IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 1917 of 2008

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GUJARAT VIDHYUT BOARD & ANR.

Versus

IILABEN BHARATBHAI JOSHI & ORS.

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Appearance:
MS RV ACHARYA(1124) for the Appellants
MR HEMANT S SHAH(756) for the Respondents

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CORAM:**HONOURABLE MR. JUSTICE J. C. DOSHI**

Date : 02/07/2026

ORDER

1. By way of filing present First Appeal u/s 96 of the Code of Civil Procedure, 1908 (in short “the Code”), the appellant – Gujarat Vidhyut Board (in short “the GVB”) challenges judgment and decree dated 18.4.2017 passed by the learned City Civil Court, Ahmedabad, whereby the learned trial Court has partly decreed Civil Suit No.1410 of 2002 and directed the GVB to pay Rs.4,85,000/- with interest at the rate of 9% per annum from the date of filing of the suit till realization.

2. For the sake of convenience and brevity, parties are referred to as per their original status before the learned trial Court.

3. Briefly states facts of the case are that the plaintiff No.1 is the wife of the deceased. The plaintiffs No.2 and 3 are the minor sons of the deceased and the plaintiff No.4 is the

mother of the deceased. The defendant is a statutory body under the Electricity Act and works to supply the electricity having head office in the city of Baroda. On 22-8-2001, the deceased Bharatkumar along with his friend Ramyagna Shatrudhansinh Chauhan went to the house of Chetanbhai Motilal Tanna in order to ask about the health of Chetanbhai. After taking breakfast, they also went for seeing the house of Chetanbhai. That the house was situated ground floor and the aforesaid three friends went on the first floor. As they were passing through the bungalow of Chetanbhai, Chetanbhai was going ahead and Ramyagnabhai and the deceased were in the behind side. As they were passing on terrace, the electric live wire was snapped from Chetanbhai's bungalow and the deceased Bharatbhai got electrocuted, as a result he fell down and sustained severe injuries. The deceased got unconscious and his fingers of right hand were burnt on account of electrocution. The deceased also sustained head injuries and blood was oozing out. The deceased was immediately rushed to the Panchsheel Hospital for treatment and it was advised from the doctor of the Hospital to admit the deceased in the Civil Hospital. Ultimately the deceased was admitted in Civil Hospital in the emergency ward where the doctor declared the deceased dead.

3.1 Claiming the aforesaid incident as absolute negligency on the part of the GVB, the plaintiff No.1 have prayed for compensation for her husband to the tune of Rs.6,50,000/- with interest.

3.2 The defendant GVB having been served, appeared

through learned advocate and mainly submitted that the incident took place due to sole negligency of the deceased. It is the deceased who is required to take necessary care to avoid the mishap. Rest of the pleadings are also denied by the GVB.

3.3 The learned trial Court partly decreed the suit to the aforesaid extent.

3.4 Being aggrieved, the GVB has preferred present First Appeal.

4. Heard learned advocates for the respective parties.

5. Learned advocate for the defendant would submit that it is a clear case where deceased was negligent and had he taken proper care, the mishap would have been avoided and therefore, in the facts and circumstances of the case, she would submit that the learned trial Court has committed serious error in deciding the issue of negligence against the GVB. She would further submit that the learned trial Court made proper calculation in grating compensation and even the income of the deceased assessed by the learned trial Court is on the higher side so also 9% interested granted by the learned trial Court is on higher side. She would further submit that the GVB cannot held liable when the centre cause of electrocution is illegal construction carried out in the society. Upon above submissions, he prays to allow this First Appeal.

6. On the other hand, learned advocate for the respondents

- plaintiffs would submit that the wires and the running of electric energy in the wires was exclusively under the control and management of employees of the defendant, and it was the duty of the defendant to follow proper procedure to pass electric current in the electric lines. He would further submit that it is obligatory on the part of the GVB to take great care and caution in laying, installing and maintaining overhead wires and to provide safety measures. He would further submit that the death of the deceased occurred on account of negligence and willful default on the part of the employee of the electricity company and therefore, the learned trial Court has given just and fair compensation and hence, no interference is called for. Upon above submission, learned advocate for the respondents – plaintiffs prays to dismiss the First Appeal.

7. Considering the aforesaid submissions, this Court has been called to decide as to whether the deceased was negligent and due to his negligency, the incident occurred?

7.1 The learned trial Court framed following issues at Exh.20:-

> *"1. Whether the suit is within the time limit ?*
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> *2. Whether this Court has jurisdiction ?*
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> *3. Whether the suit fails on the ground of non joinder and mis-joinder of the parties ?*
>
> *4. Whether the plaintiffs prove prove that the act of the defendants is illegal?*

5. Whether the plaintiffs are entitled for such amount from the defendants ?

6. What order and decree?"

8. Issue Nos.1,2,4 & 5 are answered in affirmative, issue No.3 is negative and issue no.6 is answered as per final order.

9. In this factual background, if we refer the judgment of the Hon'ble Apex Court in case of **M.C. Mehta v/s. Union of India [AIR 1987 SC 1086**], whereby the Hon'ble Apex Court extended principles of strict liability involved in case of Rylands v. Fletcher, 1868 3 HL 330 and held it to be absolute liability. In that case, claim for compensation was sought on behalf of persons who had suffered consequent to escape of oleum gas from the units of Sriram Foods & Fertilizers Industries. The Honble Apex Court has laid down the law as regards consequences of accidents where inherently dangerous activities are carried on, which reads as under:-

> *"The principle of absolute liability was laid down whereby liability was made absolute i.e., strict liability sans defences. The observations of the Apex Court at Para 31 is self-explanatory and reads as follows: "....We would therefore hold that where an enterprise is engaged in a hazardous or inherently dangerous activity and harm results to anyone on account of an accident in the operation of such hazardous or inherently dangerous activity resulting, for example, in escape of toxic gas the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident and such liability is not subject to any of the exceptions which operate vis-avis the tortious principle of strict liability under the rule in Rylands v. Fletcher."*

10. In **H.S.E.B. v/s. Ram Nath [2004 (5) SCC 793]**, the Honble Apex Court again reiterated extension of principle of absolute liability in case where liability was sought to be disowned by the Power Supply Company by contending that the unauthorized structure near the electric line hand contributed to the accident. In para 6, the Honble Apex Court held as under:-

> "*6. The appellants are carrying on a business which is inherently dangerous. If a person were to come into contact with a high-tension wire, he is bound to receive serious injury and/or die. As they are carrying on a business which is inherently dangerous, the appellants would have to ensure that no injury results from their activities. If they find that unauthorised constructions have been put up close to their wires it is their duty to ensure that that (2004) 5 SCC 793 construction is got demolished by moving the appropriate authorities and if necessary, by moving a court of law. Otherwise, they would take the consequences of their inaction. If there are complaints that these wires are drooping and almost touching houses, they have to ensure that the required distance is kept between the houses and the wires, even though the houses be unauthorised. In this case we do not find any disputed question of fact.*"

11. Recently, this Court in case of **P.G.V.C.L. v/s. Heirs of Chandrikaben Harpalsinh [AIR 2017 Gujarat 177],** discussed the issue relying upon the judgment in case of **M.P. Electricity Board v. Shailkumar and Ors., reported in (2002) 2 SCC 162** in para 6, observed thus:-

> *“6. The submissions have been made by learned Advocate Shri S.P. Hasurkar referring to the*

judgment of both the courts below and also the material and evidence particularly Exh.35 to support his contention about the negligence.

Therefore, the moot question is whether any negligence could be attributed to the deceased and whether any such contentions could be entertained to avoid the liability for the incident and the compensation as a result thereof. The aspect of negligence has been considered by both the courts below. Though the submissions have been made by learned Advocate Shri S.P.Hasurkar that from the pole the wire was brought to the premises which was passing from a pipe to the meter and that the pipe was fitted with the angle. Therefore the wire for spreading the clothes could not have been fitted with the angle and therefore it is the negligence of the consumer, is throughly misconceived. The installation and maintenance is the responsibility and obligation of the licensee like the Appellants herein. When the line is taken from the pole right up to the premises, it is their obligation to see that it is in such a manner covered and the wire is fitted with the pipe that it does not result in any accident and it is safe. These precautions are required to be taken by the supplier as they have installed the line and they have to maintain the line. There is a periodical supervision and when there is a checking for Regular Civil Appeal No. 15/2017 Page 19 the meter, the representative would also visit the premises. Therefore the submission that because the wire for spreading the clothes was attached to the angle, it was the main cause for the accident and attributed the negligence to the consumer, is misconceived. The trial court has referred to and relied upon the judgment of the Hon'ble Apex Court in case of ***M.P. Electricity Board v. Shailkumar and Ors., reported in (2002) 2 SCC 162*** *and made the observations which has been quoted referring to the "principal of strict liability". The concept of strict liability assumes its different dimension that the liability is strict once the accident has occurred and in any case the onus is on the licensee who is obliged to take precaution at the*

time of installation and maintenance of line to see that no accident occurs or the chances are minimized. Therefore the submissions which have been made referring to the aspect of negligence has a reference to the negligence in Law of Torts where a person could show that reasonable precautions were taken. However, once the "principal of strict liability" is attributed, the liability would be incurred irrespective of the fact that whether the precautions were taken or not. It is in these circumstances, the concurrent findings of facts arrived at by both the courts below cannot be said to be perverse or erroneous. The substantial questions of law posed as stated above are only referring to the aspect of Regular Civil Appeal No. 15/2017 Page 20 appreciation of evidence. The first question refers to the statutory provision in regard to liability of accident which again is vague as there are specific rules qua the Electricity Supply Rules and the Electricity Supply Code, which again referred to the statutory provisions and the obligation of the licensee to take precaution for installation and maintenance of such line. The reference and reliance on Exh. 35 would not justify any such submission which are sought to be made by learned Advocate Shri S.P. Hasurkar for the Appellants. Therefore it can hardly be said that there is any substantial question of law is involved."

12. One more judgment which was pressed into service is in case of **Paschim Gujarat Vij Company Limited Thru Deputy Engineer Versus L/h Of Deceaed Jignesh Jamanbhai Gohil,** 2024 (0) JX(Guj) 898.

13. There is no cavil that the appellant is engaged in the business of selling hazardous product viz. Electricity. It is the liability of the appellant – GVB to maintain all the wires to have insulated them to prevent the incident. If any incident occurs, the principle of absolute liability shall be attracted. Thus,

without touching the merits of the case considering the fact that the GVB is engaged in selling the hazardous substance, is required to pay compensation for death of the deceased applying the principles of strict and absolute liability.

14. Apt to note that if energy so transmitted through electricity line causes injury or death of a human being, who unknowingly come in contact with it, then it is primary liability of the Electricity Company to compensate the sufferer in view of principle of absolute liability. Electricity transmitted through the wires has potentiality of dangerous dimension. To add, it is the duty upon the Electricity Company to take all safety measures to prevent escape of such electricity or to see that such wire does not expose risk to human being. If undertaking like present appellant - GVB involved in the activity of supplying of electricity is undoubtedly involving in hazardous or risky exposure to human life, Law of torts, therefore, recognizes them to be liable for injury suffered by any other person, irrespective of any negligence or carelessness on the part of the Electricity Company. 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". Concept of strict liability or absolute liability differs from concept of fault liability which arises on account of 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 fault liability. However, such is not consideration or relevant in cases of strict liability where the defendant is held

liable regardless of whether he could have avoided the particular harm by taking precautions.

15. In view of above and *in extenso* of principles of strict liability or absolute liability, the GVB would not be at privilege to claim negligence of the deceased. Even, there is no evidence on record that the construction in question is illegal. Thus, the present First Appeal requires fate of only dismissal.

16. Resultantly, present First Appeal fails and stands dismissed.

17. Consequently, CA, if any, does not survive and stands disposed of accordingly.

18. If any amount is deposited with the learned trial Court, the same shall be disbursed to the plaintiffs along with interest accrued thereon strictly as per law.

19. Registry is directed to return back the R & P, if any, to the concerned Court forthwith.

(J. C. DOSHI,J)

SHEKHAR P. BARVE

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: SHEKHAR PRAFULBHAI BARVE(HC00200), Principal Pvt. Secretary, at High Court of Gujarat on 02/07/2026 14:56:33