

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 01.11.2017****RSA No.3173 of 1999 (O&M)**

Jai Bhagwan etc.

...Appellants

Vs.

Haryana State Electricity Board etc.

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: None for the appellants.

Mr. Pardeep Rajput, Advocate,
for respondent No.1.**RAJIV NARAIN RAINA, J. (ORAL)**

The Haryana State Electricity Board (presently converted into Nigam) is under tortuous, vicarious, statutory and strict liability arising from culpable negligence in keeping its electrical transmission wires harmless at all times and if an innocent party without notice of danger came into contact with live broken wire lying on a field and died as a result of electrocution, then negligence is established per se for which no special evidence is required in proof whereof so long as the occurrence is admitted. On accident by electrocution; See case Raman Vs. State of Haryana and others, 2013 (3) R.C.R (Criminal) 653: 2013 (4) R.C.R (Civil) 425, wherein I considered a plea of compensation for a child who suffered triple amputation, while exhaustively dealing with the relevant provisions of Section 68 of the Indian Electricity Act, 2003 and Rule 91 of the Electricity Rules, 1956 which lay down the procedure of safety and protective devices to be provided for

overhead electric lines erected over any part of the street or public place or any consumer's premises and mandate that those shall be protected with a device approved by the Inspector for rendering the line electrically harmless in case it breaks and endangers man. The judgment in *Raman*'s case stands approved (with slight modification of one direction) by the Supreme Court in case Raman Vs. Uttar Haryana Bijli Vitran Nigam Ltd. reported in (2014) 15 SCC 1. The law is clearly in favour of the appellants in a case involving the successor-in-interest of the present respondent Board, the Nigam.

The Civil Judge (Junior Division), Gurgaon (name changed Gurugram) dismissed the suit for damages filed by the husband and four minor children recording a finding that there was no negligence or carelessness on the part of the defendants (Nigam) vide judgment and decree dated 23.04.1997 dismissing the suit. However, in appeal, the learned District Judge has reversed the findings on negligence in favour of the plaintiffs, but has restricted the amount of damages from the claimed amount of ₹2,00,000/- to ₹60,000/- i.e. ₹20,000/- to plaintiff No.1 (husband) and ₹10,000/- each to plaintiffs No.2 to 5 (minor children) without assigning any reason or disclosing the method adopted for such meager quantification. The District Judge, Gurgaon in appeal should not have assumed that reasonable amount claimed should suffer some cut if only to justify the order. Accordingly, I am of the considered view that the award of compensation to the tune of ₹60,000/- to all the plaintiffs is based on *ipse dixit* and any judgment rendered according to *ipse dixit* is not legally sustainable.

The District Judge recorded that pecuniary loss to the family on account of death of Bala would be the loss of services that deceased provided to them gratuitously. The District Judge even recorded that the

contribution of the deceased to the household affairs and even rendering help to her husband in looking after his land cannot be ignored. Therefore, the case is not only of pecuniary loss, but also of un-liquidated/non-pecuniary damages and the District Judge acted miserly and not researching sound principles to rest adequate and just compensation and I find no reason whatsoever that in such a major catastrophe that fell suddenly upon the family to uphold the decretal amount and instead why should not a higher amount beyond the claimed amount of ₹2,00,000/- as compensation for the death of Smt. Bala by electrocution deserves to be maintained.

The deceased was just 32 years old at the time of death on coming into contact with overhead electrical wires which had snapped and fallen to the earth. She left behind minor children to be ever deprived of the love's labour of a mother. The death occurred on 17.09.1993. The plight of the minor children and the husband is immeasurable and, therefore, in exercise of power under Order 41 Rule 33 of the CPC, I enhance the amount of compensation even beyond the amount claimed as appears to be justified even by analogy drawn from the law in the Motor Vehicles Act, 1988 and the Consumer Protection Act, 1996 that Courts can award amounts higher than claimed in case it is found just and adequate to so do in the interest of justice but "The embargo is, it should be "just" compensation, that is to say, it should be neither arbitrary, fanciful nor unjustifiable from the evidence" [See *inter alia* ruling of the Supreme Court in Nagappa Vs. Gurudayal, (2003) 2 SCC 274]. See also Laxman Vs. Oriental Insurance Company Ltd, (2011) 10 SCC 756; Ibrahim Vs. Raju, (2011) 10 SCC 634 and Balram Prasad Vs. Kunal Saha, (2014) 1 SCC 384.

Accordingly, while upholding the findings of the District Judge on negligence, the instant appeal is partly allowed. The decree is modified and the damages are enhanced from ₹60,000/- to ₹ 2,00,000/- (claimed) and still; further to ₹5,00,000/- as just and reasonable compensation representing ₹1,00,000/- each to the five surviving members of the family. Since a consolidated payment has been awarded by this Court, it would not be proper to run interest on the awarded amount over and above the decretal amount, which will be treated as a lump sum compensation amount. In case any of the appellants are no more, then their share will be distributed inter vivos.

Office to prepare decree as per this order.

The modified amount shall be deposited by the Nigam – respondent No.1 before the Executing Court / Civil Judge (Junior Division), Gurugram within two months from the date of receipt of certified copy of this order.

Since no one has appeared on behalf of the appellants, a copy of this order shall be sent by the office to them at their address in the memorandum of appeal i.e. Village Wazirabad, Tehsil & District Gurugram.

The executing court shall send compliance report of service of this order on the appellants.

If the amount decreed by the Court of first appeal has been disbursed, that is, ₹60,000/-, that amount will be deducted/adjusted from the amount enhanced by this order. If the amount of ₹60,000/- is not paid so far, then this amount will carry interest at the rate of 9% p.a. from the date of the filing of the suit till realization.

Demand/requirement, if any, made by revenue by way of additional court fee on the enhanced damages/compensation is excused, and appeal is decided on the amount affixed to serve the ends of justice as the appellants may have no means to pay.

01.11.2017
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>