

**HIGH COURT OF TRIPURA**  
**AGARTALA**  
**RFA No. 15 of 2024**

**1. Sri Haripada Debnath** (Aged-72 years) S/O- Lt. Lalmohan Debnath  
Resident of West Bank of Amarsagar, Udaipur Town, P.O.-  
Radhakishorepur, District Gomati, Tripura, Pin-799120.

**2. Smt. Usharani Debnath** (Aged 59 years) W/O -Sri Haripada Debnath,  
Resident of West Bank of Amarsagar, Udaipur Town, P.O.-  
Radhakishorepur, District-Gomati, Tripura, Pin-799120.

----Appellants

**Versus**

**1. The State of Tripura**, Represented by the Secretary to the Government of  
Tripura, Department of Fisheries, Secretariat, New Capital Complex, P.O.-  
Agartala-799010, District= West Tripura, Tripura.

**2. The Director of Fisheries**, Directorate of Fisheries, Government of  
Tripura, P. N. Complex, Gurkhabasti, P.O.-Agartala-799006, District- West  
Tripura, Tripura.

**3. The Superintendent of Fisheries**, Fishery Office, Udaipur, P.O.-  
Radhakishorepur-799120, District Gomati, Tripura.

.....Respondents.

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| For the Appellant(s) | : | Mr. P Roy Barman, Sr. Advocate.<br>Mr. Samarjit Bhattacharjee, Advocate.<br>Mr. K. Nath, Advocate.<br>Mr. D. Paul, Advocate.<br>Ms. A. Debbarma, Advocate.<br>Mr. J. Murasing, Advocate. |
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| For the Respondent(s) | : | Mr. Kohinoor N. Bhattacharya, G.A.<br>Mr. D. Sarma, Addl. G.A. |
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| Date of hearing & delivery<br>of Judgment & Order | : | <b>22.04.2026</b> |
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| Whether fit for reporting | : | <b>YES.</b> |
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**BEFORE**  
**HON'BLE JUSTICE DR. T. AMARNATH GOUD**  
**HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA**  
**JUDGMENT & ORDER(ORAL)**

**(Dr.T.Amarnath Goud, J)**

[1] Heard Mr. P. Roy Barman, learned senior counsel assisted by Mr. Samarjit Bhattacharjee, learned counsel appearing for the appellants. Also heard, Mr. D. Sarma, learned Addl. G.A. appearing for the respondents-State.

[2] This present appeal is filed by the appellants under Section 96 of the CPC against the judgment and decree dated 08.04.2024 passed in Money Suit No. 04 of 2021.

[3] Brief facts leading to filing of this case is that in the Office complex of Respondent No.3, there was a loose electric wire which was drawn from 'A' building to "B" building by the official staff of Respondent No.3 alongwith open field and under the open sky within the same complex and the said vacant space between the two buildings which is used by the local children as playground and public in general since long without any obstruction from the Respondent No.3. While passing through the thorough fare/passage on 09.05.2021 at 5pm, son of the appellants suddenly struck by the live electric wire drawn between 'A' building to 'B' building. The one end of the wire was lying on the ground and other end fitted to the live electric board in 'A' building for which the victim fell down unconscious and was taken to Gomati District hospital by the Fire service staffs, where the victim was declared as brought dead and later, the cause of his death as mentioned by electrocution. Thereafter, the appellants filed case bearing No. M.S. 04 of 2021 U/S 1A of the Fatal Accident Act, 1855 against the respondents before

the learned Civil Judge (Sr.Division), Gomati Judicial District claiming compensation of Rs,38,80,000/-only for causing death of their son due to wrong/negligent act of the respondents. But, the Trial Court Passed judgment and Decree on 08.04.2024 and dismissed the suit on the ground that appellants failed to establish any actionable wrong done by the respondents. Aggrieved thereby, appellants prefer this instant appeal praying to set aside the impugned judgment and Decree dated 08.04.2024 passed in case No.M.S.-04 of 2021.

[4] The appellants herein have prayed for following reliefs:-

*(a) Admit the instant Appeal, preferred by the Appellants herein under Section-96 of the Code of Civil Procedure, 1908.*

*(b) Issue notice upon the Respondents.*

*(c) Call for the Records.*

*(d) Hear both sides and after hearing allow the instant Appeal Under Section-96 of the C.P.C. by setting aside the Judgment and Decree, dated, 08.04.2024, passed by the L'D Civil Judge (Senior Division), Gomati Judicial District, Udaipur, in case No. Money Suit-04 of 2021 and award compensation of Rs.38,80,000/- (Rupees thirty eight lakhs eighty thousand) only as claimed for in case No. M.S.-04 of 2021 w.e.f, the date of death of deceased Dipankar Debnath.*

*(e) Pass any other or further order or orders as the Hon'ble High Court may deem fit and proper in this regard."*

[5] The case was heard on 25.03.2026 and when this Court has expressed its mind declining the relief in favour of the appellants on the ground that the appellants are not entitled for any compensation and the trial court has rightly rejected the case and accordingly, appeal also needs to be dismissed. At that juncture on 25.03.2026, the learned senior counsel for the appellants Mr. P. Roy Barman, sought for an adjournment to place some relevant judgments in support of his case. Considering the said submissions and after full length of hearing, only for placing some judgments the matter stood adjourned on 31.03.2026.

[6] Again, on 01.04.2026, when the case is called, Mr. P. Roy Barman, learned senior counsel was absent and on his behalf there was a

representation made by Mr. J. Murasing, learned counsel, stating that they are not ready and sought for an adjournment. Considering the requests, the matter stood again adjourned on 07.04.2026 for hearing. On 07.04.2026, the case was again called and Mr. D. Sarma, learned Addl. G.A. was present for the respondents- and there was no representation on behalf of the appellants and logically considering that there may not be any judgment moreover, to ensure appearances of the counsel for the appellants, this Court directed the Registry to list the matter under the caption “For Dismissal” only to procure the appearances of the learned counsel and directed to list the matter on 08.04.2026. Accordingly, when the case is called today i.e., 22.04.2026, both parties appears and counsel for the appellants placed two judgments before this Court i.e, titled as ***M.P. Electricity Board vs. Shail Kumari and Others*** reported in ***(2002) 2 SCC 162*** and titled as ***Union of India vs. Prabhakaran Vijaya Kumar and Others*** reported in ***(2008) 9 SCC 527*** and argued that on the point of strict liability under the *law of torts* for the act committed by the respondents, the deceased came into contact with live wire and died and thus, the claimant is entitled for compensation.

[7] On behalf of the respondents, written statement has been filed and it is pleaded that the main grievance of the appellants is against the electric department for not maintaining the proper electrical wire and accordingly, if that is accepted the appellants/claimants have not made electric department as respondent and also contended that the deceased is a trespasser jumped over 7 feet compound wall into the fisheries department premises and for whatever the reason, he came into contact with the electric

wire either by playing games or otherwise. For this, the claimants are not entitled for any compensation and therefore, the respondents are not liable to pay any compensation to the claimants.

**[8]** On behalf of the appellants/ claimants three persons were examined as PWs 1,2 and 3, for the purpose of reference the relevant contents from the deposition and cross-examination of the said witness are reproduced herein below:-

**PW-1** *"I have submitted my affidavit in chief on 24.08.2022. The contents of the affidavit are true to the best of my knowledge and I stand by the same. I have submitted certain documents in support of my case which I intent to exhibit. I have submitted the original registration certificate of GST in the name of Dipankar Debnath identified and marked as Exhibit P1 series. I have also submitted the original insurance policy dated 07.01.2020 issued by National Insurance Company Limited in the name of Dipankar Debnath identified and marked as Exhibit P2. I have also submitted the certified copy of the police report in connection with registration of unnatural death under Section 174 Cr.P.C comprising 6 pages identified and marked as Exhibit P3 series. I have also submitted the certified copy of the post mortem report dated 10.05.2021 comprising 3 pages identified and marked as Exhibit P4 series. I have also submitted the original postal receipt 3 in numbers whereby the notice under Section 80 CPC was sent to the defendants identified and marked on the overleaf as Exhibit P5 series. I have also submitted the original special service report dated 30.03.2022 issued by Divisional Fire Officer (I/C) Gomati District, Udaipur identified and marked as Exhibit P6. Deceased Dipankar Debnath was my son.*

**Cross-examination:-**

*It is a fact that there is no building in the name "A and B". It is not a fact that no loose electric wire drawn from A Building to B Building situated on the west northern bank of the Office Complex by the Office Staff of defendant NO. 3 along with the open field and under the open sky within the office complex of defendant NO. 3 for lightening the B Building. It is not a fact that the open vacant space of complex of the office of defendant No. 3 between the two building has not been used by*

local children as playground or thoroughfare for movement by general public without obstruction by office of defendant NO. 3. It is not a fact that on 09.05.2021 at 5 pm my son was not passing on foot along with said thoroughfare and was not struck by the live electric wire drawn between A Building and B Building which was lying on the ground keeping one end fitted with live electric board in A Building and did not fell down unconscious. It is not a fact that the death of my son was not due to the negligent act of the staff of the office of defendant NO. 3 who drew the temporary electric line with ordinary unsale electric wire unauthorizedly beyond the knowledge of the concerned electric department but within the knowledge of defendant No. 3 or that the office staff of defendant No. 3 including him were responsible for causing death of my son for not taking any precautionary measure while drawing the electric line or that they are therefore liable to take compensation for causing death of my son as per provisions of the Fatal Accident Act 1855. It is not a fact that I along with other inhabitants of Amar Sagar bank did not inform defendant No. 3 about the torn electric wire of his office. It is not a fact that I am not entitled to receive any compensation for the death of my son or that the death did not occur due to negligent act of the defendant. It is not a fact that my son at the time of death was not earning Rs. 25,000/- per month. I have not submitted any document in support of the fact that my son used to earn Rs. 25,000/- per month during his lifetime.

It is not a fact that the principle applicable in Motor Accident Claims is not applicable in this case for the purpose of assessment of compensation. I have not submitted any voucher or any other document in support of calculation of compensation for future prospect and other heads. It is not a fact that the calculation made here is not done correctly as per Laws. It is not a fact that the total amount of compensation of Rs. 38,80,000 is totally unjustified and not applicable in this case."

**PW-2** "I have submitted my affidavit in chief on 30.11.2022. The contents of the affidavit are true to the best of my knowledge and I stand by the same. Deceased Dipankar Debnath was my younger brother and he was 3 years younger to me.

**Cross-examination:-**

It is not a fact that no loose electric wire drawn from A Building to B Building situated on the west northern bank of the Office Complex by the Office Staff of defendant NO. 3 along with the open field and under the open sky within the office complex of defendant NO. 3 for lightening the B Building. It is not a fact that the open vacant space of complex of

the office of defendant No. 3 between the two building has not been used by local children as playground or thoroughfare for movement by general public without obstruction by office of defendant NO. 3. It is not a fact that on 09.05.2021 at 5 pm my brother was not passing on foot along with said thoroughfare and was not struck by the live electric wire drawn between A Building and B Building which was lying on the ground keeping one end fitted with live electric board in A Building and did not fell down unconscious. It is not a fact that the death of my brother was not due to the negligent act of the staff of the office of defendant NO. 3 who drew the temporary electric line with ordinary unsale electric wire unauthorizedly beyond the knowledge of the concerned electric department but within the knowledge of defendant No. 3 or that the office staff of defendant No. 3 including him were responsible for causing death of my brother for not taking any precautionary measure while drawing the electric line.

**PW-3.** I have submitted my affidavit in chief on 10.01.2023. The contents of the affidavit are true to the best of my knowledge and I stand by the same. I know deceased Dipankar Debnath as local person and we used to play together. I know about his death and on that day we were playing on the Fishery Office ground.

**Cross-examination:-**

The distance between my house at Chanban Gaja Chowmuhani and the Fishery ground is less than 1 km. It is a fact that on the alleged date of his death Covid situation was prevailing and there was restriction in movement of general public.

WV: The Covid restrictions during that time was applicable after 6 pm in the evening.

I have not submitted any document in support of applicability of the restriction after 6 pm. It is not a fact that no loose electric wire drawn from A Building to B Building situated on the west northern bank of the Office Complex by the Office Staff of defendant NO. 3 along with the open field and under the open sky within the office complex of defendant NO. 3 for lightening the B Building. It is not a fact that the open vacant space of complex of the office of defendant No. 3 between the two building has not been used by local children as playground or thoroughfare for movement by general public without obstruction by office of defendant NO. 3 or that I was not present at the time of incident. It is not a fact that on 09.05.2021 at 5 pm Dipankar Debnath was not passing on foot along with said thoroughfare and was not struck by the live electric wire drawn between A Building and B Building which was lying on the ground keeping one end fitted with live

*electric board in A Building and did not fell down unconscious. It is not a fact that the death of Dipankar Debnath was not due to the negligent act of the staff of the office of defendant NO. 3 who drew the temporary electric line with ordinary unsale electric wire unauthorizedly beyond the knowledge of the concerned electric department but within the knowledge of defendant No. 3 or that the office staff of defendant No. 3 including him were responsible for causing death of Dipankar Debnath for not taking any precautionary measure while drawing the electric line. It is not a fact that since I used to be with the deceased therefore I have deposed falsely today suppressing the truth.*

[9] On behalf of the respondents, it is seen from the record that DWs1& 2 were examined. For the purpose of reference the relevant contents from the deposition and cross-examination of the said defence-witnesses are reproduced herein below:-

**DW-1**, I have submitted my affidavit in chief on 07.06.2023. The contents of the affidavit are true to the best of my knowledge and I stand by the same.

**Cross-examination:-**

*In the Fishery Department there is an appointed Night Guard and other Guard. There are two Offices in the same complex, one is Superintendent of Fisheries and the other is Deputy Director Fisheries. The western bank of Amar Sagar is approximately 1.5 km. The Office of Superintendent Fisheries is located on the north western bank of Amar Sagar and the Office of Deputy Director Fisheries is located on the south-western bank of Amar Sagar. I do not know when and who constructed the 7 feet height pukka boundary wall surrounding the western and southern side of Office of Deputy Director Fisheries. It is not a fact that on the north-western side of the Office complex there is any open space where local children used to play cricket and other games. It is not a fact that in the Office of Superintendent Fisheries there are two adjacent separate buildings.*

*WV: The Office of Superintendent Fisheries have two adjacent rooms in the same building.*

*It is not a fact that in two separate buildings electric connection was extended by taping and on the date of alleged date of incident the extended wire had fallen on the ground after breaking. It is not a fact that getting injured with the broken wire Dipankar had died. It is not a*

fact that the local people had informed the Office several times to rectify the broken wire but nothing was done to mend the same. It is not a fact that owing to the negligence on the part of the Office bearers Dipankar Debnath had died. Later we have heard that Dipankar Debnath was shifted by Fire Service from our Office complex.

WV: On that day Office was closed under lock and key and he taken by breaking the lock. It is not a fact that the Office complex was not under lock and key at the alleged date and time or that there is no existence of 7 feet pucca boundary wall on the western and southern side.

**DW-2.** I have submitted my affidavit in chief on 06.07.2023. The contents of the affidavit are true to the best of my knowledge and I stand by the same. I was holding the charge of Superintendent Fisheries from the first part of 2021 for 8/9 months and thereafter I joined my post as Deputy Director Fisheries.

**Cross-examination:**

I have not submitted any document to the effect that I was holding the charge of Superintendent Fisheries for the relevant period. At that time there was one post of Superintendent Fisheries at Udaipur. It is a fact that on the north-eastern part of the Superintendent Office there is one separate room meant for distribution of fishes. To enter the Superintendent Office, there is one iron gate which has two parts and generally when the official vehicle enters the entire gate is opened for access and for the remaining time general public access through the smaller gate built within the iron gate. It is not within my knowledge if any reply was given with respect to the notice sent to us under Section 80 of CPC. As per my knowledge the matter of electrocution was informed to the higher Authority immediately after opening of the office from Holidays. It is a fact that the distance between the Superintendent Office and the Fish distribution room is around 4 to 5 meters. There is no separate meter installed in the fish distribution room for the purpose of electrification. It is not a fact that a tap line is used from the Superintendent Office for the purpose of electrification in the fish distribution room. It is a fact that at the back side of the Superintendent Office there is one nursery layering pond. It is a fact that there is a small "ghat" made in front of the pond.

WV: That ghat is meant for the usage of fishermen for carrying/stocking fish from the lake to the nursery pond before distribution.

It is a fact that towards north from the office of Superintendent there is a vacant land.

*It is not a fact that the said vacant land is used by local children for playing.*

*WV: That land is for parking and movement of official vehicles.*

*It is not a fact that the ghat behind our office is used by local people for bathing. It is not a fact that the only entry in the office through iron gate is not under lock and key on holiday. It is not a fact that the office complex of Superintendent Fisheries is not surrounded on western and southern side by 7 feet pucca boundary wall. It is not a fact that the electric connection to the fish distribution room was in damage condition and torn and the local people had approached me several time for the rectification of the same but we did not get it rectified. It is not a fact that we did not work in office till 07.05.2021 or that no electrical fault in the connection was found till then. It is not a fact that the deceased did not enter the office premise with malafide intention after crossing 7 feet boundary wall on the eastern side of the office. It is not a fact that owing to the negligence on the part of our office the deceased had died. It is a fact that in the office of Superintendent Fisheries there is no overhead electric connection of Power Department. It is not a fact that the small door in the iron gate at the entrance always remains open even on holidays. It is not a fact that we are responsible for the death of Dipankar Debnath.*

**[10]** It is also seen from the record that during trial the following documents were exhibited by the PWs which are extracted as under :-

*Exbt. P1 series - Original registration certificate of GST in the name of Dipankar Debnath*

*Exbt. P2 -Original insurance policy dated 07.01.2020 issued in the name of Dipankar Debnath.*

*Exbt. P3 series certified copy of the police report in connection with registration of unnatural death.*

*Exbt. P4 series - Certified copy of post mortem report dated 10.05.2021.*

*Exbt. P5 series -3 nos. of original postal receipt.*

*Exbt. P6 Original special service report dated 30.03.2022 issued by Divisional Fire Officer.*

[11] On the other hand, it is seen from the record, no documents were exhibited on behalf of the defendants witnesses.

[12] As per the evidence of the DWs- it is observed that office of the Superintendent of Fisheries is surrounded on the western and southern side by 7 feet pucca boundary wall and the office of the Deputy Director of Fisheries is situated on the southern side within the boundary wall. On the northern side and eastern side there is entering into the fishery complex and there are two nursery tanks full of water. The only entry in the office is through the iron gate which remains under lock and key on holidays. That on the alleged day it was a Sunday on 9.5.2021 and if anybody wanted to enter into the office premises after office hours on holiday he has to enter by crossing the 7 feet high boundary wall. It is also seen from the evidence of DWs that deceased Dipankar Debnath had entered into the office premises with ill intention for *malafide* activities beyond the knowledge of anybody after crossing 7 feet high wall or through water on the eastern side of the office. Further it is seen from their deposition that there was no loose electric connection between the said buildings and vacant space in the office complex is also not used as a playground.

[13] Thereafter, the trial court after hearing arguments of both sides dismissed the case holding that it is an admitted fact that the victim had died due to electric shock and it is also evident that the victim was shifted to the hospital from the office complex of the respondents, which shows that he

might have sustained the electric shock from any electric connection point present in the office complex but it is not established by any cogent evidence that the electric shock was from any unattended loose or fallen live wire or that the deceased had been in the office complex for any legitimate or authorized purpose and his access into the said complex was in lawful manner and hence the respondents also cannot be held to have any lawful duty to provide care and protection to the deceased on his entry into the office complex on a holiday and beyond the knowledge of the respondents. Therefore, according to learned trial court there was an actual damage in the instant case but the appellants/claimants failed to prove presence of any legal injury and hence damages could not be granted in the absence of a legal injury. Therefore, the appellants/claimants failed to establish any actionable wrong done to victim by the negligent act of the respondents and hence the claim of the appellants/claimants could not be said to be applicable in the given facts and circumstances. Accordingly, they are not entitled to any compensation from the respondents. Aggrieved by this aforesaid order of dismissal from the court below, the present appeal is filed.

**[14]** During the course of arguments Mr. Samarjit Bhattacharjee, learned counsel appearing for the appellants/claimants submitted that for no fault of the deceased he got contact with the electrical live wire and then died in the premises of fisheries department due to negligence of fisheries department and he prayed to set aside the judgment and decree dated 08.04.2024 passed in MS No. 04 of 2021 and prayed to award compensation.

[15] Per contra Mr. D. Sarma, learned Addl. G.A. appearing for the respondents-State submits that in the event, if there is any allegation against the electric department since electric department officials are not read as respondents and no case has been made out against them and therefore, he contended that the fisheries department is only a consumer and supply has been provided by electric department and on the fateful day, the premises was under lock and key and the respondents have no knowledge or information as to what has taken place and it came to the knowledge that the deceased trespassed and jumped into 7 feet compound wall into fisheries department office premises and there he came into contact with live wire and then died. It is not a case of awarding any compensation and prayed to dismiss the case by confirming the appeal.

[16] Heard both sides.

[17] Admittedly, as per the claim statement, the deceased entered into the premises of the respondents and came into contract with live wire and succumbed.

[18] It is not in dispute that the place of incident is a Government premise and with 7 feet compound wall and on the fateful day, it being Sunday on 09.05.2021, it was closed and seen from the pleadings that no reason has been established by the appellants as to what made the deceased to enter into the premises on the fateful day. It is also not in dispute as per evidence of the respondents that the locks were opened from outside and then, the respondents entered inside the premises to attend incident which has occurred. Nowhere, in the record the appellants have established that

there was a legitimate reason for the deceased to enter into the premises and no evidence has been laid down and in the absence of which the arguments of the respondents got strengthen moreso, since the matter runs around electrocution, surprisingly, the appellants have not impleaded the electric department and its official as respondents. In the absence of which for not making any specific allegations against the concerned officials of responsible department, the fisheries department on the ground of any negligence or *laches* cannot be said to be committed any *laches* leading to the death of the deceased. Moreso, if at all, there is any negligence on the part of electric department it ought to have been established. Since, the appellants failed to do so, it may not be said that the respondents are liable to make the payment of any compensation .

[19] It cannot be said that it is an act of God or it is a responsibility of the State where the incident had occurred, the State Government also owes responsibility for the said act and *Ex gratia* needs to be paid for incident. Since, no such case has been made out for compensation under any statute, as such no *Ex gratia* can be considered for awarding. Insofar as, the judgment is referred in ***M.P. Electricity Board vs. Shail Kumari and Others*** reported in (2002) 2 SCC 162 and titled as ***Union of India vs. Prabhakaran Vijaya Kumar and Others*** reported in (2008) 9 SCC 527 pertains to the *law of torts* wherein the Hon'ble Apex Court and Privy Council referred therein and has categorically laid down certain stages and *law of torts* making the compensation on the theory of strict liability. Surprisingly, no case has been

made out against respondents fisheries department to fasten the liability under any head.

[20] The counsel for the appellants relied upon the above citations which dealt on *law of torts*.

[21] This court has no hesitation to say that the *law of torts* is not applicable to the facts of this case and thus, no liability can be fixed against the respondents.

The relevant portions of the above judgments are quoted here in below :-

**M.P. Electricity Board vs. Shail Kumari and Others** reported in (2002) 2 SCC 162

“ 2. The supplier of electricity in a locality is striving to squirm out of the liability to compensate the dependants of the sole victim of a snap electrocution. The supplier, Madhya Pradesh Electricity Board (for short "the Board") pleads that the electrocution was due to the clandestine pilferage committed by a stranger unauthorisedly siphoning the electric energy from the supply line and hence the wrongdoer alone should be mulcted with the burden of damages. In a suit filed by the dependants of the victim the trial court agreed with the Board in regard to the aforesaid contention, but the High Court disagreed and directed the Board to pay the amount of damages assessed. The said judgment of the High Court of Madhya Pradesh is now under challenge in this appeal. After hearing learned counsel for the Board we do not find the necessity to seek the help of the respondents in deciding this appeal and hence service of notice on the respondents is dispensed with.

8. Even assuming that all such measures have been adopted, a person under taking 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 persons, irrespective of any negligence or carelessness on the part of the managers of such undertakings. The basis of such liability is the foreseeable risky 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 would 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 Rly., Light, Heat and Power Company Limited v. Vandrys* 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 its way through the low-tension cable into the premises 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.”

**Union of India vs. Prabhakaran Vijaya Kumar and Others** reported in  
(2008) 9 SCC 527 “-

18. The theory of strict liability for hazardous activities can be said to have originated from the historic judgment of Blackburn, J. of the British High Court in *Rylands v. Fletcher*. Before this decision the accepted legal position in England was that fault, whether by an intentional act or negligence, was the basis of all liability (see Salmond on Tort, 6th Edn, p. 12), and this principle was in consonance with the then prevailing *Laissez-Faire* Theory.

19. With the advance of industrialization the *Laissez-Faire* Theory was gradually replaced by the theory of the Welfare State, and in legal parlance there was a corresponding shift from positivism to sociological jurisprudence. It was realised that there are certain activities in industrial society which though lawful are so fraught with possibility of harm to others that the law has to treat them as allowable only on the term of insuring the public against injury irrespective of who was at fault. The principle of strict liability (also called no-fault liability) was thus evolved, which was an exception to the general principle in the law of torts that there is no liability without fault (vide *American Jurisprudence*, 2nd Edn., Vol. 74, p. 632).

20. As stated above, the origin of this concept of liability without fault can be traced back to Blackburn, J.'s historic decision in *Rylands v Fletcher*. The facts in that case were that the defendant, who owned a mill, constructed a reservoir to supply water to the mill. This reservoir was constructed over old coal mines, and the mill owner had no reason to suspect that these old diggings led to an operating colliery. The water in the reservoir owner ran down the old shafts and flooded the colliery. (Fletcher case LR p. 279: All ER 7E-F)..

“...the person who, for his own purposes, brings on his land, and collects and keeps there anything likely to do mischief if it escapes, must keep it in at his peril, and if he does not do so, is *prima facie* answerable for all the damage which is the natural consequence of its escape”

On appeal, this principle of liability without fault was affirmed by the House." of Lords (per Cairns, J.) but restricted to non-natural users vide 21. *Rylands v. Fletcher*. In fact created a new legal principle( the principle of strict liability in the case of hazardous activities), though professing to be based of analogies drawn from existing law. The Judgment is noteworthy because it is an outstanding example of a creative generalization. As Wigmore writes, this epoch-making judgment owes much of its strength to "the broad scope of the principle announced, the strength of conviction of its expounder, and the clarity of his exposition".

22. Strict liability focuses on the nature of the defendant's activity rather than, as in negligence, the way in which it is carried on (vide *Torts by Michael Jones*, 4th Edn., p. 247). There are many activities which are so hazardous that they may constitute a danger to the person or property of another. The principle of strict liability states that the undertakers of these activities have to compensate for the damage caused by them irrespective of any fault on their part. As Fleming says "permission to conduct such activity is in effect made conditional on its absorbing the cost of the accidents it causes, as an appropriate item of its overheads" (see *Fleming on Torts*, 6th Edn., p. 302).

23. Thus, in cases where the principle of strict liability applies, the defendant has to pay damages for injury caused to the plaintiff, even though the defendant may not have been at any fault.

24. The basis of the doctrine of strict liability is twofold: (i) The people who engage in particularly hazardous activities should bear the burden of the risk of damage that their activities generate, and (ii) it operates as a loss distribution mechanism, the person who does such hazardous activity (usually a corporation) being in the best position to spread the loss via insurance and higher prices for its products (vide *Torts by Michael Jones*, 4th Edn., p. 267).

25. As pointed out by Clerk and Lindsell (see *Torts*, 14th Edn.): "The fault principle has shortcomings. The very idea suggests that compensation is a form of punishment for wrongdoing, which not only has the tendency to make tort overlap with criminal law, but also and more regrettably, implies that a wrongdoer should only be answerable to the extent of his fault. This is unjust when a wholly innocent victim sustains catastrophic harm through some trivial fault, and is left virtually without compensation.

26. Many jurists applaud liability without fault as a method for imposing Journal, 1952, p. 1172) losses on superior risk bearers. Their argument is that one who should know that his activity,

even though carefully prosecuted, may harm others, and should treat this harm as a cost of his activity. This cost item will influence pricing, and will be passed on to consumers spread so widely that no one will be seriously effected (vide article by Prof. Clarence Morris entitled *Hazardous Enterprises and Risks Bearing Capacity* Published in *YALE Law Journal*, 1952 page 1173).

27. The rule in *Rylands v. Fletcher*<sup>13</sup> was subsequently interpreted to cover a variety of things likely to do mischief on escape, irrespective of whether they were dangerous per se e.g. water, explosions, electricity, noxious fumes, colliery spoil, poisonous vegetation, a flagpole, etc (see *Winfield and Jolowicz on Tort*, 13th Edn., p. 425) vide *National Telephone Co. v. Baker* *Eastern and South African Telegraph Co, Ltd. v. Cape Town Tramways Co. Ltd.* *Hillier v. Air Ministry* etc. In America, the rule was adapted and expressed in the following words "one who carried on an ultra-hazardous activity is liable to another whose person, land or chattels he should recognise as likely to be harmed by the unpreventable miscarriage of the activity, for harm resulting thereto from that which makes the activity ultra-hazardous, although the utmost care is exercised to prevent for harm. (vide *Restatement of the Law of Torts*, Vol. 3, p. 41).

28. *Rylands v. Fletcher* gave English law one of its most creative generalizations which, for a long time, looked destined to have a successful future. Yet, after a welcome start given to it by Victorian Judges the rule was progressively emasculated, until subsequently it almost became obsolete in England. According to *Dias and Markesinis* (see *Tort Law*, 2nd Edn., p. 355) one reason for this may well be that as a generalization justifying a shift from fault to strict liability it may have come prematurely. The 19th century had not yet fully got over *laissez-faire*, and it was only in the 20th century that the concepts of social justice and social security, as integral parts of the general theory of the Welfare State, were firmly established.

29. As already mentioned above, the rule of strict liability laid down by *Blackburn, J.* in *Rylands v. Fletcher* was restricted in appeal by *Lord Cairns* to non-natural users, the word "natural" meaning "that which exists in or by nature, and is not artificial", and that was the sense in which it was used by *Lord Cairns*. However, later it acquired an entirely different meaning i.e. that which is ordinary and usual, even though it may be artificial vide *Rickards v. Lothian*<sup>17</sup> followed in *Read v. J. Lyons & Co. Ltd.* Thus, the expression "non-natural" was later interpreted to mean "abnormal", and since in an industrial society industries can certainly not be called "abnormal" the rule in *Rylands v. Fletcher* was totally emasculated in these subsequent rulings. Such an interpretation, as *Prof. Newark* writes, "would have surprised *Lord Cairns* and astounded *Blackburn* justice" (see *Article entitled Non-natural User and Rylands v. Fletcher*", published in *Modern Law Review*, 1961, Vol- 24 page 557).

30. In *Read v. J. Lyons & Co. Ltd.* which was a case of injury due to a shell explosion in an ammunition factory *Lord Macmillan* while rejecting the claim of the plaintiff made further restrictions to the rule in *Rylands v. Fletcher* by holding that the rule "derives from a conception of mutual duties of neighbouring landowners", and was therefore inapplicable to personal injuries. He also held that to make the defendant liable there should be escape from a place under the defendant's control and occupation outside his occupation, and since the plaintiff was within the premises at the time of the accident the injury was not due to escape therefrom. In this way *Read v. J. Lyons & Co.* destroyed the very spirit of the decision in *Rylands v. Fletcher* by restricting its principle to the facts of that particular case, instead of seeing its underlying juristic philosophy.

31. Apart from the above, some other exceptions carved out to the rule in *Rylands v. Fletcher* are: (a) consent of the plaintiff; (b) common benefit; (c) act of stranger; (d) act of God; (e) statutory authority; (f) default of the plaintiff, etc.

32. In *Dunne v. North Western Gas Board*<sup>19</sup> *Sellers. L.J.* asserted that the defendant's liability in *Rylands v. Fletcher* "could simply have been placed on the defendant's failure of duty to take reasonable care", and it seems a logical inference from this that the Court of Appeal considered the rule to have no useful function in modern times. As *Winfield* remarks, the rule in *Rylands v. Fletcher*, by reason of its many limitations and exceptions, today seldom forms the basis of a successful claim in the courts (see *Winfield and Jolowicz on Tort*, 13th Edn., p. 442), and it seems that the rule "has hardly been taken seriously by modern English courts", vide *Attorney General v. Geothermal Produce N.Z. Ltd.*

33. As *Winfield* remarks, because of the various limitations and exceptions to the rule "we have virtually reached the position where a defendant will not be considered liable when he would not be liable according to the ordinary principles of negligence" (see *Winfield on Tort*, 13th Edn., p. 443).

34. This repudiation of the principle in *Rylands v. Fletcher* is contrary to the modern judicial philosophy of social justice. The injustice may clearly be illustrated by *Pearson v. North Western Gas*. In that case the plaintiff was seriously injured and her husband was killed by an explosion of gas, which also destroyed their home. Her action in court failed, in view of the decision in *Dunne v. North Western Gas Board*. Thus, the decline of the rule in *Rylands v. Fletcher* left the individual injured by the activities industrial society virtually without adequate protection.

35. However, we are now witnessing a swing once again in favour of the principle of strict liability. The Bhopal Gas Tragedy, Chernobyl nuclear disaster, the crude oil spill in 1988 on to the Alaska coastline from the oil tanker *Exxon Valdez*, and other similar incidents have shocked the conscience of people all over the world and have aroused thinkers to the dangers industrial and other activities in modern society.

36. In England, the Pearson Committee recommended the introduction of strict liability in a number of circumstances of (though none of these recommendations have so far been implemented, with the exception of that related to defective products).

37. In India the landmark Constitution Bench decision of the Supreme Court in *M.C. Mehta v. Union of India* has gone much further than *Rylands v. Fletcher* in imposing strict liability. The Court observed: (*M.C. Mehta case* 22, SCC p. 421, para 31)

"31. If the enterprise is permitted to carry on an hazardous or inherently dangerous activity for its profit, the law must presume that such permission is conditional on the enterprise absorbing the cost of any accident arising on account of such hazardous or inherently dangerous activity as an appropriate item of its overheads."

38. The Court also observed that this strict liability is not subject to any of the exceptions to the rule in *Rylands v. Fletcher*.

39. The decision in *M.C. Mehta case* related to a concern working for private profit. However, in our opinion the same principle will also apply to statutory authorities (like the Railways), public corporations or local bodies which may be social utility undertakings not working for private profit.

[22] It is also not the case of the appellant that under legitimate expectation the deceased had visited the fisheries department to attend some lawful work on the fateful day and in the process came into contact with live wire for the negligence committed by the fisheries department or the electric department.

[23] Since, on 09.05.2021 it being Sunday, public holiday, the premises was under locked and closed, and there was no staff working, there was no reason for the deceased to jump over the wall entering into the Government premises by way of trespass.

[24] After going through the above facts, the principle of strict liability and rules decided under the *law of torts* awarding any compensation does not arise. In the present case the deceased was a trespasser having

entered into the government premises un-authorizedly and the electric department is not made a party and there is no evidence on record to show that the respondents department is liable to pay any compensation.

[25] This court is also of the view that there is neither any obligation nor any direct or indirect relation between the deceased and respondents which can be established to draw and attract *law of torts*.

[26] In view of the aforesaid discussion and observation, this court finds that order passed by the trial court on 08.04.2024 in MS No. 04 of 2021, needs no interference since, the appellants have not made out a case for any interference and to grant any relief and, thus, the impugned order passed by the learned trial court on 08.04.2024 is affirmed. Consequently, the appeal fails and the appeal is liable to be dismissed. Accordingly, the same is dismissed.

[27] As a sequel, miscellaneous application(s), pending if any, shall also stand closed.

**S.DATTA PURKAYASTHA,J**

**DR.T. AMARNATH GOUD,J**

*Paritosh*

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