

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

OWP No. 2248/2018

**Reserved on 29.11.2023
Pronounced on 22.12.2023**

1. Sham Dev Singh Aged 06 years, S/o Bahadur Singh R/o Raj Nagar, Budhal, Tehsil Kotranka District Rajouri minor, through his father namely Bahadur Singh aged 45 years, S/o late Sh. Beli Ram R/o Raj Nagar, Budhal, Tehsil Kotranka District Rajouri. Appellant(s)/Petitioner(s)

Through: Mr. Vipan Gandotra, Advocate

vs

1. State of Jammu and Kashmir through Commissioner Secretary Power Development Department, Civil Secretariat, Srinagar/Jammu. Respondent(s)
2. Chief Engineer Power Development Department Srinagar/Jammu
3. Deputy Commissioner, District Rajouri.
4. Tehsildar Kotranka, District Rajouri.
5. District Social Welfare Officer, Rajouri.
6. SHO, Police Station, Budhal, Rajouri.

Through: Ms. Monika Kohli, Sr. AAG
Mr. Amit Gupta, AAG

Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGMENT

1. The hands of the poor villager are his earning tools and if they are lost in an accident/incident, his earning capacity would be reduced to zero and he would either starve or turn beggar, if not supported by the family or the State.

2. The petitioner, who was of five years of age, while playing on the roof of his house, came in to contact with the 11 KV high tension wire, which was passing through the roof of his house, due to which he suffered serious injuries resulting into amputation of both of his arms. It stated by the petitioner that height of the wires was only around 4 feet from the roof of his house and this fact was already brought to the notice of the respondent No. 3 by one Nazir Ahmad, who was also residing in the same vicinity. The said application was forwarded to the Executive Engineer, Power Development Department for taking immediate steps for the safety of the people but no action was taken by the respondents.
3. The factum of electrocution suffered by the petitioner was also recorded in the daily dairy of Police Station, Budhal on 25.02.2017 (Annexure- C to the writ petition). After the incident, the petitioner was referred to District Hospital Rajouri and then to Govt. Medical Hospital, Jammu, wherefrom he was further referred to PGI, Chandigarh. He was admitted on 26.02.2017 and discharged on 11.05.2017. After discharge of the petitioner, the father of the petitioner submitted an application (Annexure-F to the writ petition) to the respondent No. 4, wherein besides providing the details of the incident, a request was also made for the grant of relief. A copy of the application was forwarded by the respondent No. 4 to the Naib Tehsildar, Budhal for the submission of report, which was submitted by the Patwari and Naib Tehsildar on 18.07.2017. The respondent No. 4 forwarded the detailed report to respondent No. 3 on 09.10.2017. Thereafter, the respondent No. 3 directed the District Social Welfare Officer, Rajouri-

respondent No. 5 to sanction the monthly pension in favour of the petitioner as the petitioner had suffered 100% disability due to electric burns. Despite recommendation of the case of the petitioner for pension, the petitioner was paid only a meagre amount of Rs. 2,00,000/- as an ex-gratia relief in view of the injuries suffered by him. The petitioner further claims to have approached various authorities for grant of just compensation through his father but till date except an amount of Rs. 2.00 lacs, nothing has been paid to the petitioner. It is stated by the petitioner that on account of the injuries suffered by him because of the negligence of the respondent-Power Development Department, the whole of the life of the petitioner has been ruined. The petitioner, as such, has claimed the compensation for costs of artificial limbs, wear and tear of the artificial limbs, pain and suffering, amenities of life, loss of chance of marriage, loss of future income etc.

4. The respondents 1 & 2 have filed the response stating therein that as per the verification conducted by the department, the petitioner was playing with an iron rod on the roof of house and said iron rod accidentally got in contact with 11 KV High Tension live conductor and as such, there was no negligence on the part of the Power Development Department. The respondent Nos. 1 & 2 have objected the writ petition on the ground that it was because of negligence of the petitioner that he suffered the injuries. It is further stated that had there been any negligence on the part of the Department, the case of the petitioner would have been dealt with in accordance with the policy for grant of compensation in such cases.

5. The respondent Nos. 3 & 4, have also filed the response, thereby denying the averments made in the writ petition, except the averments pertaining to the record.
6. Mr. Vipin Gandotra, learned counsel for the petitioner vehemently argued that whole of the life of the petitioner has been ruined because of the negligence of the respondents, as such, the respondents are under legal obligation to compensate the petitioner.
7. *Per contra*, Mr. Amit Gupta, learned AAG submitted that it was the negligence of the petitioner because of which he suffered electric shock as he was playing with the iron rod on the roof of his house, as per the investigation conducted by the Power Development Department, as such the respondents are under no obligation to compensate the petitioner.
8. Heard learned counsel for the parties and perused the record.
9. The respondent-Power Development Department has objected the writ petition on the ground that it was the petitioner, who was negligent as while playing he touched the 11 KV High Tension live conductor with an iron rod, as such, there was no negligence on the part of the Power Development Department. It needs to be mentioned here that no report has been placed on record by the respondents substantiating the averments made in para (3) of the objections to the writ petition filed by the respondent Nos. 1& 2 that after the incident took place, the verification conducted and it was found that the allegation of the petitioner that the wires were hanging over the roof of the petitioner, was found incorrect.

10. This Court can take judicial notice of the height of the child of five years and can safely assume the height of the wires from the roof of the house of the petitioner. If the child of 5 years while playing with the iron rod could touch the wires, then it can be safely assumed that the wires were not beyond the reach of normal adult human being. The respondent Nos. 3&4 have admitted the averments made in para-3 of the writ petition wherein the petitioner has referred to the application submitted by one Nazir Ahmed with respondent No.3 in respect of removal of wires and the endorsement made by the respondent No.3 directing Executive Engineer concerned to take necessary action for the safety of the people. Otherwise also, the respondent-Power Development Department cannot impute any negligence to the minor child. Even under Indian Penal Code, the child below seven years of age is incapable of committing any crime, which is recognition of principle of '*Doli Incapax*' (Section 82 I.P.C). Likewise, the principle of '*Violenti non-fit Injuria*' is not applicable to the children. Under Indian Contract Act also, an agreement with minor is void. When the law has granted absolute immunity to the minor in respect of civil and criminal liability, the respondent-Power Development Department cannot raise the plea of negligence on the part of the minor to deny their liability to compensate the petitioner. The photographs placed on record itself reflect the short height of the child. Therefore, this court has not even an iota of doubt in its mind that it was because of the negligence of the Power Development Department that the petitioner had suffered electric shock resulting into amputation of both of his arms, which is established by

disability certificate (Page-39 to the writ petition) placed on record by the petitioner demonstrating that he has suffered 100% permanent disability. The petitioner has also averred that the petitioner would need an attendant for rest of his life. The State/UT being a “welfare state” under such circumstances is under legal obligation to suitably compensate the victim of electrocution so as to allow him or her a life with dignity and not as a beggar. When the poor man loses his hands, the chances of his abandoning by other members of the family, can also not be ruled out.

11. Now, the only issue that is required to be determined is with regard to the quantum of compensation payable to the petitioner by the respondents. This court is of the considered view that the principles applicable for grant of compensation in Motor Vehicles Accident can also be applied in such cases particularly when this court has come to definite conclusion that it was because of the negligence of the respondent-Power Development Department that the petitioner suffered electrocution resulting in to amputation of both of his arms.
12. So far as contention of the respondents that had there been any negligence on the part of the respondent-department, the case of the petitioner would have been dealt in accordance with the policy for grant of compensation for electrocution is concerned, this Court has already observed that the grant of ex-gratia relief in terms of Government orders issued from time to time will not come in the way of the Courts to grant compensation in appropriate cases. In this context, it would be relevant to take note the relevant portion of the judgment passed by this Court in **SWP No. 504/2014 titled, Ravi**

Kumar vs. State of J&K and ors. decided on 02.12.2023, which is reproduced as under:

“ 7. x x x x x The respondents have come up with a policy for grant of ex-gratia relief to the departmental and non-departmental persons, who are killed or incapacitated due to electrocution caused by the negligence of the Power Development Department. The Government Order dated 24.11.2011 provides for grant of ex-gratia relief of Rs. 01 lac in case of total disability and Rs. 30,000/ in case of partial disability, whereas the Government order dated 24.10.2019 provides for grant of ex-gratia relief of Rs. 7.5 lacs in case of total disability and Rs. 2.00 lacs in case of partial disability. The Government order dated 24.10.2019 provides that the payment shall be subject to condition that the relief granted by the Government under the Workmen’s Compensation Act, shall be adjusted while making payment of the Ex-gratia relief. The term ‘ex-gratia’ means out of grace or gratuitous. The ex-gratia relief in fact is the amount which the Government has volunteered to pay to the victims of electrocution due to negligence of the Power Development Department. The policy for grant of ex-gratia relief cannot come in the way of Courts to compensate the victims for the electrocution in an appropriate manner. x x x x x”.

13. The petitioner was 5 years of the age at the time of incident, which took place in the year 2017. In “**Kajal v. Jagdish Chand**”¹, the Hon’ble Supreme Court considered the notional income of a girl of 12 years of the age, on the basis of minimum wages payable to skilled workman. The relevant para is extracted as under:

“Loss of earnings

20. Both the courts below have held that since the girl was a young child of 12 years only notional income of Rs 15,000 p.a. can be taken into consideration. We do not think this is a proper way of assessing the future loss of income. This young girl after studying could have worked and would have earned much more than Rs 15,000 p.a. Each case has to be decided on its own evidence but taking notional income to be Rs 15,000 p.a. is not at all justified. The appellant has placed before us material to show that the minimum wages payable to a skilled workman is Rs 4846 per month. In our opinion, this would be the minimum amount which she would have earned on becoming a major. Adding 40% for the future prospects, it works to be Rs 6784.40 per month i.e. 81,412.80 p.a. Applying the multiplier of 18, it works out to Rs 14,65,430.40, which is rounded off to Rs 14,66,000.”

¹ (2020) 4 SCC 413

14. The same principle has been applied in “**Ayush v. Reliance General Insurance Co. Ltd.**”², as well, where the claimant was 5 years of age.
15. In this case, the incident took place on 25.02.2017. The Labour and Employment Department, Government of J&K has issued Notification on 26.10.2017, providing the minimum wages of Rs. 225.00, 350.00, 400.00 and 325.00 for Un-skilled, Skilled, Highly Skilled and Administrative/Ministerial/Accounts Staff. Though this notification came into force in November 2017, but the proposal was mooted for enhancement of the minimum wages on 23.02.2017. The minimum wages prescribed by the Notification (supra) can be relied upon by this Court for the determination of compensation. The wages payable to skilled worker under notification (supra) is Rs. 350.00 per day and as such, the monthly wages would be Rs. 10,500.00. The monthly income is required to be enhanced by 40% taking into consideration the prospects of enhancement of earning in future, in terms of judgment of the Supreme Court in “**National Insurance Co. Ltd. vs. Pranay Sethi and anr**”³. Thus, the monthly income would be Rs. 14,700.00 per month. The multiplier applicable would be 18. Thus the total loss of future earnings would be Rs. 31,75,200/-. In view of the injuries suffered by the petitioner, as he has lost both of his arms he would need an attendant for rest of his life and also the petitioner has suffered loss of marriage prospects.
16. In **Ayush v. Reliance General Insurance Co. Ltd.** (supra), the Hon’ble Supreme Court of India granted the compensation to the accident victim of

² (2022) 7 SCC 738

³ (2017) 16 SCC 680

5 years, who suffered injuries on 21.09.2010 when the monthly wages payable to a skilled worker was Rs. 3700/-, under the following heads:

	<i>Head</i>	<i>Amount</i>
A.	Loss of future earnings due to the permanent disability for life $(3700 + 1480 = 5180) \times 12 \times 18$	Rs 11,18,880
B.	Medical expenses	Rs 5,74,000
C.	Future medical expenses i.e. towards purchase of 2 devices	Rs 10,00,000
D.	Pain, suffering and loss of amenities	Rs 10,00,000
E.	Loss of marriage prospects	Rs 3,00,000
F.	One attendant charges $(3700 \times 12 \times 18) = 7,99,200$ rounded off	Rs 8,00,000
G.	Conveyance charges	Rs 2,00,000
	<i>Total</i>	Rs 49,92,880
	Rounded off	Rs 49,93,000

17. In **Mohd. Sabeer v. U.P. SRTC, 2022 SCC OnLine SC 1701**, the Hon'ble Supreme Court, besides under other heads, granted an amount of Rs. 12,80,000/- as compensation for the purchase and maintenance of prosthetic leg, but in the present case due to absence of evidence as to the cost of prosthetic limbs, this Court deems it proper to grant an amount of Rs. 10.00 lacs as cost and maintenance of two prosthetic limbs.
18. Accordingly, the compensation to which the petitioner is held entitled to is assessed as under:-

1) Loss of future earnings =	Rs.31,75,200/-
2) Loss of Amenities and Pain and suffering =	Rs.10,00,000/-
3) Loss of marriage prospect=	Rs. 3,00,000/-
4) Cost & Maintenance Artificial limb =	Rs.10,00,000/-
5) Attendant's Expenses=	Rs. 5,00,000/-
Total =	<u>Rs.59,75,200/-</u>

19. An amount of Rs. 2 lacs has already been paid to the petitioner. In view of above, the respondents are directed to pay an amount of Rs. 57,75,200/-

(Rupees Fifty Seven lacs and Seventy Five Thousand and Two hundred only) to the petitioner alongwith interest @ 6% per annum, except upon the component of future earnings and attendant's expenses, from the date of filing of the petition till its realization. Since the petitioner is minor, the amount of Rs 10,00,000/- would be paid to the father of the petitioner being the natural guardian. The rest of the amount would be invested in one or more Fixed Deposits Receipts so as to attract the maximum rate of interest. The interest amount shall be payable to the guardian of the petitioner every month. In the event, the father of the petitioner requires any amount in respect of medical expenses or otherwise for the education of the petitioner, during the minority of the petitioner, he shall be at liberty to approach this Court.

20. The writ petition is disposed of in the above terms.

JAMMU

22.12.2023

Karam Chand/Secy.



(Rajnish Oswal)
Judge

Whether the order is speaking:	Yes
Whether the order is reportable:	Yes