

CWP No.4715 of 2016

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No.4715 of 2016
Date of decision:07.12.2016**

Rita Sharma

...Petitioner

Versus

Dakshin Haryana Bijli Vitran Nigam and another

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Vikas Bishnoi, Advocate,
for the petitioner.

Mr. Abhilaksh Grover, Advocate,
for respondents No.1 and 2.

Rakesh Kumar Jain, J.

The petitioner has challenged the order of the Permanent Lok Adalat (Public Utility Services), Hisar, dated 27.01.2016 by which application filed by the petitioner under Section 22-C of the Legal Services Authority Act, 1987 (hereinafter referred to as the "Act") has been dismissed.

The brief facts of the case are that the petitioner was a minor when she got electrocuted on 16.03.2013 while playing on the roof of her uncle's house where there were high voltage wires passing on the roof. She was shifted to Soni Burn and Plastic Surgery Hospital, Hisar, where she remained admitted from 16.03.2013 to 22.03.2013 and, thereafter, was

shifted to Maharaja Agarsain Medical College, Agroha, where she remained admitted till 23.03.2013. A rukka was sent to the Police Station, Agroha on which police came to the Medical College but statement of the petitioner could not be recorded as she was semi-conscious and, thereafter, shifted to Malik Nursing Home, Balsmand Road, Hisar where she remained admitted from 23.03.2013 to 10.04.2013 and again admitted on 12.04.2013 till 26.04.2013. Ultimately, the doctor amputated her right upper limb from mid forearm to save her life, for which the petitioner had to spend ₹4 lacs on her treatment, medicine, operation, transportation and special diet etc. and she became permanently disabled. She has also arranged the artificial limb from foreign country on which it is stated that father of the petitioner had to spend ₹2 lacs. A DDR No.37 dated 07.04.2013 was also lodged in the Police Station Agroha. Since the respondents did not pay compensation to the petitioner, therefore, she filed the application before the Permanent Lok Adalat for awarding ₹10 lacs to her on account of permanent disability with interest besides the compensation for mental agony and harassment. Since the parties failed to resolve the dispute amicably, therefore, they were given opportunity by the Permanent Lok Adalat to lead evidence on the issues framed by it and the application of the petitioner was dismissed only on the ground that the petitioner could not prove negligence of the respondents, however, the finding is recorded that the petitioner was electrocuted and suffered injuries.

Aggrieved against the said order, the present petition has been filed in which counsel for the petitioner has submitted that the petitioner

deserves to be compensated on account of her permanent disability, treatment expenses, mental pain and agony etc. and has relied upon two decisions of this Court in the cases of **Raman vs. State of Haryana and others**, CWP No.14046 of 2012, decided on 02.07.2013 and **Sharmita and others vs. State of Haryana and others**, CWP No.10115 of 2014, decided on 15.03.2016. It is submitted that the strict liability is not required to be proved and has referred to the finding recorded in **Raman's case (supra)**, which are reproduced as under:-

“6. That upholding the principle of “strict liability” and consequential negligence in awarding compensation for breach of statutory duties/obligations on the part of State Electricity Boards, the Apex Court and the High Courts of Madras, Madhya Pradesh, Orrisa, Kerala and Gujarat have awarded compensation to victims in writ/appellate jurisdiction by holding that electricity authorities are duty bound to observe precautions/safeguards under the provisions of the Indian Electricity Act, 2003 (previously the Indian Electricity Act 1910, the Electricity Supply Act, 1948 and the Rules made thereunder). Failure of such statutory functions/duties tantamounting to negligence cannot be overcome by alleged statutory obligations on the part of the consumer of electricity. Electrocuting by live wires necessitates “Strict liability” and differs from liability arising on account of negligence and is not relevant in cases of “Strict liability”. Thus, electricity authorities are liable irrespective of whether the harm could have been avoided by the consumer taking precautions. The following judgments granting compensation for injuries/loss of life caused on account of mishaps arising out of electrocution and liability arising under the statutory enactments quoted above, are cited hereunder in support of the above settled principles of law:

- a. Madhya Pradesh Electricity Board Vs Shail Kumari AIR 2002 SC 551
- b. N.Nizhalkodi Vs The Chairman TNEB./W.P. (MD) No.6634 of 2007 decided on 16.08.2012 – S.B. of Madras

High Court

- c. A.Subramani Vs Tamil Nadu Electricity Board, W.P. (MD)
No. 14011 of 2010 decided on 23.02.2012 – S.B. of
Madras High Court
- d. Ramesh Singh Pawar Vs M.P. Electricity Board and others,
AIR 2005 MP 2
- e. A.Krishna Patra Vs Orissa State Electricity Board, AIR
1997 Ori 109
- f. The Kerala State Electricity Board Vs Suresh Kumar, AIR
1986 Ker 72
- g. Patel Maganbhai Bapujibhai Vs Patel Ishwarbhai Motibhai,
AIR 1984 Guj 69”

“That in the afore-stated situation, the settled position of law indicates that the rule of strict liability and the theory foreseeable risk makes the electricity authorities primarily liable to compensate the sufferer. So long as the voltage of electricity transmitted through the wires is potentially of dangerous dimensions, the managers of its supply have the added duty to take all safety measures to prevent escape of such energy which causes electrocution. Thus, it is the statutory obligation, duty and responsibility of the electricity authorities to provide safety and protective devices for rendering safeguards and failure to do so entails award of compensation on account of any mishap which occurs by lack of safeguards.”

He has also submitted that in **Sharmita's case (supra)**, the following arguments have been raised coupled with the observations made by this Court:-

Arguments

“Learned counsel for the petitioners has submitted that even if the respondents are not absolutely negligent, still they are liable to pay compensation and has relied upon a decision of the Supreme Court in the case of “Madhya Pradesh Electricity Board Vs. Shail Kumari” 2002 (1) RCR (Criminal) 433. He further relied upon a Division Bench judgment of this Court in the case of “Paramjit Kaur and others Vs. State of Punjab and others” 2008(4) RCR (Civil) 772.”

Observations

“It is not disputed that the house in question does not belong to the deceased rather he was living in that house as a tenant. The height of the wire is very low as it is shown in the photograph, which was reasonably a cause of electrocution of the petitioner, who alleged to have accidentally touched the wire and expired. Thus, in the given facts and circumstances, I hold the respondents liable for compensating the petitioners for the death of Amit Kumar.”

On the other hand, the only argument raised by the respondents is that the negligence of the respondents has not been proved rather the petitioner herself was negligent, therefore, the respondents are not liable to pay any amount.

I have heard learned counsel for the parties and perused the available record.

The petitioner in this case is a girl, aged about 13 years, who was studying in 8th class. She was playing on the roof of her uncle's house when she came in contact with the live electricity wires of 11 KV and suffered massive burn injuries resulting in amputation of her hand and other injuries. The Permanent Lok Adalat has observed that there is no evidence as to how the petitioner got electrocuted but at the same time, the finding has been recorded that the injuries has been suffered by the petitioner due to electrocution. The petitioner had stated that she was playing on the roof with her friends and felt attracted towards the wire and got electrocuted. She had also stated that there was an iron grill where she was standing but her statement has been rejected on the ground that there were other children also but nobody else get attracted towards the high voltage wires.

Be that as it may, the fact remains that the petitioner has been

electrocuted and as stated by her, there was an iron grill above which the electric wires were passing and she suffered an electric shock. In **Raman's case (supra)**, this Court has held that so long as the voltage of electricity transmitted through the wires is potentially of dangerous dimensions, the managers of its supply have the added duty to take all safety measures to prevent escape of such energy which causes electrocution.

Similarly, in **Sharmita's case (supra)**, while referring to the decision of Supreme Court in the case of **Madhya Pradesh Electricity Board vs. Shail Kumari**, 2002(1) RCR (Criminal) 433, it has been held that even if the respondents are not absolutely negligent, still they are liable to pay compensation.

Consequently, I am of the considered opinion that the petitioner deserves to be compensated by the respondents and for that matter, they are directed to pay ₹15 lacs as compensation to the petitioner which would include her hospitalization charges, operation, so long treatment, diet, transportation, care-taking, mental pain and agony, future prospectus and element of disability. Since she was a 13 years old girl at the time of electrocution and is to be rehabilitated, therefore, the amount of ₹10 lacs to be paid by the respondents shall be deposited in the FDR in the name of the petitioner and the remaining amount of ₹5 lacs shall be paid to her father, who has allegedly incurred expenses on her treatment and other heads. The petitioner shall be entitled to withdraw the interest accrued on the FDR. After attaining the age of majority, the petitioner may make an application to the respondents-department for the purpose of job according

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to her qualification, which shall be considered objectively and sympathetically and in case the petitioner is found suitable and eligible, they would also offer job to her so that she may not feel dependent and handicapped in her life because of the aforesaid incident and can be rehabilitated permanently with the financial security.

Disposed of.

December 07, 2016
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(Rakesh Kumar Jain)
Judge

Whether speaking / reasoned:	Yes/No
Whether Reportable:	Yes/No