliminating or reducing the risks of personal injury to any person, or damage to property of any person or interference with use of such property;*
- (c) prohibiting the supply or transmission of electricity except by means of a system which conforms to the specification as may be specified;*
- (d) giving notice in the specified form to the Appropriate Commission and the Electrical Inspector, of accidents and failures of supplies or transmissions of electricity;*
- (e) keeping by a generating company or licensee the maps, plans and sections relating to supply or transmission of electricity;*
- (f) inspection of maps, plans and sections by any person authorised by it or by Electrical Inspector or by any person on payment of specified fee;*
- (g) specifying action to be taken in relation to any electric line or electrical plant, or any electrical appliance under the control of a consumer for the purpose of eliminating or reducing the risk of personal injury or damage to property or interference with its use.*

Section 68. (Provisions relating to Overhead lines): ---- *(1) An overhead line shall, with prior approval of the Appropriate Government, be installed or kept installed above ground in accordance with the provisions of sub-section (2).*

(2) The provisions contained in sub-section (1) shall not apply

- (a) in relation to an electric line which has a nominal voltage not exceeding 11 kilovolts and is used or intended to be used for supplying to a single consumer;*
- (b) in relation to so much of an electric line as is or will be within premises in the occupation or control of the person responsible for its installation; or*
- (c) in such other cases, as may be prescribed.*
- (3) The Appropriate Government shall, while granting approval under sub-section (1), impose such conditions (including conditions as to the ownership and operation of the line) as appear to it to be necessary.*
- (4) The Appropriate Government may vary or revoke the approval at any time after the end of such period as may be stipulated in the approval granted by it.*
- (5) Where any tree standing or lying near an overhead line or where any structure or other object which has been placed or has fallen near an overhead line subsequent to the placing of such line, interrupts or interferes with, or is likely to interrupt or interfere with, the conveyance or transmission of electricity or the accessibility of any works, an Executive Magistrate or authority specified by the Appropriate Government may, on the application of the licensee, cause the tree, structure or object to be removed or otherwise dealt with as he or it thinks fit.*
- (6) When disposing of an application under sub-section (5), an Executive Magistrate or authority specified under that sub-section shall, in the case of any tree in existence before the placing of the*

overhead line, award to the person interested in the tree such compensation as he thinks reasonable, and such person may recover the same from the licensee.

Explanation. - For the purposes of this section, the expression "tree" shall be deemed to include any shrub, hedge, jungle growth or other plant.

Section 161. (Notice of accidents and injuries): ---

- (1) If any accident occurs in connection with the generation, transmission, distribution, supply or use of electricity in or in connection with, any part of the electric lines or electrical plant of any person and the accident results or is likely to have resulted in loss of human or animal life or in any injury to a human being or an animal, such person shall give notice of the occurrence and of any such loss or injury actually caused by the accident, in such form and within such time as may be prescribed, to the Electrical Inspector or such other person as aforesaid and to such other authorities as the Appropriate Government may by general or special order, direct.*
- (2) The Appropriate Government may, if it thinks fit, require any Electrical Inspector, or any other person appointed by it in this behalf, to inquire and report-*
 - (a) as to the cause of any accident affecting the safety of the public, which may have been occasioned by or in connection with, the generation, transmission, distribution, supply or use of electricity, or*
 - (b) as to the manner in, and extent to, which the provisions of this Act or rules and regulations made thereunder or of any licence, so far as those provisions affect the safety of any person, have been complied with.*
- (3) Every Electrical Inspector or other person holding an inquiry under sub-section (2) shall have all the powers of a civil court under the Code of Civil Procedure, 1908 for the purpose of enforcing the attendance of witnesses and compelling the production of documents and material objects, and every person required by an Electrical Inspector be legally bound to do so within the meaning of section 176 of the Indian Penal Code."*

"7. The Central Government has also framed the Rules called the Intimation of Accidents (Form and time of service of notice) Rules, 2005. Rule 3 reads as under:

"3. Intimation of accidents.- (1) If any accident occurs in connection with the generation, transmission, supply or use of electricity in or in connection with, any part of the electric lines or other works of any person and the accident results in or is likely to have resulted in loss of human or animal life or in any injury to a human being or an animal, such person or any authorized person of the generating company or licensee, not below the rank of a Junior Engineer or equivalent shall send to the Inspector a telegraphic report within 24 hours of the knowledge of the occurrence of the fatal accident and a report in writing in Form A within 48 hours of the knowledge of occurrence of fatal and all other accidents. Where possible a telephonic message should also be given to the Inspector immediately, if the accident

comes to the knowledge of the authorized officer of the generating company/licensee or other person concerned.

- (2) For the intimation of the accident, telephone numbers, fax numbers and addresses of Chief Electrical Inspector or Electrical Inspectors, District Magistrate, police station, Fire Brigade and nearest hospital shall be displayed at the conspicuous place in the generating station, sub-station, enclosed substation/switching station and maintained in the Office of the in-charge/owner of the Medium Voltage (MV)/High Voltage (HV)/Extra High Voltage (EHV) installations."*

"8. Chapter IV of the Indian Electricity Rules, 1956 deals with general safety requirements. Rule 29 provides that all electric supply lines and apparatus shall be of sufficient ratings for power, insulation and estimated fault current and of sufficient mechanical strength, for the duty which they may be required to perform under the environmental conditions of installation, and shall be constructed, installed, protected, worked and maintained in such a manner as to ensure safety of human beings, animals and property. According to sub-rule (2) of Rule 29, the relevant code of practice of the Bureau of Indian Standards including National Electrical Code, if any, may be followed to carry out the purposes of this rule and in the event of any inconsistency, the provision of these rules would prevail. As per sub Rule (3) of Rule 29, the material and apparatus used shall conform to the relevant specifications of the Bureau of Indian Standards where such specifications have already been laid down. Rule 30 reads as under:

"30. Service lines and apparatus on consumer's premises-

- (1) The supplier shall ensure that all electric supply lines, wires, fittings and apparatus belonging to him or under his control, which are on a consumer's premises, are in a safe condition and in all respects fit for supplying energy and the supplier shall take due precautions to avoid danger arising on such premises from such supply lines, wires, fittings and apparatus.*
- (2) Service-lines placed by the supplier on the premises of a consumer which are underground or which are accessible shall be so insulated and protected by the supplier as to be secured under all ordinary conditions against electrical, mechanical, chemical or other injury to the insulation.*
- (3) The consumer shall, as far as circumstances permit, take precautions for the safe custody of the equipment on his premises belonging to the supplier.*
- (4) The consumer shall also ensure that the installation under his control is maintained in a safe condition."*

"9. Rule 35 provides that the owner of every medium, high and extra-high voltage installation shall affix permanently in a conspicuous position a danger notice in Hindi or English and the local language of the district, with a sign of skull and bones. Rule 44-A provides that if accident occurs in connection with the generation, transmission, supply or use of energy in or in connection with, any part of the electric supply lines or other works of any person and the accident results in or is likely to have resulted in loss of human or animal life or in any injury to a human being or an animal, such person or any authorised person of the State Electricity Board/Supplier, not below the rank of a Junior Engineer or equivalent shall send to the Inspector a telegraphic report within 24 hours of the knowledge of the occurrence of the fatal accident and a written report in the form set out in Annexure XIII within 48 hours of the knowledge of occurrence of fatal and all other accidents."

- “11. The combined reading of the Electricity Act and the Rules framed thereunder and the Indian Electricity Rules, 1956, quoted hereinabove, provides safety measures required to be observed for supply of electricity. The electricity is a dangerous commodity and it is the statutory duty of the person responsible for the supply and maintenance to abide by all the protective measures. In case respondents in the present case had installed all the safety devices and had taken precautions, the accident could have been avoided. It is not believable that 8 years boy would climb the rock and get electrocuted, as projected in the reply by respondents. The boy has come in contact with the live wire lying low when he had gone to bring vegetables with his mother. It was a high tension live wire called 'Lahru-Chowari Line'. Since it was lying low, no contributing negligence can be attributed to a boy aged 8 years. It is a fit case where principle of 'res ipsa loquitur' would apply. There is no merit in the contention of Mr. B.S.Ranjan, Advocate, that it was an act of God. Rather, it is a sheer act of negligence on the part of the respondents, who have failed to take necessary safety measures in maintaining high tension live wires called 'Lahru-Chowari Line'. It was the duty of the field officers concerned under Rule 44-A of the Electricity Rules, 1956 and as provided under Rule 3 of Intimation of Accidents (Form and time of service of notice) Rules, 2005 to give information of the accident to the higher authorities. There is no tangible material placed on record by respondents No. 2 & 3 in the reply that Rule 44-A of the Electricity Rules, 1956 or Rule 3 of the Intimation of Accidents (Form And Time Of Service Of Notice) Rules, 2005, have been complied with. The respondents have failed to conduct periodical inspections as visualized under the Act and Rules framed thereunder. They have failed to protect the life and property of the general public. The present case falls within the ambit of strict liability. There is a flagrant violation of the Act and Rules by the respondents by not providing any safeguards, checks and balances to prevent escape of energy which caused electrocution in the instant case. The hanging of 'Lahru-Chowari Line' at a low level was a potential danger and threat to public at large. The burden on the respondents was high involving the risk factor. The respondents have failed to discharge the onus placed upon them under the Statutes. There is also a criminal negligence on the part of the functionaries of respondents No. 2 & 3.”**
- “12. The petitioner has remained hospitalized w.e.f. 18.3.2012 to 3.5.2012 in Dr. Rajendra Prasad Medical Hospital, Tanda. He was operated upon on 25.3.2012. His both arms were amputated as per Annexure P-4. He has suffered 100% disability. The petitioner has been reduced to a vegetable form by the sheer negligence on the part of the Board and its functionaries. He has dis-continued his studies. He cannot look after himself. He needs attendant and nursing throughout his life. He comes from a scheduled tribe family and that too from a very remote area of the State of Himachal Pradesh. He is to be fed by his family members. He cannot take even his bath. We can take judicial notice of the fact that the help of the family would not be available to him throughout his life. He cannot marry with this condition. He and his family members have suffered trauma after the accident. The petitioner has suffered pain and agony. He has to be provided with sufficient compensation for his entire future life.”**
- “13. A person injured by the negligent act of others is definitely entitled to general damages for non-pecuniary loss such as pain, suffering and loss**

of amenities and also pecuniary loss, both past and future. He has incurred medical expenses as well. The petitioner is entitled for compensation/damages for the embarrassment for the disability and disfigurement. The petitioner is also entitled to damages for the loss of ability to use his limbs, including the loss of pride and pleasure and loss of marriage prospects.

“14. Now, as far as damages/ compensation under pecuniary loss is concerned, the principle of 'restitutio in integrum' would apply. The petitioner is entitled to be put in the same position in which he would have been if he had not sustained the wrong.”

“15. Now, as far as the loss of future earning is concerned, the Court has to look into the entire gamut of facts and circumstances of the case, including the background of the petitioner. The petitioner was a brilliant student. He would have earned at least 30,000/- to 40,000/- per month, after attaining the age of majority or after completing his education. It would have been easier for him to get job from the Scheduled Tribe quota.”

“16. The Court has to apply the appropriate multiplier by taking into consideration life expectancy of a child. In the present case, taking into consideration all the facts and circumstances even on the conservative side, the life expectancy of the petitioner with his disability would not be less than 70 years of age. The petitioner is also entitled to the empowerment of his ability to perform household chores. The petitioner has to employ house-keeper/servant etc. to perform them. Even if the family members are providing the chores performed by the petitioner, the petitioner is entitled to award of damages representing the value of those services. The petitioner is also entitled to medical and nursing expenses including special equipment which may be required for providing him artificial limbs and the cost of travel, to and fro journey to hospital and his family members.”

“17. Now, as far as the plea of act of God taken by the respondents is concerned, the principle is that the act of God amounts due to operation of natural force. In the present case, the plea of act of God raised by the respondents is not attracted. The child has come in contact with the live wire due to negligence and laxity of the functionaries of the respondents who have failed to maintain the supply lines by taking precautions required under the Act. There was no contributory negligence on behalf of the petitioner. The petitioner was only 8 years old. He could not foresee that the loose wire would be lying low on the ground.”

“21. In the case of Yachuk & another vrs. Oliver Blais Co., Ltd., reported in (1949) 2 All. E.R. 150, the Privy Council has held that when employee has given an explosive substance to a boy with a limited knowledge in respect of the likely effect of the explosion, the boy having done the act which the child of his years might be reasonably expected to do. This would not be a case of contributory negligence. It has been held as under:

“.....It was contended on behalf of the plaintiffs that the learned Judge's findings were illogical and inconsistent. Black was negligent because he ought to have recognized that a boy of the age of the infant plaintiff not only lacked knowledge and experience, but was likely to have mischievous propensities. These defects being characteristic of the normal boy, it was impossible (so ran the argument) to impute to this boy, whatever exceptional training or

experience he might have had and however reckless he might appear to have been, any failure to take reasonable care for his own safety. In other words, he could not be found guilty of contributory negligence. Their Lordships do not find it necessary to decide whether there is a necessary inconsistency, in all cases in which the defendant owes a duty to show special care in his dealings with a child, in a finding of negligence by the defendant coupled with one of contributory negligence by an infant plaintiff. If the evidence had shown that the infant plaintiff in the present case had, if fact, greater knowledge of the dangerous properties of gasoline than would be imputed normally to a child of his age, a more debatable question would have arisen. A careful examination of the evidence has satisfied their Lordships that the boy had no knowledge of the peculiarly dangerous quality of gasoline. He knew, no doubt, that an object soaked in gasoline could be ignited with a match. He did not know, and there is no evidence that he had ever been told, that gasoline was a volatile liquid capable of producing a highly inflammable vapour likely to burst into flame if heat were brought near it. He knew (he said in his evidence) that "it would burn like a match....after you strike it." His father said that he had never warned him about gasoline, because he did not think that a boy could buy it. The boy himself said, what is likely enough, that his father had told him to keep away from his gasoline torch, but that he was "pretty sure" that neither of his parents had ever warned him "to be careful with gasoline." On the evidence it is, in their Lordships view, impossible to regard him as any more capable of taking care of himself in the circumstances in which he was placed than a normal boy of his age might be expected to be. In the words of DENMAN, C.J., although he may be said to have acted "without prudence or thought", he "showed these qualities in as great a degree as he could be expected to possess them." It is a fair inference from the evidence that it was the very property of gasoline which he neither knew, nor could be expected to know, which brought about his misadventure. Their Lordships are, accordingly, of opinion, in agreement with the Court of Appeal for Ontario, that on the facts of this case the finding of contributory negligence cannot be supported.

It follows from what their Lordships have already said that the attempt to attribute the disaster which happened solely to the acts of the infant plaintiff must fail. That defence cannot, indeed, be maintained in the light of the concurrent findings of fact in this case, for, when once the negligence of the plaintiff, it is impossible to say that a new cause has intervened so as to relieve the defendant of all responsibility for the evil consequences which followed his wrongful act. Their Lordships will add, however, that even without regard to the rule of practice as to concurrent findings they would have had no difficulty in arriving at the same conclusion. However the case is put, the answer made by McRUER, J.A., in the Court of Appeal for Ontario, seems to their Lordships to be conclusive in the light of the evidence when he said ([1945] Ont. Rep. 33):

"If one gives to a child an explosive substance and the child, with a limited knowledge in respect of the likely effect of the explosion, is tempted to meddle with it to his injury, it cannot be said in answer to a claim on behalf of the child that he did meddle to his own injury, or that he was tempted to do that which a child of his years might be reasonably expected to do."

"29. In the case of Manohar Lal Sobha Ram Gupta and others vrs. Madhya Pradesh Electricity Board, reported in 1975 ACJ 494, the Division Bench has held that the Electricity Board is a statutory Authority and as such the

standard of care required is high one owing to the dangerous nature of electricity. It has been held as under:

"[4] The defendant has a statutory authority under the Electricity Act, 1910, read with the Electricity Supply Act, 1948 to transmit electric energy. The defendant, therefore, cannot be made liable for nuisance for the escape of electrical energy on the principle accepted in the case of Rylands v. Fletcher, (1866) LR 1 Ex 265. The defendant, however, is still liable for negligence. It is negligence to omit to use all reasonable known means to keep the electricity harmless; (see Clerk & Lindsell on Torts, 13th Edition, paragraph 1536), The burden of proving that there was no negligence is on the defendant and there is no obligation on the plaintiff to prove negligence. Further, the standard of care required is a high one owing to the dangerous nature of electricity; (see Charlesworth on Negligence, 5th Edition, p. 531). If the defendant produces no material and offers no evidence to negative negligence, negligence will be presumed. This result will also follow on the principle of res ipsa loquitur. Live broken electric wires carrying, high tension energy are generally not found in a public place, street or road and, therefore, if such a thing happens a prima facie inference can be drawn that there has been some carelessness on the part of the defendant in transmitting electric energy or in properly maintaining the transmission lines. This inference is further supported by Rule 91 of the Indian Electricity Rules, 1956. This rule provides that every over head line which is not covered with insulating material and which is erected over any part of a street or other public place or any factory or mine or on any consumer's premises shall be protected with a device approved by the Inspector for rendering the line electrically harmless in case it breaks. If the precaution under this rule is taken the line in case it breaks would become dead and harmless. The fact that the line after it broke did not become harmless shows that necessary precaution was not taken. As the defendant has not produced any evidence whatsoever to place the facts showing that all necessary precautions were taken and there was no negligence on its part, it must be held that the accident happened because of the negligence of the defendant."

"30. In the case of Amul Ramchandra Gandhi vrs. Abhasbhai Kasambhai Diwan and others, reported in AIR 1979 Gujarat 14, the Division Bench has laid down the principles when the contributory negligence can be attributed to a child. It has been held as under:

"11. The principles which emerge on a review of the authorities may be thus summarized: A distinction must be necessarily drawn between children and adults when the question of contributory negligence arises for, a child cannot be expected to be as careful for his own safety as an adult. Where a child is of such an age as to be unable to fend for himself or to be naturally ignorant of danger, or where in doing an act which contributed to the accident, he was only following the instincts natural to his age and the circumstances, he is not guilty of contributory negligence. A child should be found guilty of contributory negligence only if it is established as a matter of fact on the evidence on record that he is of such an age and understanding as reasonably to be expected to take precautions for his own safety and the blame for the accident could be necessarily attached to him. In cases of road accidents, it must be borne in mind that a child is

not possessed of the road sense or the experience of elders. Even if it transpires that he was taught road discipline either at home or at school and that, therefore, if he had bestowed some thought, he would have realized that it was his duty to take reasonable care for his own safety, still a normal child would not be held culpable in view, of his propensity to forget altogether what has been taught to him if something else is uppermost in his mind. A normal child is always momentarily forgetful of the perils of crossing and walking on a road, regrettably though, and under such circumstances, if he failed to notice even an on coming vehicle and got hurt by it, he cannot be held guilty of contributory negligence. In such a case, the question of the duty of the driver of the vehicle must be examined with greatest precision and unless the driver is in a position to show on establishment of, primary facts that he was driving the vehicle in such a manner that he could have brought it to standstill in case of emergency and that the accident was inevitable or unavoidable, the inference of his negligence and. his alone must be raised almost as a matter of course."

"34. In the case of Padma Behari Lal vrs. State Electricity Board and another, reported in AIR 1992 Orissa 68, the learned Single Judge has held that where cyclist came in contact with a live hanging wire detached from the electric pole, the Electricity Board was found negligent. It has been held as under:

"6. In the given circumstances of this case, the question for determination is as to whether the petitioner is entitled to compensation from the opposite parties without proving as to how the accident took place. It is well established in law that in an action for damage in tort, the general rule is that onus to prove negligence on the part of the respondent rests on the claimant. But there are cases in which the claimant is not in a position to produce evidence as to the negligence of the respondent which caused the accident. In those cases it may be that the claimant would not be in a position to know the true cause of the unfortunate action. In some of the such cases the cause of accident, though not known to the claimant might be within the special knowledge of the respondent. The rule of evidence accepted by all courts of law put the onus on the respondent to prove that the accident was not on account of negligence on its part where the circumstance leading to an accident is such that it is improbable that it would have occurred without the negligence of the respondent. The aforesaid rule of evidence is commonly known as "res ipsa loquitur". The said maxim applies in action for negligence in which the accident speaks for itself. In such cases the claimant is not required to allege and prove any specific act or omission on the part of the respondent. If he proves the accident and the attending circumstances so as to make the aforesaid maxim applicable, it would be then for the respondent to establish that the accident happened due to some cause other than his/its negligence. The petitioner's son in this case was moving on a bicycle on the public road. His movement on the road on a bicycle was not the cause of his death. His death was due to electrocution having come in contact with the live electric Wire. The electric wires have been carried supported by the electric poles, the maintenance of which is admittedly the duty of the Electricity Board. Any live wire getting detached from the pole is likely to cause loss of life. The responsibility of the Electricity Board

is, therefore, all the more greater for its maintenance by replacement of wire, checking of the points where the wire has been joined or fixed to the pole and to take all precautions to use materials which would stand a stormy weather. The very fact that live wire in a stormy weather which caused the death of the son of the petitioner was detached from the pole and was hanging over the road makes the maxim 'res ipsa loquitur' applicable and in such event, it is not for the petitioner to prove any specific act or omission amounting to negligence of the Electricity Board. In these circumstances, the burden lies on the opp. parties to establish that the Electricity Board was not negligent. The opp. parties have failed to establish that the accident occurred due to some cause other than the negligence of the Electricity Board. The petitioner is thus entitled to compensation from the opp. parties on account of the death of his son which in the circumstances must be held to be due to negligence of the Electricity Board in maintaining the electric wire running over the poles (vide 1987 ACJ 880 : (AIR 1988 Ker 206) Thressia v. Kerala State Electricity Board)."

"36. In the case of M.P. State Road Transport Corporation and others vrs. Abdul Rahman and others, reported in AIR 1997 MP 248, the Division Bench has held that the concept of contributory negligence cannot be made applicable to a child. A child functions according to his own reasoning and his intelligence. It has been held as under:

"11. From the aforesaid discussion relating to contributory negligence on the part of a child of tender age there is no doubt that the concept of contributory negligence cannot be made applicable to a child. A child functions according to his own reasoning and his intelligence. Logicality and rationality are not expected from a child as a child of tender age has no continuous thinking process and is governed by his impulse, instinct and innocence. Can one ever conceive that a child, if would have been aware of the peril, would ever commit an act which is dangerous or hazardous for him? The answer has to be a categorical 'No', because a child's action is childlike and really innocent. Possibly for that reason, it has been said:--

"The Maker of the Stars and Sea, become a Child earth for me?"

A child remains a child in spite of all training and directions and if anything sparkles it is the glory of his innocence which makes him indifferent to the risks which an adult apprehends and pays attention.

In view of our aforesaid analysis, we conclude and hold that Riyaz, the child of four, was not liable for contributory negligence."

"37. In the case of R.S.E.B. & another vrs. Jai Singh and others, reported in AIR 1997 Rajasthan 141, the learned Single Judge has held that all wires resulting in electrocution would attract the maxim 'res ipsa loquitur'. The learned Single Judge has held as under:

"12. Khuman Singh, Helper, who is none but the employee of the Board itself, has clearly stated that on 15-2-1992 itself, after his duty was over he went to Charbhujaji arm he was told by Girija Shankar that the earth wire of 11 K.V. line was snapped at Tadawara and that an insulator pin was also detached and, therefore, after shutting down electricity supply, repairs are required to be carried out. However, he went to his village and learnt at about 11 p.m. in the same night through Phool Singh and Lehri Lal that because of damage to the live

electric wires resulting in electrocution of the three deceased persons such an incident had taken place. Besides, the petitioner-defendants have pleaded that the sparks resulted from the live electricity passing wires resulted in setting grass lying on the terrace of the house of one Rafique Mohd, on fire as a result of which the wires melted and got snapped and its end fell on the ground which resulted in electrocution of the deceased. Assuming so, the sparks must have resulted due to fluctuation and trimming in the supply of electricity and besides, as per the pleadings of the petitioners themselves the grass was lying on the terrace of the house which was quite nearer to the overhead passing electric wires and, therefore, it was also negligent act by way of an omission from the side of the defendants in not having raised the height of the passing wires or to have removed the same from their present position. Besides, the plaintiffs have consistently maintained that such electric wires got snapped and broken on three or four occasions earlier since the same were old and damaged, it was incumbent on the defendants to have replaced the same and they must have taken every precaution as a result of which they could neither get snapped nor sparks could be released from there due to any disorder in supply of the electric wires. The defendants apparently failed to do so. Therefore, for the present, the defendants cannot dispute that they were, operating and maintaining supply of electricity through the electric poles located on both sides of the place of incident and electricity wires joints with both the poles were passing above the field of the deceased persons. Thus, the field whereon the residential house of the deceased was also situated, were agricultural fields the area was inhabited and, therefore, it was the duty of the officials/agents of the R.S.E.B. that the electric lines passing over head were perfectly in order and there was no visible possibility and apprehension of their being snapped and sparks being released from them resulting in electrocution and fire to the property. However, R.S.E.B. positively failed to do so which is an apparent omission on their part.

13. *That being so, when the deceased 1 persons were not at the fault at all and on the contrary, the R.S.E.B. through its officials/ agents were negligent and at its faulting end, as held in the decision of Padam Beharilal case (AIR 1992 Orissa 68) (supra) by the Orissa High Court, since it was the positive duty of the R.S.E.B. to maintain the electric wire lines free from such incident. It is having failed to do so, the maxim res ipsa loquitur, it was not for the plaintiffs but, when admittedly parents of the petitioners along with his son Kishan Singh were electrocuted immediately and they were burnt on the spot, in such event it is not for the plaintiffs to prove any such specific act or omission amounting to negligence of the R.S.E.B. but the burden shifts on the defendants to establish that the unfortunate incident was not a result of negligence on the part of the R.S.E.B."*

"38. In the case of T. Gajayalakshmi Thayumanavar and anr. Vrs. Secretary, Public Works Department, Govt. of Tamil Nadu, Madras and ors., reported in AIR 1997 Madras 263, the Division Bench has held that when the wire snapped and fell on cycle rider and the cycle rider was electrocuted, the incident occurred due to negligence of Board as it has not maintained the electric system properly. It was further held that

snapping of electric wire was not an act of God. It has been held as under:

"20. On an appraisal of the evidence of P.Ws. 1 to 3 and R. W. 1, it is manifest that the Electricity Board had not maintained the fuse mechanism properly and had it been maintained properly, the death of Suryaprakash could have been avoided as the fuse would have been blown off automatically on the snapped electric overhead conductor falling on him and getting earthed through his body when he was lying on the ground. We are unable to accept the contention of the learned counsel for the Electricity Board that respondents 2 and 3 had taken the necessary precautions and that the death of Suryaprakash by electrocution could not have occurred due to the snapping wire falling on him. R.W. 1 had not witnessed the occurrence nor the respondents examined members of the public to show as to how the occurrence had taken place if it was not as categorically spoken to by P.W. 3. The snapping of the electric line is not disputed by respondents 2 and 3 in the counter affidavit filled before the Arbitrator. The fact that the conductor/live wire had snapped shows its negligent maintenance by the Tamil Nadu Electricity Board. We are also unable to accept the contention of the learned counsel for the Electricity Board that it was an unexpected incident due to rain and wind and that the snapping of the electric line was an Act of God. We are further unable to appreciate the contention of the learned counsel for the Electricity Board that the death of Suryaprakash took place only due to the negligence of Suryaprakash in his leaving the home that day in the rain and wind. We are of the view that the death of Suryaprakash had occurred due to the overhead electric line having snapped and falling on him in the circumstances narrated by P.W. 3 and it was due to the negligence on the part of the Electricity Board as it has not maintained the electric system properly. Therefore, we hold that respondents 2 and 3 are responsible for the death of Suryaprakash and that they are liable to pay compensation."

"39. Their lordships of the Hon'ble Supreme Court in the case of M.P. Electricity Board vrs. Shail Kumar and others, reported in AIR 2002 SC 551, have held that the responsibility to supply electric energy in the particular locality was statutorily conferred on the Board. If the energy so transmitted 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. Their lordships have further held that the Board is also liable under the strict liability rule and the basis of such liability is the forceable risk inherent in the very nature of such activity. Their lordships have held as under:

"7. It is an admitted fact that the responsibility to supply electric energy in the particular locality was statutorily conferred on the Board. If the energy so transmitted 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 or to see that the wire snapped would not remain live on the

road as users of such road would be under peril. It is no defence on the part of the management of the Board that somebody committed mischief by siphoning such energy to his private property and that the electrocution was from such diverted line. It is the look out of the managers of the supply system to prevent such pilferage by installing necessary devices. At any rate, if any live wire got snapped and fell on the public road the electric current thereon should automatically have been disrupted. Authorities manning such dangerous commodities have extra duty to chalk out measures to prevent such mishaps.

- 8. 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 precautions.*
- 10. There are seven exceptions formulated by means of case law to the doctrine of strict liability. It is unnecessary to enumerate those exceptions barring one which is this. "Act of stranger i.e. if the escape was caused by the unforeseeable act of a stranger, the rule does not apply". (vide Page 535 Winfield on Tort, 15th Edn.)*
- 13. In the present case, the Board made an endeavour to rely on the exception to the rule of strict liability (Rylands v. Fletcher) being "an act of stranger". The said exception is not available to the Board as the act attributed to the third respondent should reasonably have been anticipated or at any rate its consequences should have been prevented by the appellant-Board. In Northwestern Utilities, Limited v. London Guarantee and Accident Company, Limited {1936 Appeal Cases 108}, the Privy Council repelled the contention of the defendant based on the aforesaid exception. In that case a hotel belonging to the plaintiffs was destroyed in a fire caused by the escape and ignition of natural gas. The gas had percolated into the hotel basement from a fractured welded joint in an intermediate pressure main situated below the street level and belonging to the defendants which was a public utility company. The fracture was caused during the construction involving underground work by a third party. The Privy Council held that the risk involved in the operation undertaken by the defendant was so great that a high degree care was expected of him since the defendant ought to have appreciated the possibility of such a leakage."*
- "41. The learned Single Judge in the case of Ramesh Singh Pawar vrs. Madhya Pradesh Electricity Board and others, reported in AIR 2005 MP 2, has found the Electricity Board liable to pay compensation to the*

petitioner not only on the ground of negligence but on the principle of strict liability also. The learned Single Judge has held that the Writ petition was maintainable. It has been held as follows:

"16. Considering the totality of the facts and circumstances of the case, in the backdrop of discussion made hereinabove and keeping in view the specific findings recorded by the Supreme Court in the case of Shail Kumari and the observations made in Paras 8, 9, 11 and 13 reproduced hereinabove. There is no doubt that not only on the ground of negligence but on the principle of strict liability, the Board is liable to pay compensation to the petitioner.

18. Having heard, the petition is maintainable and the Board is liable to pay compensation in the present case. The next question that requires determination is as to what should be the compensation that should be awarded in such cases."

"42. Their lordships of the Hon'ble Supreme Court in the case of Nilabati Behera vrs. State of Orissa and ors., reported in (1993) 2 SCC 746, have held that a claim in public law for compensation for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution, is an acknowledged remedy for enforcement and protection, of such rights, and such a claim is based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right. It has been held as follows:

"17. It follows that 'a claim in public law for compensation' for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution, is an acknowledged remedy for enforcement and protection of such rights, and such a claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right is 'distinct from, and in addition to, the remedy in private law for damages for the tort' resulting from the contravention of the fundamental right. The defence of sovereign immunity being inapplicable, and alien to the concept of guarantee of fundamental rights, there can be no question of such a defence being available in the constitutional remedy. It is this principle which justifies award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution, when that is the only practicable mode of redress available for the contravention made by the State or its servants in the purported exercise of their powers, and enforcement of the fundamental right is claimed by resort to the remedy in public law under the Constitution by recourse to Articles 32 and 226 of the Constitution. This is what was indicated in Rudul Sah and is the basis of the subsequent decisions in which compensation was awarded under Articles 32 and 226 of the Constitution, for contravention of fundamental rights.

34. The public law proceedings serve a different purpose than the private law proceedings. The relief of monetary compensation, as exemplary damages, in proceedings under Article 32 by this Court or under Article 226 by the High Courts, for established infringement of the indefeasible right guaranteed under Article 21 of the Constitution is a remedy available in public law and is based on the strict liability for contravention of the guaranteed basic and indefeasible rights of the citizen. The purpose of public

law is not only to civilize public power but also to assure the citizen that they live under a legal system which aims to protect their interests and preserve their rights. Therefore, when the court molds the relief by granting "compensation" in proceedings under Article 32 or 226 of the Constitution seeking enforcement or protection of fundamental rights, it does so under the public law by way of penalising the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizen. The payment of compensation in such cases is not to be understood, as it is generally understood in a civil action for damages under the private law but in the broader sense of providing relief by an order of making 'monetary amends' under the public law for the wrong done due to breach of public duty, of not protecting the fundamental rights of the citizen. The compensation is in the nature of exemplary damages' awarded against the wrong doer for the breach of its public law duty and is independent of the rights available to the aggrieved party to claim compensation under the private law in an action based on tort, through a suit instituted in a court of competent jurisdiction or/and persecute the offender under the penal law."

"43. In the case of Sube Singh vrs. State of Haryana and ors., reported in (2006) 3 SCC 178, their lordships of the Hon'ble Supreme Court have held that it is well settled that award of compensation against the State is an appropriate and effective remedy for redress of an established infringement of a fundamental right under Article 21, by a public servant. It has been held as follows:

"38. It is thus now well settled that award of compensation against the State is an appropriate and effective remedy for redress of an established infringement of a fundamental right under Article 21, by a public servant. The quantum of compensation will, however, depend upon the facts and circumstances of each case. Award of such compensation (by way of public law remedy) will not come in the way of the aggrieved person claiming additional compensation in a civil court, in enforcement of the private law remedy in tort, nor come in the way of the criminal court ordering compensation under section 357 of Code of Civil Procedure."

"44. In the present case, the boy had a right to life under Article 21 of the Constitution of India. Healthy and happy life has been curtailed by the criminal neglect of the respondents causing him serious and painful burn injuries. He has to live with a trauma and shall remain handicap throughout the life. The petitioner has to go through inconvenience, hardship, discomfort, disappointment, frustration and mental stress throughout his life.

"45. Their lordships of the Hon'ble Supreme Court in the case of R.D. Hattangadi vrs. Pest Control (India) Pvt. Ltd. And ors., reported in (1995) 1 SCC 551, have laid down the following principles to determine compensation for disability:

"9. Broadly speaking while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas

non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far non-pecuniary damages are concerned, they may include (i) damages for mental and physical shock, pain and suffering, already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters i.e. on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e., on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life."

"46. Their lordships of the Hon'ble Supreme Court in the case of Rekha Jain vrs. National Insurance Company Limited and ors., reported in (2013) 8 SCC 389, have reiterated the following principles for granting compensation for personal injury:

"40. It is well-settled principle that in granting compensation for personal injury, the injured has to be compensated (1) for pain and suffering; (2) for loss of amenities; (3) shortened expectation of life, if any; (4) loss of earnings or loss of earning capacity or in some cases for both; and (5) medical treatment and other special damages. In personal injury cases the two main elements are the personal loss and pecuniary loss. Chief Justice Cockburn in Fair's case, supra, distinguished the above two aspects thus:

"In assessing the compensation the jury should take into account two things, first, the pecuniary loss the plaintiff sustains by the accident: secondly, the injury he sustains in his person, or his physical capacity of enjoying life. When they come to the consideration of the pecuniary loss they have to take into account not only his present loss, but his incapacity to earn a future improved income".

41. McGregor on Damages (14th Edition) at paragraph no. 1157, referring to the heads of damages in personal injury actions, states as under:

"The person physically injured may recover both for his pecuniary losses and his non-pecuniary losses. Of these the pecuniary losses themselves comprise two separate items, viz., the loss of earnings and other gains which the plaintiff would have made had he not been injured and the medical and other expenses to which he is put as a result of the injury, and the Courts have sub-divided the non-pecuniary losses into three categories, viz., pain and suffering, loss of amenities of life and loss of expectation of life".

Besides, the Court is well-advised to remember that the measures of damages in all these cases 'should be such as to enable even a tortfeasor to say that he had amply atoned for his misadventure'. The observation of Lord Devlin that the proper approach to the problem or to adopt a test as to what contemporary society would deem to be a fair sum, such as would allow the wrongdoer to 'hold up his head among his neighbours and say with

their approval that he has done the fair thing', is quite apposite to be kept in mind by the Court in assessing compensation in personal injury cases."

42. *In R. Venkatesh v. P. Saravanan & Ors.[12], the High Court of Karnataka while dealing with a personal injury case wherein the claimant sustained certain crushing injuries due to which his left lower limb was amputated, held that in terms of functional disability, the disability sustained by the claimant is total and 100% though only the claimant's left lower limb was amputated. In paragraph 9 of the judgment, the Court held as under:*

"9. As a result of the amputation, the claimant had been rendered a cripple. He requires the help of crutches even for walking. He has become unfit for any kind of manual work. As he was earlier a loader doing manual work, the amputation of his left leg below knee, has rendered him unfit for any kind of manual work. He has no education. In such cases, it is well-settled that the economic and functional disability will have to be treated as total, even though the physical disability is not 100 per cent".

43. *Lord Reid in Baker v. Willoughby, has said:*

"A man is not compensated for the physical injury; he is compensated for the loss which he suffers as a result of that injury. His loss is not in having a stiff leg; it is in his inability to lead a full life, his inability to enjoy those amenities which depend on freedom of movement and his inability to earn as much as he used to earn or could have earned."

44. *The aforesaid principles laid down by this Court, Appeal Cases, House of Lords and leading authors and experts referred to supra, whose opinions have been extracted above, with all fours, are applicable to the fact situation for awarding just and reasonable compensation in favour of the appellant as she had sustained grievous injuries on her face and other parts of the body which is assessed at 30% permanent disablement by competent doctors."*

"49. Now, we have to award the just and fair compensation as per the principles laid down in the judgments cited hereinabove, taking into consideration the 100% disability of 8 years old boy at the time of electrocution. According to the averments made in the petition, he was a brilliant student. The petitioner would normally had started earning at least Rs. 30,000/- per month after attaining the age of 20 years. His life expectancy can safely be taken as per the prevailing trends to 70 years. He would have safely worked for 38 years. The appropriate multiplier, in the present case, would be 25. There is no possibility of marriage of the petitioner, therefore, no standard deductions can be made from the income. The income in entirety has to be taken into consideration. The annual income of the petitioner would be Rs. 3,60,000/-, which is required to be multiplied by 25. The total future loss of the income of the petitioner comes to (30,000 x 12 x 25 = 90,00,000/-) i.e rupees ninety lacs. The petitioner is also entitled to standard damages of Rs. 10,00,000/- towards loss of companionship, life amenities/pleasures and loss of happiness. The petitioner is entitled to Rs. 10,00,000/- for pain and suffering, including mental distress, trauma and discomfort and

inconvenience. He is entitled to Rs. 10,00,000/- towards attendant/ nursing expenses for his life. He is also entitled to a sum of Rs. 5,00,000/- for securing artificial/robotic limbs and future medical expenses.”

[13] The counsel for the petitioner submitted that the aforesaid judgment rendered by the Division Bench of the High Court of Himachal Pradesh in **Naval Kumar's case** was challenged by the State of Himachal Pradesh in Civil Appeal No. 1339 of 2017 before the Hon'ble Apex Court and that even though the Hon'ble Apex Court modified the impugned judgment by reducing the compensation amount from Rs. 1,25,00,000/- to Rs. 90,00,000/- with interest payable at the rate of 6% per annum from the date of filing of the writ petition, the Hon'ble Apex Court upheld all the findings given in the impugned judgment. The learned counsel accordingly submitted that as all the issues raised in the present writ petition are squarely covered by the aforesaid judgments rendered by the High Court of Himachal Pradesh and the Hon'ble Apex Court, the present writ petition can be disposed of by granting the claim of compensation made by the petitioner in the present writ petition.

[14] The learned GA appearing for the respondents reiterated the stand taken by the respondents in their affidavit-in-opposition and submitted that as the claim for compensation made by the petitioner is a belated one and as there was no negligence on the part of the respondents, the respondents are not liable to pay any compensation and the writ petition deserves to be dismissed as being devoid of merit. In support of his contention, the learned GA relied on the following judgments:-

(i) **AIR 1995 SC 1991 "State of Maharashtra Vs. Digambar"**

"17. Power of the High Court to be exercised under Article 226 of the Constitution, if is discretionary, its exercise must be judicious and reasonable, admits of no controversy. It is for that reason, a person's entitlement for relief from a High Court under Article 226 of the Constitution, be it against the State or anybody else, even if is founded on the allegation of infringement of his legal right, has to necessarily depend upon unblameworthy conduct of the person seeking relief, and the Court refuses to grant the discretionary relief to such person in exercise of such power, when he approaches it with unclean hands or blame-worthy conduct."

"24. Thus, when the writ petitioner (respondent here) was guilty of laches or undue delay in approaching the High Court, the principle of laches or undue delay adverted to above, disentitled the writ petitioner (respondent here) for discretionary relief under Article 226 of the Constitution from the High Court, particularly, when virtually no attempt had been made by the writ petitioner to explain his blameworthy conduct of undue delay or laches. The High Court, therefore, was wholly wrong in granting relief in relation to inquiring into the allegation and granting compensation for his land alleged to have been used for scarcity relief road works in the year 1971-72. ..."

(ii) **(1999) 7 SCC 298 "Chairman, Grid Corporation of Orissa Ltd. (GRIDCO) & ors. Vs. Sukamani Das (Smt) & anr."**

"6. In our opinion, the High Court committed an error in entertaining the writ petitions even though they were not fit cases for exercising power under Article 226 of the Constitution. The High Court went wrong in proceeding on the basis that as the deaths had taken place because of electrocution as a result of the deceased coming into contact with snapped live wires of the electric transmission lines of the appellants, that "admittedly/ prima facie amounted to negligence on the part of the appellants". The High Court failed to appreciate that all these cases were actions in tort and negligence was required to be established firstly by the claimants. The mere fact that the wire of the electric transmission line belonging to the Appellant 1 had snapped and the deceased had come into contact with it and had died was not by itself sufficient for awarding compensation. It also required to be examined whether the wire had snapped as a result of any negligence of the appellants and under which circumstances the deceased had come into contact with the wire. In view of the specific defences raised by the appellants in each of these cases they deserved an opportunity to prove that proper care and precautions were taken in maintaining the transmission lines and yet the wires had snapped because of circumstances beyond their control or unauthorised intervention of third parties or that the deceased had not died in the manner stated by the petitioners. These questions could not have been decided properly on the basis of affidavits only. It is the settled legal position that where disputed questions of facts are involved a petition under Article 226 of the Constitution is not a proper remedy. The High

Court has not and could not have held that the disputes in these cases were raised for the sake of raising them and that there was no substance therein. The High Court should have directed the writ petitioners to approach the Civil Court as it was done in OJC No. 5229 of 1995."

[15] I have heard the rival submissions advanced by the learned counsel appearing for the parties at length and also carefully examined all the materials available on record. In the present case, there is no dispute with regard to the fact that the minor son of the petitioner suffered severe injuries due to the electrocution and his right hand below the elbow was amputated and the victim boy is rendered permanently 70% physically disabled in relation to his right upper limb. The respondents have also not disputed the fact that after the incident of electrocution, the victim boy was admitted at RIMS for his medical treatment and the petitioner and his family members incurred heavy expenses for the medical treatment of his son and for other expenses for taking care and looking after his injured son. The fact that the petitioner and his son and other family members suffered great pain, agony and trauma after the accident is not also disputed by the respondents.

[16] The stand taken by the respondents is that the alleged electrical accident took place on 13-11-2014, however, no complaint was registered either by the petitioner or any relative of the victim boy to the concerned Police Station or to the concerned Office/ Division Office of the Electricity Department and as such no enquiry could be made in that regard and that the petitioner filed representation only on 07-05-2017 claiming for compensation and as such, such claim for payment of compensation is a belated claim.

Another stand taken by the respondents is that there was no negligence on the part of the Electricity Department as the transformer in question was already fenced and the danger notice board was affixed on the supporting poles of the said transformer as mandated under the Electricity Act and Rules.

In the rejoinder affidavit filed by petitioner, the second stand taken by the respondents is strongly refuted by the petitioner by stating that there was no protective fencing around the transformer in question prior to the occurrence of the incident and the fencing was erected only after the incident took place. The petitioner also strongly refuted the first stand taken by the respondents by stating that the incident was immediately reported to the Bishnupur Sub-Division, MSPDCL and the staff of Bishnupur Sub-Division visited and inspected the petitioner's son, however, they never extended any kind of assistance to the victim boy and his family members. In the reply affidavit filed by the respondents to the rejoinder affidavit filed by the petitioner, the categorical statements made by the petitioner in his rejoinder affidavit were never denied or controverted by the respondents, even though they reiterated the stand taken by them in their affidavit-in-opposition.

[17] In the Office Memorandum dated 22-12-2017 (Annexure - R/1 to the affidavit-in-opposition) issued by the Office of the Managing Director, MSPDCL, which was issued after the petitioner submitted his representations dated 07-05-2017, all the Sub-divisional Managers under Revenue Division were notified to execute/ implement minimum of 10 Distribution Transformer security fencing where conditions are most

susceptible/ prone to accident in order to prevent casualty to human and animals. The contents of the said O.M. is reproduced hereunder for ready reference:-

“OFFICE MEMORANDUM
Imphal, dated 22nd December, 2017

No. 12/65/GM(Plg)/2016-MSPDCL/3226-40: In view of increasing instances of fatal and non-fatal electrical accidents related with non-fencing of Distribution Transformers, it is hereby notified to all the Sub-Divisional Managers under Revenue Divisions to execute/ implement minimum of 10(ten) Distribution Transformer security fencing where the conditions are most susceptible/ prone to accidents in order to prevent casualty to human and animals.

List of fencing works to be taken up should be finalized and executed departmentally for reimbursement upto a maximum of Rs. 10,000/- (Ten Thousand) each before 31/01/2018.

Hereafter, if any cases relating to fatal accidents occur due to negligence of the Sub-Divisional Officers /non-fencing of such Distribution Transformer, the concerned Sub-Divisional Officers shall be held liable for such fatal accident cases.

Encl: Sample Design.

(L. Priyokumar Singh)
i/c Managing Director,
MSPDCL”

[18] On conjoined reading of the statements made by the respondents at para 13 of their affidavit-in-opposition and the contents of the Office Memorandum dated 22-12-2017 quoted hereinabove and taking into consideration the categorical statements made by the petitioner in his rejoinder affidavit that the transformer was fenced only recently after the incident took place, which remain unrefuted by the respondents, this court come to the conclusion that there were many Distribution Transformer without any security fencing prior to issuance of the said Office Memorandum dated 22-12-2017 and the said transformers in the petitioner's village were fenced only after the incident took place and that there were no security fencing around the said

transformer at the time of occurrence of the said incident. Resultantly, this court comes to the conclusion that there was gross negligence on the part of the respondents which lead to the electrocution of the petitioner's son.

[19] As regards the other stand of the respondents, the petitioner strongly refuted the same by categorically stating in the rejoinder affidavit that the incident was immediately reported to the Bishnupur Division, MSPDCL and that the staff of the Bishnupur Division, MSPDCL visited and inspected the petitioner's son, however, they never extended any kind of assistance to the victim boy and his family. It has also been stated by the petitioner in his rejoinder affidavit that the incident of the electrocution was already reported to the competent authority, however, the petitioner and his family could not pursue the matter as they are illiterate and busy while taking care of the victim child and in earning their daily wages for their survival. Such categorical statements of the petitioner remained unrefuted by the respondents in the reply affidavit filed by them. Even after the authorities have knowledge about the occurrence of the said incident, there is nothing on record to show that the authorities of the Electricity Department made any enquiry or took up any action for verification of the said incident and they merely took the stand that the petitioner made a belated claim. Accordingly, such stand of the respondents cannot be countenanced and this court is not inclined to reject the claim of the petitioner only on this count. Leaving aside such undisputed facts, the respondents have failed to point out any provision of law which disentitled the petitioner to make claim for payment of compensation on behalf of his

injured son only on the ground that there was about two and half years delay in making such a claim. Taking into consideration the facts and circumstance of the present case, this court is of the considered view that the judgments relied on by the learned GA are not applicable as the facts and circumstances of the cases are totally different.

In view of the facts and circumstances of the present case and the judgments rendered by the High Court of Himachal Pradesh in the case of Naval Kumar alias Rohit Kumar, wherein a number of Supreme Court judgments have been referred to, this court is of the considered view that the petitioner is entitled to get the reliefs sought for in the present writ petition.

[20] The victim boy remained hospitalized w.e.f. 13-11-2014 to 02-02-2015 in the Regional Institute of Medical Sciences Hospital, Imphal with interim discharge in between. He was operated on 11-12-2014 and his right hand below the elbow was amputated, he suffered 70% disability as per the certificate issued by the competent authority (at Annexure-A/6 Colly.). The victim boy being a child of three years cannot look after himself and he needs constant care, attendant and nursing due to the injury caused by the electrocution. He comes from a poor Scheduled Tribe family and that too from a remote hill area of the State of Manipur. He and his family members have suffered trauma after the accident and the victim boy had suffered pain and agony and as such he has to be provided with sufficient compensation for his entire future life. A person injured by the negligent act of others is definitely entitled to general damage for non-pecuniary loss such as pain, suffering and loss of amenities and also pecuniary loss both

past and future. The petitioner has incurred medical expenses as well. The victim boy is also entitled for compensation/ damages for the embarrassment, for the disability and disfigurement and he is also entitled to damages for the loss of availability to use his limb including the loss of pride and pleasure.

As far as the damages/ compensation under pecuniary laws is concerned, the principle of `restitutio in integrum` would apply. The victim boy is also entitled to be put in the same position in which he would have been if he had not sustained the wrong.

[21] As far as loss of future earning is concerned, this court has to look into the entire gamut of facts and circumstances of the case including the background of the victim boy. This court has to apply appropriate multiplier by taking into consideration the life expectancy of a child, which can be safely taken as per the prevailing trends minimum 70 years. The victim boy is also entitled to perform household chores and he is also entitled to medical and nursing expenses including special equipment which may be required for providing him artificial limbs and the cost of travel to and fro journey to hospital and his family members as well as other miscellaneous expenses incurred by his family members during the course of his treatment.

Taking into consideration the entire facts and circumstances of the present case, this court is also of the considered view that there was no contributory negligence on the part of the victim boy.

[22] For awarding a just and fair compensation to the victim boy, this court has to keep in mind the principles laid down by the Hon'ble Apex Court and other High Courts in its various judgments referred to in the case of **Naval**

Kumar alias Rohit Kumar (supra) and taking into consideration the 70% disability of the three years old boy at the time of the incident. The claim of the petitioner as per the averments made in the petition is that his son would normally have started earning at least Rs. 35,000/- per month after attaining the age of 25 years and that his life expectancy can safely be taken as 70 years and that he would have safely work for 38 years. As per the averments made in the petition, the earning potentiality of the petitioner's son would be reduced by at least 1/3rd of the actual capacity of earning due to the amputation of his right hand and injuries suffered by the victim boy. As per the calculation of the petitioner, the reduction amount of his son's future income comes to Rs. 11,666/- per month and Rs. 1,40,000/- per annum. As the victim boy would have safely worked for 38 years, the appropriate multiplier is to be 25. As the petitioner is only claiming for future loss of income of his son, the annual loss of income of Rs 1,40,000/- is required to be multiplied by 25 and the total future loss of income of the petitioner's son comes to (Rs 1,40,000/- x 25 = Rs. 35,00,000/-) Rs. Thirty Five Lakhs. The victim boy is also entitled to standard damages of Rs 2 lakhs towards loss of life amenities/ pleasure and loss of happiness. He is also entitled to Rs. 2 lakhs for the pain and suffering including mental distress, trauma, discomfort and inconvenience. He is further entitled to Rs. 2 lakhs towards attendant/ nursing expenses and he is entitled to a sum of Rs. 2 lakhs for securing artificial / robotic limbs and further medical expenses.

[22] In the result, the writ petition is allowed and for securing financial amenities for future of the victim boy, the respondents are directed to pay compensation of Rs. 43,00,000/- (Rupees Forty Three Lakhs) to the victim boy. The amount should be deposited in the fixed deposit in the name of the

victim boy, viz., **Lansingam Dangmei** under joint guardianship of the petitioner at a nationalised bank near the vicinity of the petitioner's village, as far as possible, within a period of ninety days from the date of receipt of a certified copy of this judgment, failing which, the amount shall carry an interest at the rate of 9% per annum till the date of depositing the amount in the bank. The interest so accrued will be transferred in a separate Account to be opened in the same branch in the name of the victim boy to be operated jointly by the parents, payable to the victim boy on regular basis. The Manager of the nationalised bank, where the compensation amount is deposited, would release a sum of Rs. 10,000/- (Rupees Ten Thousand) per month to the victim boy, through his parents, to meet his daily expenses.

With the aforesaid directions, the present writ petition is disposed of. Parties are to bear their own costs.

JUDGE

FR / NFR

Devananda