

IN THE HIGH COURT OF TRIPURA
AGARTALA

W.P.(C) NO. 433 OF 2011

Smt. Parbati Das,
wife of late Dilip Das,
resident of South Pulinpur, P.O. Howaibari,
P.S. Teliamura, District : Khowai, Tripura

..... Petitioner

– Vs –

1. The Union of India,
represented by the Secretary to the
Ministry of Power & Electricity,
Govt. of India, New Delhi – 110001

2. The State of Tripura,
represented by the Secretary,
Power Department, Govt. of Tripura,
Capital Complex, P.O. Lichu Bagan,
P.S. New Capital Complex,
District : West Tripura

3. The Chairman-cum-Managing Director,
Tripura State Electricity Corporation Ltd.,
Bidyut Bhavan, Banamalipur,
P.O. Agartala, P.S. West Agartala,
District West Tripura

4. North Eastern Electric Power Corporation Ltd.
(NEEPCO Ltd.), Power Grid, Teliamura,
Gamaitilla, P.O. & P.S. Teliamura,
District : Khowai, Tripura

..... Respondents

B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the petitioner : Mr. K. Roy, Advocate

For the respondents : Mr. A. Roy Barman, CGC
Mr. G.S. Bhattacharji, Advocate
Mr. A. Sengupta, Advocate

Date of hearing & order : 18.06.2015

Whether fit for reporting :

Yes	No
	√

JUDGMENT & ORDER (ORAL)

Heard Mr. K. Roy, learned counsel appearing for the petitioner as well as Mr. G.S. Bhattacharji, learned counsel appearing for the respondent No.2 and Mr. A. Sengupta, learned counsel appearing for the respondents No. 3 and 5. None appears for the respondent No.4 despite call. Mr. A. Roy Barman, learned CGC appearing for the Union of India, respondent No.1, has submitted that in this petition, the Union of India is not a necessary party.

2. The facts which are undisputed are that the husband of the petitioner while cutting down betel-nut trees got electrocuted with the High Tension (HT) line and succumbed to death on 09.10.2009. It has been also placed on record that her husband, namely Dilip Das, since deceased, made complaint to the Senior Manager, North Eastern Electric Power Corporation Ltd. (NEEPCO Ltd.) for shifting the HT line as the petitioner and

her husband was apprehending that for drawing up of the HT line over their homestead land, at any time danger might result. Such letter was written on 07.01.2008 and it has been alleged that no action whatsoever was taken and ultimately, being electrocuted, the petitioner's husband died while cutting the betel-nut trees. It is also not disputed that one case for unnatural death was reported and recorded under Section 174 of the Cr.P.C. vide Teliamura P.S. U/D Case No.28/2009 in the Teliamura police station. The final report was also filed after the investigation was complete by the Officer In-charge, Teliamura police station on 30.10.2009. From the said final report, it can be gathered as under :

"During investigation self visited the PO, examined witness and from the witness its revealed that on 09.10.2009 at about 1300 hrs. While said Dilip Das (42), S/O- Samiran Das of South Pulinpur P/S TLM was engaged to cut a nut tree in his house complex then said nut tree fallen into the electric wire which was fixed from the electric department near by and said Dilip Das (42) suffering from short circuit resulting which lying their and shifted to TLM (RL) hospital where MO declared brought dead. During investigation self collected PM. Report from the Mo Dr. Nilpadnini D/Barma where opined that cause of death of Dilip Das due to cardio respiratory failure by the electric shock which is suicidal in nature. During investigation there is nothing and foul play behind his dead."

With the final report dated 30.10.2009, the investigation as to the unnatural death's case has come to an end.

3. The petitioner without filing any suit under the Fatal Accident Act, has approached this court and that approach has been made obviously after the period of limitation. It cannot be denied that in appropriate cases this court can exercise its jurisdiction under Article 226 of the Constitution of India for determining and declaring tortious liability. Such order under the jurisdiction of Article 226 of the Constitution can only be made when the facts are not disputed.

4. Against the petitioner's claim, the respondent No.2, the State of Tripura, has submitted that the death has taken place for negligence of the deceased as he went on for cutting trees without asking the Tripura State Electricity Corporation Ltd., for short 'TSECL', for shutting down the electricity supply in the HT line. As a result, when he felled the tree, it got suspended over the live HT line, causing short circuit and he was found dead when was brought to the Teliamura hospital. It has been stoutly urged that the state cannot be made liable for such death in any manner. Similarly, the TSECL, by filing an affidavit, has contended that before cutting the tree near the live electric

line the deceased Dilip Das did not ask for shutting down the line to the TSECL or to any of its officer.

5. Even the Union of India has filed the counter-affidavit only for a limited purpose to show that the Union of India is not a necessary party in the matter as neither the HT line nor the management thereof in any manner is connected to the respondent No.1.

6. By filing a separate affidavit-in-opposition, the North Eastern Electric Power Corporation Ltd., for short 'NEEPCO Ltd.', has categorically stated that the Power Grid and the NEEPCO Ltd. are two separate corporations having different entities and they are not in the control and management of the electric transmission or distribution of HT line in the Teliamura region where the accident took place and as such they are also not a necessary party as in no way they do have any involvement with the management of the HT line.

7. Mr. K. Roy, learned counsel, to support the case of the petitioner, has referred to a decision of the apex court in **M.P. Electricity Board Vs. Shail Kumari & Ors.**, reported in **(2002) 2 SCC 162**, where it has been held that :

14. The Privy Council has observed in Quebec Rly., Light, Heat and Power Co. Ltd. v. Vandry 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.

[Emphasis supplied]

This principle, no doubt, is applicable in a case where the strict liability as enunciated in the celebrated case of **Rylands vs. Fletcher**, reported in **(1868) 3 HL 330 : (1861-73) ALL ER Rep 1** is relevant.

8. From the other side, Mr. G.S. Bhattacharji, learned counsel appearing for the respondent No.2, placing a previous decision of the apex court in **Chairman, Grid Corporation of Orissa Ltd. (GRIDCO) & Ors. Vs. Sukamani Das & Anr.**, reported in **(1999) 7 SCC 298**, has submitted that in exercise of power under Article 226 of the Constitution of India similar cases should not be adjudicated by the High Court. In **Chairman, Grid Corporation of Orissa Ltd. (GRIDCO) & Ors. Vs. Sukamani Das & Anr.**, it has been succinctly observed that :

"The High Court went wrong in proceeding on the basis that as the deaths had taken place because of electrocution as a result of the deceased coming into contact with snapped live wires of

the electric transmission lines of the appellants, that "admittedly prima facie amounted to negligence on the part of the appellants". The High Court failed to appreciate that all these cases were actions in tort and negligence was required to be established firstly by the claimants. Mere fact that the wire of the electric transmission line belonging to the appellant No. 1 had snapped and the deceased had come into contact with it and had died was not by itself sufficient for awarding compensation. It also required to be examined whether the wire had snapped as a result of any negligence of the appellants and under which circumstances the deceased had come into contact with the wire. In view of the specific defences raised by the appellants in each of these cases they deserved an opportunity to prove that proper care and precautions were taken in maintaining the transmission lines and yet the wires had snapped because of circumstances beyond their control or unauthorised intervention of third parties or that the deceased had not died in the manner stated by the petitioners. These questions could not have been decided properly on the basis of affidavits only. It is the settled legal position that where disputed questions of facts are involved a petition under Article 226 of the Constitution is not a proper remedy. The High Court has not and could not have held that the disputes in these cases were raised for the sake of raising them and that there was no substance therein. The High Court should have directed the writ petitioners to approach the Civil Court as it was done in OJC No. 5229 of 1995."

[Emphasis supplied]

9. In response thereto, Mr. Roy, learned counsel appearing for the petitioner has referred to a decision of the Gauhati High Court in **State of Manipur & Ors. Vs. Hurilung Kamei**, reported in **(2010) 6 GLR 858**, where the Gauhati High Court having referred to the decision rendered in **Chairman,**

Grid Corporation of Orissa Ltd. (GRIDCO) & Ors. Vs. Sukamani Das & Anr., has transcended beyond the restrictions. The apex court in **M.P. Electricity Board Vs. Shail Kumari & Ors.** has further held that :

"The State Electricity Board is liable to pay compensation in connection with the death of a person due to electrocution arising out of any negligence or carelessness on the part of the Board on the principle of strict liability. In the said case, a live wire snapped and fell on the public road which was partially inundated with rainwater. Not noticing that wire, a cyclist, while returning home at night, rode over the wire which twitched and snatched him and he was instantaneously electrocuted. The claim for damages made by the dependants of the deceased was resisted by the appellant State Electricity Board on the ground that the electrocution was due to a clandestine pilferage committed by a stranger unauthorisedly siphoning the electric energy from the supply line. The High Court directed the Board to pay compensation of Rs. 4.34 lakhs to the claimants. While dealing with the appeal filed against the Chairman against the decision of the High Court, the hon'ble Supreme Court held at paragraph Nos. 7 and 8 as follows:

"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 lookout 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."

[Emphasis supplied]

The rule of strict liability has been followed in India in many earlier decisions. The apex court has applied the said rule of strict liability as propounded in **Rylands v. Fletcher** even under the jurisdiction conferred by Article 226 of the Constitution of India where the negligence has been established.

10. In this case, in the considered opinion of this court, the principle of strict liability cannot have any role, inasmuch as no negligence against the TSECL neither has been pleaded nor has been established in this petition. As such, the decision referred by Mr. Roy, learned counsel is of no assistance in support of the claim of the petitioner. Apart that, on scrutiny of the documents attached to the writ petition, this court is unable to find out any negligence. Even any infringement of Article 21 of the Constitution of India can be located for purpose of granting the compensation under the public law remedy. However, a letter has been enclosed with the writ petition to show that the NEEPCO Ltd. was approached for shifting the HT lines, but the NEEPCO Ltd. was not the proper authority. As such, even the NEEPCO Ltd. cannot be made liable for the said unfortunate death occurred to the husband of the petitioner.

11. Having regard to all these aspects and for complete absence of negligence, the authority in-charge of the transmission, cannot be held responsible for negligence and in absence of any direct lapse of the authority responsible for the transmission, the strict liability principle cannot also be applied in the case and hence this writ petition being devoid of merit is dismissed.

12. However, before parting with the records, this court being also the court of equity, directs the respondents No. 3 and 5 to give a sum of ₹1,00,000 (rupees one lakh) to the petitioner for the death of her husband as it is a known fact that the ordinary persons even though can apprehend danger but always cannot be expected of exercising due and adequate caution. When the High Tension line is drawn up over the homestead land of someone anything untoward may occur even though there is no negligence. On the humanitarian consideration, the Corporation owes responsibility to make good a part of the damage the family has suffered. The said amount of ₹1,00,000 be paid within a period of 3(three) months from today. If not paid within the stipulated period that would carry interest @ 12% per annum till the exgratia amount be paid.

13. In the result, this writ petition is dismissed, subject to the direction of payment of exgratia. There shall be no order as to costs.

A copy of this order be furnished to Mr. A. Sengupta, learned counsel appearing for the respondents No. 3 and 5 for onward transmission.

JUDGE

ROY/Dipesh