

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

LPA No. 115/2023
CM No. 4173/2023

Union Territory of J&K and others

.... Appellant/Applicant(s)

Through:- Mr. Amit Gupta, AAG

V/s

Radha Sharma

.....Respondent/Non-applicant(s)

Through:- Mr. Rajiv Kumar Sharma, Advocate

CORAM : HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE
HON'BLE MR. JUSTICE MOHAN LAL, JUDGE

ORDER
20.10.2023

CM No. 4173/2023

01. This condonation application has been preferred by the applicants /appellants seeking 73 days' delay in filing the above titled Letters Patent Appeal.
02. Learned counsel for the non-applicant submits that he has no objection to the application.
03. For the reasons stated in the application coupled with the submissions made at Bar, sufficient cause for condoning the delay in filing the appeal is made out. This application is allowed and 73 days' delay in filing the above titled appeal is condoned.
04. This application is **disposed of** as such.

LPA No. 115/2023

01. This Letters Patent Appeal is directed against the judgment and order dated 01.03.2023 passed in OWP No. 902/2010 titled "*Radha Sharma Vs. State of J&K and others*" by the learned writ Court, vide which, the writ petition has been allowed and the respondents were directed to pay compensation of Rs.10 lacs to the petitioner on account of death of her young son.
02. The respondent's thirteen years old son died due to electrocution while working in the agricultural field at Village Pangore. The deceased came in contact with electric wire hanging low between the poles and suffered massive electric shock, which resulted in his death on 22.07.2009. In this regard, FIR No. 05/2010 under Section 304-A RPC was registered with Police Station Gajansoo and challan was also presented against the appellants. The respondent preferred a writ petition bearing OWP No. 902/2010, claiming compensation on account of death of her son, which had occurred due to negligence of the respondents. The contention of the petitioner/respondent herein in the writ petition was that the electricity distribution line and the electric wires were not maintained by the appellants as per the requirement of the Electricity Act and the Electricity Rules, and their negligence resulted in death of her son and, as such, sought compensation for irreparable loss suffered by her due to the negligent and callous act of the appellants.

03. The appellants opposed the contention of the respondent on the ground that they had installed and erected electric poles to provide timely regular supply of power to the irrigation pumps for facilitating proper irrigation through irrigation pumps. These poles were installed on the request of general public including family members of the respondent. These electric poles were maintained as per the provisions of the Electricity Act and Rules, and appellants denied any negligence on their part. The appellants, thus, denied the claim of their liability to compensate the respondent on the plea that the death of her son had not occurred due to any negligence on their part in maintaining the electricity supply to the area.
04. The learned Single Judge vide the impugned judgment dated 01.03.2023, allowed the writ petition and held the appellants liable for the death of minor son, which had occurred due to their negligence and granted compensation of Rs. 10 lacs in terms of policy for payment of *ex-gratia* relief vide Government Order No. 454-F of 2019 dated 24.10.2019.
05. The appellants are aggrieved of the judgment on the ground that the learned Writ Court had committed error in entertaining the writ petition, as these disputed facts could only be proved in the civil court. The appellants have not committed any act which would warrant payment of compensation, as there is no negligence on their part. The respondent was, thus, required to be put to strict proof pertaining to electrocution caused by

negligence, as such, the appellants cannot be held liable for payment of compensation, otherwise also, the compensation awarded is on the higher side.

06. Heard learned counsel for the parties and perused the record.
07. The admitted facts are that the petitioner's young son, who was only 13 years of age died due to electrocution in the agriculture field at Pangore, when he came in contact with live electric wire. The accident occurred on 22.07.2009, due to electrocution when exposed electric live wire hanging at the height of 3 to 4 ft. at ground level, came in contact with the deceased who suffered electric shock and died due to electrocution. In this regard, FIR No.05/2010 under Section 304-A RPC, was registered at Police Station, Gajansoo, Jammu against the respondents/State on 07.01.2010 and Challan in this case has also been produced.
08. The respondents claimed that the distribution lines of 440 volts(LT) to feed irrigation pumps in village Pangore, and electric poles were fixed in the parental agriculture fields of the respondent on the demand of general public and the same was not objected by respondent and other family members. The appellants had erected the poles and installed the power lines as per Electricity Act and Rules and the general public was made aware to maintain safe distance.
09. Though the death of the deceased Vishal Sharma has been admitted by the appellants, but they denied their liability to pay any compensation on the ground that there is no negligence on

their part. The petition, according to them, involves disputed question of fact which cannot be considered by this Court in exercise of its writ jurisdiction

10. The question is whether writ petition can be entertained for granting compensation to the petitioner for the death of her husband is, thus, no longer *res integra*, in view of the settled legal position as laid down in “**M.P. Electricity Board Vs. Shail Kumari and others,**”(2002) 2 SCC 162, wherein, the Hon’ble Supreme Court has 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.

14. The Privy Council has observed in *Quebec Railway, Light Heat and Power Company Limited v. Vandry and Ors.* {1920 Law Reports Appeal Cases 662} that the company supplying electricity is liable for the damage without proof that they had been negligent. Even the defence that the cables were disrupted on account of a violent wind and high tension current found it sway through the low tension cable into the premise of the respondents was held to be not a justifiable defence. Thus, merely because the illegal act could be attributed to a stranger is not enough to absolve the liability of the Board regarding the live wire lying on the road.

15. In *W.B. State Electricity Board v. Sachin Banerjee* the Electricity Board adopted a defence that electric lines were illegally hooked for pilferage purposes. This Court said that the Board cannot be held to be negligent on the said fact situation but the question of strict liability was not taken up in that case."

11. Similarly, in **Mushtaq Ahmed and others Vs. State of Jammu & Kashmir and others**, reported in **AIR 2009 JK 29** and **Joginder Singh Vs. State of J&K and others**, reported in **AIR 2011 (1)**

JKJ 722, this Court, while dealing with the issue, it was held that:-

"13. The question that, therefore, falls for consideration is as to whether even in such type of cases, where death or injury is caused because of leakage of electric energy by the State engaged in supply of electric energy, which, no doubt, poses a potential threat to the safety of living beings, if not would be debarred from invoking extra ordinary civil writ jurisdiction of the Court when the electrocution had taken place because of no fault of the victim".

12. The death of the deceased was due to electric shock suffered by him when he came in contact with hanging electric wire. This fact has also been reflected in the post-mortem report. It is well settled that the maintenance of electric supply line in the area is that of the State and its functionaries. They are under an obligation to maintain their electric lines along with all its equipment. A strict and absolute duty is cast upon them to maintain the same.
13. The State which is dealing in the hazardous activity of transmission of high voltage electric energy, was in law, bound to take requisite safety measures, so that the person does not get electrocuted with the transmission of high voltage electric line as the electric energy that, by its nature, is prone to cause loss and damage, respondents while dealing with high voltage electric line, should have taken safety measures, so that there is no result to any loss. They were also bound to take other requisite precautionary measures. The cause of death being admittedly electrocution and the liability be fastened on the appellants. There

are no disputed questions of fact involved in this petition. The appellants failed to take the precautionary measures, as such, are liable to compensate the petitioner for the death of her son, therefore, the plea that the respondents are not liable to pay any compensation to the petitioner for the death of her son without any basis.

14. The only other issue is regarding quantum of compensation which the appellants claim to be on a higher side. The learned Single Judge relied on the policy framed by the Government for death caused due to electrocution and awarded compensation of Rs. 10 lacs as per the ex-gratia relief granted in case of death by electrocution and granted ten lacs in terms of Government Order No. 454-F of 2019 dated 24.10.2019.
15. In view of the aforesaid facts and circumstances of the case, we do not find any merit in the present appeal and the same is, accordingly, **dismissed** and the judgment dated 01.03.2023 passed by the learned writ Court is upheld.

(MOHAN LAL) (SINDHU SHARMA)
JUDGE JUDGE

JAMMU
20.10.2023
Vishal

<i>Whether the judgment is speaking</i>	:	<i>Yes/No</i>
<i>Whether the judgment is reportable</i>	:	<i>Yes/No</i>