

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

OWP No. 634/2016

Rakesh Kumar

.... Petitioner/Appellant(s)

Through:- Mr. Rajiv K. Sharma, Advocate

V/s

State of J&K & ors.

.....Respondent(s)

Through:- Mr. Amit Gupta, AAG

CORAM : HON'BLE MR. JUSTICE VINOD CHATTERJI KOUL, JUDGE

JUDGMENT

01. The petitioner, through the medium of this petition, is seeking a direction to the respondents to pay him compensation of an amount of Rs. 50 lac along with interest as well as to appoint one of his family members in the department on the ground that because of the negligence of the respondents in laying the electric wires, he suffered an accident in which he became disabled and the accident in question too was because of the negligence of the respondents.

02. The case of the petitioner is that on 04.12.2014 after attending a nature's call outside the village Mari, while he was coming back came in touch/contact with GUY WIRE which was giving support to the electric pole, due to which he suffered electric shock and such electric shock caused injuries to the petitioner, resulting in his permanent disablement. Regarding the accident in question, which he claims was due to the negligence of the respondents, an FIR was registered with Police of Police Station Pouni vide FIR No. 50/2014 under Sections 279/338 RPC. The said FIR was investigated and the police found, offences punishable under the aforesaid

sections established and accordingly, presented the Challan. He submits that his income was the only source of livelihood to him and his family members and because of the injuries so suffered by him and due to the injuries which were caused due to negligence of the respondents, they have been deprived of their livelihood. He, therefore, on the ground that because of the negligence of the respondents, suffered disability due to the injuries caused by electric shock, therefore, he claims compensation in this petition.

03. The respondents have contested the claim by pleading that it was not due to negligence of the respondents that caused the accident but it is because of his own negligence, that he suffered and that the Challan regarding the incident has resulted in dismissal as no evidence was produced to establish the negligence of the respondents and as such, in view of the said decision whereby the charge-sheet was dismissed, the petitioner is not entitled to any compensation.

04. Learned counsel for the petitioner has referred to the FIR, Charge-sheet as well as documents which clearly show that the FIR was registered regarding the incident in question as it was found that GUY WIRE was put and was carrying electric current because of the negligence of the respondents. The police investigated the FIR and on completion, found the offences established, therefore, on the basis of FIR as well as charge-sheet, it had been established that the accident in question took place because of the negligence of the department. So far as the acquittal of accused is concerned, same can be sufficient to hold that the accident was not due to the negligence of the department. On the basis of the material collected and evidence recorded during investigation, it was found that the accident was due to

negligence and the negligence is attributable to the department, who are supposed to maintain the electric wires in such a manner that it does not cause any harm to anybody. Had the respondents taken proper care and caution, the GUY WIRE would not have been carrying the electric current. The documents placed on record particularly FIR and the charge-sheet make it clear that the accident had taken place due to the negligence of the respondents.

05. The medical report would also show that the petitioner had suffered injuries and his disability as per the certificate issued by the Medical Board is 50%. As per the certificate, he had suffered electric burn followed by partial amputation Lt. Hand, deformity Rt hand scarring over back and scalp.

06. So the injuries would clearly show that the injuries are because of the electric shock only, that had happened due to the petitioner having come in contact with the GUY WIRE which was supporting the electric pole which ordinarily cannot have electric current. The GUY WIRE supports the pole and it was carrying electric current, therefore, it was not maintained properly and the respondents had not taken due care, as such, it is established that there had been negligence on the part of the respondents.

07. The Hon'ble Supreme Court, while dealing with this doctrine in '**M. C. Mehta & anr. vs. Union of India & ors., 1987 (1) SCC 395**' has held as under: -

“Where an enterprise is engaged in a hazardous or inherently dangerous activity and harm is caused on any one on account of the accident in the operation of such activity, the enterprise is strictly and absolutely liable to compensate those who are affected by the accident; such liability is not subject to any of the exceptions to the principle of strict liability

under the rule in *Rylands v. Fletcher* (M. C. Mehta vs. Union of India reported as (1987) 1 SCC 395).”

08. The question is whether writ petition can be entertained for granting compensation to the petitioner is, thus, no longer *res integra*, in view of the legal position and law as laid down in **Mustaq Ahmed & ors. vs. State of Jammu & Kashmir & ors.**, reported in **AIR 2009 JK 29** and **Joginder Singh v. State of J&K & ors**, reported in **AIR 2011 (1) JKJ 722**. This Court, while dealing with the issue, it was held in Mustaq Ahmed's case, *supra* as under:-

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, it 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”.

08. Further this Court in Mustaq Ahmed's case *supra* discussed para26 of the judgment of the Hon'ble Supreme Court in SDO Grid Corporation's case, AIR 2005 SC 3971, which is reproduced as under;

“26. After referring to all the judgments, in our considered view, the ratio of the judgment handed down by the Apex Court in SDO Grid Corporation's case, AIR 2005 SC 3971 (*supra*) relied upon by Mr. Thakur and also made the basis for rejection of all the three writ petitions filed by the appellants, does not whittle down the law laid down by the Apex Court in M.P. Electricity Board's case, AIR 2002 SC 551 as in SDO Grid Corporation's case, AIR 2005 SC 3971 (*supra*), the Apex Court considered the earlier decision rendered in M.P. Electricity Board's case and without affecting the principle of "strict liability" distinguished the said judgment on the ground that the question of negligence was determined by Civil Court. Therefore, it can be reasonably understood that M.P. Electricity Board's case has been distinguished on its own facts and the Hon'ble Supreme Court has not taken any contrary view from the one already taken with regard to the

doctrine of "strict liability" as discussed in extenso in the judgment of Constitution Bench of Supreme Court in M.C. Mehta's case, AIR 1987 SC 1086(supra)."

09. The question is that to what extent, the petitioner would be entitled to compensation on account of the injuries suffered by him due to electric shock on account of the negligence of the respondent. The income of the deceased as stated in the petition as Rs.20,000/- per month, but no proof regarding his income is on record. Thus, to determine the exact compensation to which the petitioner is entitled to would be difficult. The same, however, can be considered according to the Policy framed by the respondents for grant of ex-gratia relief.

09. As per policy by the Government of J&K for grant of ex-gratia relief to the departments/non-departmental persons, who are killed/grievously incapacitated due to electric shocks and accidents. Government Order No. 328-PDD of 2011 dated 24.11.2011, coverage under the scheme and this as per the respondents is to be read with Government Order No. 454-F of 2019 dated 24.10.2019 reads as under:-

Sanction is hereby accorded to the following amendments in the Jammu and Kashmir Book of Financial Powers:-
In the Book of Financial Powers in Chapter 5.9 against S.No.-23-A(~), the column 'Extent' shall be recast as under:-

S. No.	Nature of Power	To whom delegated	Extent
123-A	1)To grant Ex-gratia Relief in favour of the employees of the POD, other persons or their heir and to the owners of Domestic Animals, who are electrocuted and die, or are rendered fully/partially disabled due to the negligence of the POD, subject to the conditions that: i) All the employees of the POD, whether regular, DRW/Casual labour, Work Charged, Contingent paid etc., engaged in the generation, transmission or supply of electrical energy in the Department, who are	DCP	Full powers within the Budget Provisions with the following scales: A. Human Beings: I. In case of Death=Rs 10.00 lacs. II. Total Disability=Rs 7.50 lacs. III. Partial Disability=Rs 2.00 lacs In case of death of any

	killed, incapacitated, wholly or partially, during the course of discharging their bona fide and legitimate duties; ii) Civilians, killed or injured, resulting in their partial or total disability, subject to the explicit condition that the accident is not attributable to them, but to . the lapses, attributable to the POD, as verified by the Director, TTI & C; iii) Domestic animals killed by electrocution, caused due to lapses, attributable to the Department and verified by the Director, n-! ac.		employee, the Ex-gratia relief shall be paid to the legal heirs of the deceased. The payment shall be subject to the condition that the relief, granted by the Government under the Workman's Compensation Act, shall be adjusted while making payment of the Exgratia relief. B. Domestic Animals i. Cow, bull, horse=Rs 20,000 ii. Sheep/ Goat=Rs 5,000
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10. The petitioner has been left without any means and succour due to injuries sustained by him, who is the only earning member of his family. The State being a welfare State framed the aforesaid policy, therefore, grant of compensation to the petitioner in terms of the said policy would be just and proper to meet the ends of justice. The petitioner is, accordingly, held entitled to compensation of Rs.7.5 Lakh in terms of the aforesaid orders as minimum compensation.

11. In view of the aforesaid discussion and in the facts and circumstances of the case, this petition is allowed and the respondents are directed to pay the petitioner a sum of Rs. 7.5 lakh as compensation along with interest at the rate of 6% per annum from the date of filing of this petition.

12. **Disposed of,** accordingly along with connected application(s).

(VINOD CHATTERJI KOUL)
Judge

JAMMU
RAM MURTI/PS
28.12.2023

Whether the order is speaking

:

Yes/No

Whether the order is reportable

:

Yes/No