

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

RSA No.5163 of 2017 (O&M)

Date of Decision: April 17, 2018

Chairman PSPCL and others

...Appellant

Versus

Ms. Dia

...Respondents

CORAM:- HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr.S.P.S.Tinna, Advocate for
the appellant.

HARINDER SINGH SIDHU, J.

This regular second appeal has been filed against the decision of the courts below, whereby, the suit of the plaintiff-respondent for damages and compensation has been decreed.

The plaintiff who is a minor had filed a suit through her father/natural guardian for damages and compensation against the defendant-appellant (Corporation). The case set up in the plaint was that on 2.7.2011 the plaintiff (who was about three years old then) came in contact with a wire on the parapet wall of the roof of her house through which 11000 voltage current was flowing because of which she suffered serious injuries. She was admitted to Amandeep Hospital, Amritsar where she underwent multiple surgeries including of the abdomen, the toe of her right foot etc. Her right hand was amputated at mid-palm level. A lot of expense was incurred for her treatment. It was pleaded in the suit that earlier also a

number of persons had sustained injuries on account of the negligent action

of the Corporation in letting the 11000 volt wires lie close to the residential houses without proper protection and the repeated requests of the residents to the Corporation authorities to remove them had yielded no result. The tragic incident led to a hue and cry. It was reported in the press compelling the defendants to sanction an amount of Rs.70,000/- as compensation to the plaintiff in August 2013.

The case of the Corporation was that the electric lines had been installed much earlier and the construction had been raised later illegally without permission. Further, the SDO of the department had vide its memo No.449 dated 9.3.2005 requested the father of the plaintiff to remove the construction raised by him near the LT lines as any mishap could occur. He was also warned by this letter that in case he failed to remove the construction from near the LT line, the Corporation would not be responsible for any accident. Accordingly, contending that the house had been constructed after the laying of the electric lines and that the construction had not been removed despite a request warning him about the dangers, it was contended that the Corporation was in no way responsible for the accident and was not liable to pay any compensation or damages.

To prove the injuries and the treatment, the plaintiff examined Ramesh Chopra, Manager Blood Bank Adlakha Hospital, Amritsar as PW1 who deposed regarding the blood given from the blood bank for the treatment of the plaintiff. Dr. Ravi Mahajan HoD Plastic Surgery, Amandeep Hospital, Amritsar (PW2) deposed regarding the treatment of the plaintiff for electric burn injuries. He stated that the plaintiff had been admitted initially on 2.7.2011. She was again admitted on 31.7.2011 and

discharged on 30.8.2011. She was once again admitted on 1.4.2013 and discharged on 26.4.2013. He proved the medical treatment record. The medical bills were proved by PW3 Lakhbir Singh of Apollo Pharmacy, Amandeep Hosptial, Amritsar. Dharam Singh Assistant Professor, Ortho Department, Guru Nanak Dev Hospital, Amritsar proved her disability certificate Ex. PW5/1 as per which her disability is 55%. PW6 ASI Janak Raj proved the inquiry report Ex. PW6/1 regarding the incident. In the inquiry, it was found that in the vicinity of Preet Nagar, 11000 voltage electric wires were crossing. The street is narrow. On 2.11.2011 when the father of the plaintiff was not at home, the plaintiff Dia who was about 3 years of age was playing on the roof of her house. Suddenly, her hand came in contact with electric wire and she sustained burn injuries. She remained admitted in Amandeep Hospital, Amritsar. Due to the injuries her right hand had to be amputated. The left hand is also not working properly. She also received burn injuries on her stomach. One toe of her right foot is also not working properly.

In order to prove its case, the defendant had examined Dinesh Gupta SDO, Technical, PSPCL East Sub Division, Batala Road, Amritsar as DW1 who deposed as per the plea of the defendants and tried to prove the letter dated 9.3.2005 allegedly sent by the defendants to the father of the plaintiff to remove the construction from near the LT lines. The Ld. Trial Court, however, held that the said letter could not be relied upon as it had not been proved in accordance with the provisions of the Evidence Act. The said document had not been exhibited by the defendants. Further DW1 had not stated that the letter was issued under the signatures of the Assistant

Executive Engineer. Nor had he identified the signatures of the Assistant Executive Engineer on the said letter. The Trial Court concluded that it had been proved on record that the accident had occurred due to the negligence of the defendants in not taking proper precautions to avoid such a mishap. The defendants were held liable to pay Rs.10 lakh as compensation to the plaintiff.

Against the order of the Ld. Trial Court, the defendants filed an appeal. The plaintiff filed cross objections claiming that the compensation awarded was inadequate. The Ld. Lower Appellate Court dismissed the appeal of the defendants. However, the compensation was enhanced from Rs.10 lakh to Rs.20 lakh.

Regarding the letter dated 9.3.2005 relied on by the defendants, the Ld. Lower Appellate Court held that the defendants had failed to prove that it was ever written. The original of the letter had not been produced. Also there is no postal receipt of its having been dispatched to the plaintiffs.

Sh. Surinder Pal Singh Tinna, Ld. Counsel for the appellant while not seriously disputing the injuries sustained and the quantum of damages/ compensation contended that the Courts below have seriously erred in not giving due weight to the fact that there was an element of contributory negligence on the part of the plaintiff/ her guardians. The wires had been installed before the construction. It was much later that the construction was raised illegally and without permission by the father of the plaintiff who had also been issued a memo dated 9.3.2005 requiring him to remove the construction and warning him that he would be responsible for any mishap.

construction as required the mishap would not have occurred. An application under Order 41 Rule 27 CPC for allowing the appellant to produce the copy of the letter dated 9.3.2005 by way of secondary evidence has also been filed.

Having heard Ld. Counsel for appellant, I feel there is no merit in the appeal. The Ld. Courts below after due appreciation of evidence have come to the conclusion that the injuries were sustained by the plaintiff on coming into contact with the 11000 voltage electric wire passing over the roof of the house. The damages have been awarded keeping in view the nature and extent of injuries sustained and their impact on the future life of the plaintiff.

The only question to be addressed is whether there is ground to hold that there was any element of contributory negligence on the part of the plaintiff/ her father either on account of the construction having been raised disregarding the overhead electric wires already existing or for their failure to remove the construction despite a notice issued by the appellant requiring that the construction be removed (assuming that such a notice was sent, even though it has not been proved)?

This question has already been considered by this Court earlier in different cases and answered in the negative.

Abshish @ Tanu Vs. Punjab State Electricity Board and others 2012(5) RCR (Civil) 935, was a similar case where a writ petition was filed claiming compensation for the injuries sustained by the petitioner therein on coming into contact with a live electric wire. The petitioner was a minor aged about 7 years. While playing on the roof of his house he came

in contact with electric wires that resulted in serious burn injuries to him. His left hand was amputated from the shoulder and all his toes were also amputated. There was also serious cosmetic disfigurement on his leg and a partial bend resulting in arc of the left leg. The defence of the Electricity Board was that the high tension wires had been drawn several years prior to the construction of the house and the proximity of the high tension wires was the result of a building violation by putting up a construction without sanction from the local body. The defence thus was that the accident was not the result of any negligence on the part of the Board but was on account of the illegal construction made by the petitioner's father or his predecessor.

Rejecting this defence the Court observed as under:

“6. It is not denied that the electrical installations were there from the year 1971. The contention from the respondent is that the petitioner's construction is unauthorized but apart from giving details that the purchase was made by the petitioner's father and the relatives in October, 1993 and that the respective vendors had purchased the property on 05.03.1981 and that they had been construction even from the year 1981, no attempt is made to show that any sanction had been obtained for the construction in the place where the building exists. I will not take this to be very serious as it is not a new construction. Admittedly the place of accident was a mixed zone where there was also permission for residential living as well as location of industries. As a matter of fact, at the ground floor, the petitioner's father has a factory and the residential accommodation is at the first floor. The contention on behalf of the Electricity Board is that the petitioner's father has extended the construction at the first floor unauthorizedly closer to the electric wire and has thus brought a situation of inviting a danger. A tortious claim for damages according to the counsel, will arise only in respect of breach of duty or want of negligence in a situation where the defendants had a duty towards the plaintiff which was breached by negligence on the part of the defendants. According to him, the Electricity Board would owes no duty to remove the installation far away from the construction which was illegally made.

IV. Greater degree of care cast against persons installing or managing inherently dangerous installation; Duty to remove construction proximate to live wires

7. An electrical installation is so made that could cause danger to any member of the public. It is normally kept at a reasonable distance to ensure that there is no harm caused to any person or to any member of the public, who has a right to live in the property of which he is the owner or a person who is authorised to stay in the property. There are enough

provisions under the Electricity Act that allow for removal of any construction dangerous to the electrical installations and the police powers extend to even demolition and removal of existing construction. Section 18(3) of the Indian Electricity Act, 1910 allows the Electricity Board or its licensee to have the obstruction or interference to existing electrical installation at the instance of any person by electrocution or otherwise to be removed by Magistrate of the First Class, or in a Presidency town by the application of the licensee. Rule 29 of the Indian Electricity Rules, 1956 mandates that all electric supply lines and apparatus shall be constructed, installed, protected, worked and maintained in such a manner as to ensure safety of human beings, animals and property. The power of removal of constructions extends to even authorised construction but the only liability in case of necessity for removal of any such authorised construction would be that the Electricity Board would have to pay compensation and if there exists a dispute, the owner could invoke the mechanism provided under the Electricity Act of 1910, since repealed but which was in force at that time. It could thus be noticed that there is a need for Electricity Board to ensure that none of their installations pose a threat to any person of public.

8. *Shri Gurcharan Dass, learned counsel appearing for the petitioner argued that as the accident was a direct result of inaction, negligence and violation of statutory rules by the respondent Board, petitioner is entitled for compensation. Referring to the provisions of Rules 29, 44 and 46 of the Indian Electricity Rules and the various provisions of the Electricity Act, 1910, it was submitted by Shri Dass, learned counsel for the petitioner that the respondent Board having failed to discharge its statutory duty in following the safety measures and procedure contemplated for maintenance of electric lines and the poles, they are responsible for the accident and, therefore, compensation is liable to be paid. The Supreme Court has held in **M.P. Electricity Board v. Shail Kumari (2002) 2 SCC 162** that "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. In **Ramesh Singh Pawar v. M.P. Electricity Board and others, AIR 2005 Madhya Pradesh 2**, the Madhya Pradesh High Court referred through the relevant provisions of Electricity Act, 1910 to hold thus:*

"Under the Indian Electricity Act, 1910, the Electricity Supply Act and Electricity Rule and in particular provisions of Rules 29, 44, 45 and 46 the Board is required to conduct periodical inspection of the lines maintained by them, Board is required to take all such safety measures to prevent such accident and maintain the lines in such a manner that life and property of the general public is protected. The Board is duty bound to carry out activities in such a manner that safety and security provisions are enforced in accordance with the statutory rules. In the present case except for making denials of the claim made by the petitioner, respondents/Board has not produced any document, affidavit or other material to indicate or establish that in the present case they had taken steps to prevent such a mishap."

9. *In **Manohar Lal Sobha Ram Gupta v. M.P. Electricity Board, 1975 ACJ 494**, the High Court held that it was negligence to omit to use all reasonable means to keep electricity from harming a person. The standard of care required was held to be high owing to the inherently dangerous*

*nature of electricity and the burden of proving that there was no negligence was on the authorities. The principle was reiterated in **Angoori Devi v. Municipal Corporation, Delhi, AIR 1998 Delhi 305** and in **Padma Behari v. Orissa State Electricity Board, AIR 1992 Orissa 68** wherein it was held that the Electricity Board was guilty of negligence as due care and caution was not taken by it for maintenance of the electric wires no preventive action was taken to disconnect the power line even after the detachment of the live wire from the electric pole.*

10. The Electricity Board was at all times apprised of the danger that was involved in the location of its electrical installation. A public authority owes a duty to the public that its act or installations are such that they do not cause any danger to life and property of its citizens. The onus is on respondents that even an unwary or a negligent child does not come to harm by their installations in a public place. Indeed the expression of a negligent child should itself be discarded, for a child is entitled to such act as it might indulge in when it has not the age of discretion. We apply the logic of negligence only in a situation where a person understands that there is a danger lurking in the corner and he does an act unmindful of such danger or invites upon himself through an act that could be dangerous. These aspects ought to be irrelevant for a child. The Electricity Board's duty of care shall extend to provide for safety mechanism that will dispel harm even for an act of child. Accidents do take place involving children and in all such situations, Courts have always leaned in favour of minor children to protect their interests that are asserted on their behalf and look for proof to see whether the cause for harm could have been quelled by the person, who had control over the device which had contributed to the harm by exercise of adequate care. I would, therefore, hold that the Electricity Board was negligent by not responding to the prayers of the petitioner's father and the Mohalla Committee by not securing its installation free of the danger. Ultimately it so happened that the Electricity Board has relented and shifted to a distance of 0.54 meters after the accident."

It was held that there were effective provisions under the Electricity Act that permitted the removal of any construction dangerous to the electrical installations. The provisions enabled even demolition and removal of existing construction. Hence, the mere fact that the construction was raised later or was illegal was held not to be a valid defence.

The question was again considered in great detail in **Raman v. State of Haryana 2013(3) RCR(Criminal) 653 (P&H)**. In this case, a four year old child Raman on coming into contact with a naked 11KV transmission line passing over the roof of his father's house built in village

Sanoli Khurd, District Panipat suffered serious injuries. It resulted in triple amputation of the limbs, a condition which the Court found to be even worse than 100% permanent disability. The stand of the respondent Board was that the 11KV transmission line had been erected and installed three decades earlier. It was then passing over agricultural fields. Over a period of time, people raised construction outside the *abadi deh* or *lal lakir* of the village. The petitioner's father had also constructed a house for his family where the unfortunate incident happened.

The Court first considered in detail the statutory provisions which impose a duty of care on the Corporation.

“17. The first issue which arises for consideration is as to the duty of care cast on the respondent Nigam-Licensee of the State in maintaining transmission lines which is owner and the supplier of electricity under the Electricity Act, 2003 (for short 'the Act'). Section 68 of the Act contains provisions relating to overhead lines that carry live electrical energy. The provision stipulates that an overhead line shall, with the approval of the appropriate Government, be installed or kept installed above ground, in accordance with the provisions of Section 68(2) of the Act. Section 68 gives authority to a District Magistrate to remove trees, structures or objects near an overhead line. The Electricity Board/Nigam should be thus vigilant for maintenance of live electrical lines at all times. Section 68 of the Act reads as follows :-

"68.(1) An overhead line shall, with prior approval of the Appropriate Government, be installed or kept installed above ground in accordance with the provisions of sub-section (2).

2. The provisions contained in sub-section (1) shall not apply -

(a) in relation to an electric line which has a nominal voltage not exceeding 11 kilovolts and is used or intended to be used for supplying to a single consumer;

(b) in relation to so much of an electric line as is or will be within premises in the occupation or control of the person responsible for its installation; or

(c) in such other cases as may be prescribed.

(3) The Appropriate Government shall, while granting approval under sub-section (1), impose such conditions (including conditions as to the ownership and operation of the line) as appear to it to be necessary

(4) The Appropriate Government may vary or revoke the approval at any time after the end of such period as may be stipulated in the approval granted by it.

(5) Where any tree standing or lying near an overhead line or where any structure or other object which has been placed or has fallen near an overhead line subsequent to the placing of such line,

interrupts or interferes with, or is likely to interrupt or interfere with, the conveyance or transmission of electricity or the to interrupt or interfere with, the conveyance or transmission of electricity or the accessibility of any works, an Executive Magistrate or authority specified by the Appropriate Government may, on the application of the licensee, cause the tree, structure or object to be removed or otherwise dealt with as he or it thinks fit.

(6) When disposing of an application under sub-section (5), an Executive Magistrate or authority specified under that sub-section shall, in the case of any tree in existence before the placing of the overhead line, award to the person interested in the tree such compensation as he thinks reasonable, and such person may recover the same from the licensee.

Explanation. - For purposes of this section, the expression "tree" shall be deemed to include any shrub, hedge, jungle growth or other plant."

18. Rule 91 of the Electricity Rules 1956 (for short "the Rules") lays down the procedure of Safety and Protective Devices of overhead electric lines erected over any part of a street or other public place or any consumer's premises and mandates that those shall be protected with a device approved by the Inspector for rendering the line electrically harmless in case it breaks. These safeguards are required to be provided by Electricity authorities statutorily. Rule 91 reads as under :-

"91. Safety and protective devices :- (1) Every overhead line, (not being suspended from a dead bearer wire and not being covered with insulating material and not being a trolley-wire) erected over any part of street or other public place or in any factory or mine or on any consumers' premises shall be protected with a device approved by the Inspector for rendering the line electrically harmless in case it breaks.

(2) An Inspector may by notice in writing require the owner of any such overhead line wherever it may be erected to protect it in the manner specified in sub-rule (1).

(3) The owner of every high and extra-high voltage overhead line shall make adequate arrangements to the satisfaction of the Inspector to prevent unauthorised persons from ascending any of the supports of such overhead lines which can be easily climbed upon without the help of a ladder or special appliances. Rails, reinforced cement concrete poles and pre-stressed cement concrete poles without steps, tubular poles, wooden supports without steps, I-sections and channels shall be deemed as supports which cannot be easily climbed upon for the purpose of this rule]."

19-20. Rules 29, 44, 45 and 46 of the Electricity Rules 1956 are statutory in nature and require the electricity authorities to conduct periodical inspection of lines maintained by them and are required to take all such safety measures to prevent accident and maintain the lines in such a manner that life and property of the general public is protected. The Board/Nigam is duty bound to carry out activities in such a manner that safety and security provisions are enforced in accordance with the statutory rules. The aforesaid Rules are reproduced for rapid reference :-

"29. Construction, installation, protection, operation and maintenance of electric supply lines and apparatus. - (1) All electric supply lines and apparatus shall be of sufficient ratings for power, insulation and estimated fault current and of sufficient mechanical strength, for the duty which they may be required to perform under the environmental conditions of installation, and shall be constructed, installed, protected, worked and maintained

in such a manner as to ensure safety of [human beings, animals and property].

(2) Save as otherwise provided in these rules, the relevant code of practice of the [Bureau of Indian Standards] [including National Electrical Code] if any may be followed to carry out the purposes of this rule and in the event of any inconsistency, the provision of these rules shall prevail.

(3) The material and apparatus used shall conform to the relevant specifications of the [Bureau of Indian Standards] where such specifications have already been laid down."

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44. Instructions for restoration of persons suffering from electric shock. -

(1) Instructions, in English or Hindi and the local language of the district and where Hindi is the local language, in English and Hindi for the restoration of persons suffering from electric shock, shall be affixed by the owner in a conspicuous place in every generating station, enclosed sub-station, enclosed switch-station and in every factory as defined in clause (m) of Section 2 of the Factories Act, 1948 (63 of 1948) in which electricity is used and in such other premises where electricity is used as the Inspector or any officer appointed to assist the Inspector may, by notice in writing served on the owner, direct.

(2) Copies of the instructions shall be supplied on demand by an officer or officers appointed by the Central or the State Government in this behalf at a price to be fixed by the Central or the State Government.

(3) The owner of every generating station, enclosed substation, enclosed switch-station and every factory or other premises to which this rule applies, shall ensure that all authorised persons employed by him are acquainted with and are competent to apply the instructions referred to in sub-rule (1).

(4) In every manner high voltage or extra-high voltage generating station, sub station or switch station, an artificial respirator shall be provided and kept in good working condition.

45. Precautions to be adopted by consumers, [owners, occupiers], electrical, contractors, electrical workmen and suppliers - (1) No electrical installation work, including additions, alterations, repairs and adjustments to existing installations, except such replacement of lamps, fans, fuses, switches, low voltage domestic appliances and fittings as in no way alters its capacity or character, shall be carried out upon the premises of or on behalf of any [consumer, supplier, owner or occupier] for the purpose of supply to such [consumer, supplier, owner or occupier] except by an electrical contractor licensed in this behalf by the State Government and under the direct supervision of a person holding a certificate of competency and by a person holding a permit issued or recognised by the State Government :

Provided that in the case of works executed for or on behalf of the Central Government and in the case of installations in mines, oil fields and railways, the Central Government and in other cases the State Government may, by notification in the Official Gazette, exempt, on such conditions as it may impose, any such work described therein either generally or in the case of any specific class of [consumers, suppliers, owners or occupiers] from so much of this sub-rule as requires such work to be carried out by an electrical contract licensed by the State Government in this behalf.

(2) No electrical installation work which has been carried out in contravention of sub-rule (1) shall either be energised or connected to the works of any supplier.]

46. Periodical inspection and testing of installation, - (1)(a) Where an installation is already connected to the supply system of the supplier, every such installation shall be periodically inspected and tested at intervals not exceeding five years either by the Inspector (or any officer appointed to assist the Inspector) or by the supplier as may be directed by the State Government in this behalf or (in the case of installation belonging to, or under the control of the Central Government, and in the case of installations in mines, oil fields and railways by the Central Government.

(aa) the periodical inspection and testing of high voltage and extra high voltage installations belonging to supplier, shall also be carried out at intervals not exceeding five years by the inspector or any officer appointed to assist the inspector.]

(b) Where the supplier is directed by the Central or the State Government as the case may be to inspect and test the installation he shall report on the condition of the installation to the consumer concerned in a form approved by the Inspector and shall submit a copy of such report to the Inspector or to any officer appointed to assist the Inspector and authorised under sub-rule (2) of the rule 4A.

(c) Subject to the approval of the Inspector, the forms of inspection report contained in Annexure IXA may, with such variations as the circumstances of each case require, be used for the purposes of this sub-rule.

(2)(a) The fees for such inspection and test shall be determined by the Central or the State Government, as the case may be, in the case of each class of consumers and shall be payable by the consumer in advance.

(b) In the event of the failure of any consumer to pay the fees on or before the date specified in the fee-notice, supply to the installation of such consumer shall be liable to be disconnected under the direction of the Inspector. Such disconnection, however, shall not be made by the supplier without giving to the consumer seven clear days' notice in writing of his intention so to do.

(c) In the event of the failure of the owner of any installation to rectify the defects in his installation pointed out by the Inspector or by any officer appointed to assist him and authorised under sub-rule (2) of Rule 4A in the form set out in Annexure IX and within the time indicated therein, such installation shall be liable to be disconnected [under the directions of the Inspector] after serving the owner of such installation with a notice :

Provided that the installation shall not be disconnected in case an appeal is made under rule 6 and the appellate authority has stayed the orders of disconnection:

Provided further that the time indicated in the notice shall not be less than 48 hours in any case:

Provided also that nothing contained in this clause shall have any effect on the application of rule 49.

(3) Notwithstanding the provisions of this rule, the consumer shall at all times be solely responsible for the maintenance of his installation in such condition as to be free from danger."

Having noticed the statutory provisions, the Court then approved the following formulation by the amicus Curie Mr. Anil Malhotra on the question of liability of the Corporation :

electricity matters, Mr. Malhotra's research has resulted in the following submissions and supporting case law :-

"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, Orissa, 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. Electrocution 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 v. Shail Kumari, 2002(1) R.C.R.(Criminal) 433 : AIR 2002 SC 551*
- b. N. Nizhalkodi v. The Chairman TNEB./W.P. (MD) No. 6634 of 2007 decided on 16.08.2012 - S.B. of Madras High Court*
- c. A. Subramani v. 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 v. M.P. Electricity Board and others, 2004(3) R.C.R.(Criminal) 428 : 2004(3) R.C.R.(Civil) 452 : AIR 2005 MP 2*
- e. A. Krishna Patra v. Orissa State Electricity Board, AIR 1997 Ori 109*
- f. The Kerala State Electricity Board v. Suresh Kumar, AIR 1986 Ker. 72*
- g. Patel Maganbhai Bapujibhai v. Patel Ishwarbhai Motibhai, AIR 1984 Guj. 69"*

"That in the aforesaid 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."

23. On the applicability of the settled position of law to the present case, Mr. Malhotra has the following to say :-

"8. That from a reading of the averments made in the petition, the minor child Raman was electrocuted on 03.11.2011 by the live overhead line/wire on the open roof of his house provided by respondent Nos. 1 to 4 by installing an angle iron on the roof of the house of the petitioner. This mode and method of providing electrical energy to the residential premises of the petitioner through a live overhead line/wire by installing it through an angle iron contrary to the provisions of Section 68 of the

Electricity Act, 2003, clearly establishes its flagrant violation. No precautions, safeguards, safety measures or other steps were taken to ensure that the live overhead line/wire was at a reasonable and sufficient distance to avoid human contact. Hence, by installing the live overhead line/wire and keeping it exposed clearly establishes that no measures were taken to avoid mishap by contact with the wire transmitting high voltage electrical energy. Hundred percent permanent disabilities have been suffered by the minor 4 year old child on this count. 9. That in the aforesaid situation, applying the principles in the judgments quoted above and upon the doctrine of strict liability being fully attracted to the present case and keeping in view the negligence of the respondents in not providing any safeguards, checks, balances, there is a clear statutory obligation upon the respondents to pay compensation for the loss caused to the petitioner. Furthermore, the respondents did not exercise care and caution in doing any periodic checks in ensuring that the live wire installed through an angle iron should have been detected and immediately removed. As suppliers of electrical energy, the respondents are fully liable for not ensuring the removal of the live overhead line/wire which was a potentially dangerous and volatile risk situation. Therefore, even on account of negligence, the respondents are fully liable for compensation."

The Court concluded as under:

"24. I think that on failure to use all reasonable means to prevent escape of an inherently dangerous thing, which by nature electricity is, the standard of care will be very high and the onus would be on the supplier to show that there was no negligence. In this case, the respondent-Nigam has not successfully discharged the onus to the satisfaction of this Court.

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38. I agree with Mr. Malhotra that this is an eminently fit case for award of special compensation and damages as a freak and an unparalleled case in the magnitude of injury caused by electrocution. Though I do not agree to his quantification of compensation under different heads which is rather conservative and does not satisfy the conscience of the Court or the extent of injury, I am inclined to think that principles of strict liability go to Article 21 of the Constitution of India and invade the battle ground in fighting for the protection of life and liberty of our people. There is an element of criminal negligence as well on the part of the Nigam when viewed from the standpoint of Section 68 of the Indian Electricity Act, 2003 read with Rules 29, 44, 45, 46 and 91 of the Electricity Rules 1956 which I dare say require periodic or constant vigil by the agents and servants of the Nigam. The Nigam having drawn active transmission lines 30 years ago cannot sit complacently and claim no fault because construction activity has spilled beyond the lal lakir or phirni of the village. It is also not the case of the Nigam that it has not given lawful domestic electricity connections through meters to the residents of the area falling under the sag of the 11 KV transmission line or to the parents of the petitioner. If they have given connections and meters have been installed and they charge tariff through bills then they cannot complain of unauthorized constructions. Furthermore, even assuming arguendo that the father of the petitioner had a hand in placing the angle iron to keep at bay a potentially offending live wire he should be understood as doing so as an act of self preservation, an instinct as primitive as man and his innate desire to stay alive. This may be seen also as akin to the right of private defence in criminal law. In absence of help forthcoming from the Nigam and to protect himself and his family

from harm any reasonable man may have acted accordingly. This by itself should not be allowed to defeat a just claim for compensation. However, to the contrary there is no specific denial, as discussed above, that the angle iron (P-4) was installed by the agents of the Nigam in 2006. The frontiers of strict liability and negligence in tort thus get clubbed together and run in tandem to the peril of the Nigam.”

The Court held that the Corporation having drawn active transmission lines 30 years ago could not claim no fault because construction without proper sanction had been raised subsequently. The Corporation had not pleaded that it had not given lawful domestic electricity connections through meters to the residents of the area where the 11 KV transmission line passed. It was held that where the residents had been given connections and meters were installed and the Corporation was also charging tariff through bills then the ground of unauthorized construction could not be pleaded.

This decision was approved by Hon'ble the Supreme Court in

Raman v. Uttar Haryana Bijli Vitran Nigam Ltd., (2014) 15 SCC 1 :

“6. The learned Single Judge of the High Court adverted to Section 68 of the Electricity Act, 2003 (for short “the Act”) and Rule 91 of the Electricity Rules, 1956 (for short “the Rules”) 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.

7. The learned Single Judge of the High Court further referred to Rules 29, 44 and 46 of the Rules which are statutory in nature which require the electricity authorities to conduct periodical inspection of the lines maintained by them and to take all such safety measures to prevent accident and maintain the lines in such a manner that life and property of the general public is protected. The learned Single Judge has considered the position of law declared by this Court in a catena of cases for awarding compensation, particularly, the electrocution cases, and held the principle of “strict liability” and consequential negligence in awarding compensation in favour of the claimant against the State Electricity Board. This Court and the various High Courts such as the High Courts of Madras, Madhya Pradesh, Orissa, Kerala and Gujarat have awarded compensation to the victims of electrocution in exercise of the extraordinary and appellate jurisdiction, and have held that the Electricity Board/Supply Companies are duty-bound to take precautionary measures under the provisions of the Act. Therefore, the learned Single Judge has held the electricity authority, the first respondent to be liable to pay the compensation to the claimant irrespective of the fact that the harm could have been avoided by the consumer by taking precautionary measures. The learned Single Judge of the High Court has referred to various judgments of this Court as well as the aforesaid High Courts rendered under the Motor Vehicles Act for determination and awarding just and reasonable

compensation in favour of the claimant viz. Kerala SRTC v. Susamma Thomas, Sarla Dixit v. Balwant Yadav, U.P. SRTC v. Trilok Chandra, United India Insurance Co. Ltd. v. Patricia Jean Mahajan and Abati Bezbaruah v. Geological Survey of India by applying the multiplier method as specified in the Schedule to the MV Act.”

In the light of the above, there is no merit in the appeal and the same is dismissed.

April 17, 2018

(HARINDER SINGH SIDHU)
JUDGE

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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No