IN THE HIGH COURT OF MANIPUR
AT IMPHAL
W.P. (C) No. 976 of 2018

Mr. P. Dearson, aged about 34 years, S/o Late P. Bijoy, a permanent residence of Khangkhui Khunao Village, P.O. & P.S. Ukhrul, Ukhrul District, Manipur – 795142.

…Petitioner

- Versus -

1. The State of Manipur, represented by Commissioner (Power), Government of Manipur, Secretariat, Babupara, P.O. & P.S. Imphal, Imphal West Manipur, Pin No.-795001.
2. The Manipur State Power Company Limited (MSPCL), represented by Managing Director, Imphal, Near 2nd MR Gate, North A.O.C., P.O. Lamlong, P.S. Porompat, Imphal East District, Manipur, Pin No. 795001.
3. The Manipur State Power Distribution Company Limited (MSPDCL), represented by Managing Director, Keishampat, Imphal, Imphal, P.O. & P.S. Imphal, Imphal West District, Manipur, Pin No. – 795001.
4. The Deputy General Manager, MSPDCL, Ukhrul Headquarter, P.O. & P.S. Ukhrul, Ukhrul District, Manipur-795142.

…Respondents

B E F O R E
HON'BLE MR. JUSTICE KH. NOBIN SINGH

For the petitioner	**:**	Shri Tungrei Ngakang, Advocate
For the respondents	**:**	Shri S. Rupachandra, Addl. AG
Dates of Hearing	**:**	**14-11-2019**
Date of Judgment & Order	**:**	**06-01-2020 [**21-12-2019 to 12-01-2020 being holiday**]**

JUDGEMENT AND ORDER

[1] Heard Shri Tungrei Ngakang, learned Advocate appearing for the petitioner and Shri S. Rupachandra, learned Addl. Advocate General appearing for the respondents.

[2] By the instant writ petition, the petitioner has prayed for issuing a writ of mandamus or any other appropriate writ to direct the respondents to pay compensation for a sum of Rs. 42,00,000/- (Rupees forty two lakhs) with interest thereon from the date of the incident.

[3.1] According to the petitioner, he is the natural father of the deceased, minor boy namely, Late P. Somirin, aged about three years who was reading in class KG-I. On 24-08-2016 at around 12:00 noon, the petitioner's son was electrocuted by the transformer installed at the Khangkhui Khunou Primary School which is about 15 feet behind the School building. The HT Pushing was placed at the ground level without lifting it up to certain height for maintaining and controlling the required electrical power gravity. On top of that, the transformer was installed and kept open without any fencing.

[3.2] On the date of the incident, a complaint dated 24-08-2016, addressed to the DGM, MSPDCL, was lodged requesting for the redressal of the grievances of the petitioner by giving financial assistance and compensation. Similarly, the village authority of the Khangkhui Khunou also filed a representation dated 24-08-2016 for the same purpose. The respondents gave oral assurance to the petitioner's family that a Grade-IV job would be provided to the petitioner in the Electricity Department with ex-gratia but ultimately, it turned out to be barren and sterile.

[3.3] After the electrocution of the petitioner's son, the concerned Medical Officer, i/c PHC, Khangkhui Khunou, Ukhrul District certified that

the death was caused by electrocution and the death body was handed over to the family members vide Certificate dated 09-09-2016 issued by them. Due to impending danger and recurrence of such incidents in future, the Transformer was shifted out to some other place.

[3.4] The petitioner submitted a memorandum dated 17-11-2017 to the Hon'ble Chief Minister requesting for payment of ex-gratia as well as the appointment under the Die-in-harness scheme as the death was caused due to sheer negligence and dereliction of duty on the part of the Electricity Department.

[3.5] The O.C., Shangshak Police Station, Ukhrul District, Manipur upon registering a General Diary Book vide Entry No. 273/SSK-P.S./2016 dated 25-08-2016 enquired into and certified that a boy of 3 (three) years died due to electrocution for which a Certificate dated 10-11-2016 was issued by it.

[3.6] Although all formalities have been completed by submitting required documents to the DGM concerned, the same was forwarded to the Deputy Commissioner, Ukhrul District, Manipur. However, no action was taken for payment of ex-gratia and compensation to the bereaved members of the family till date. Accordingly, a reminder representation dated 29-09-2018 was submitted to the MD, MSPDCL but no response was received by the petitioner.

[4] Being aggrieved by the inaction on the part of the respondents, the instant writ petition has been filed by the petitioner on the inter-alia grounds that the petitioner's son died due to sheer negligence on the part

of the authority as mandated under the provisions of the Act and that keeping in mind the young age of the victim, the annual income that he would have earned, would be about Rs.1,20,000/- per annum, if multiplied by 35 years, the total income of the petitioner's son would have been Rs. 42,00,000/- lakhs.

[5] The stand of the respondent No.3 as indicated in his affidavit, is that there was no negligence on the part of the MSPDCL and that no assurance was given for appointment of the petitioner to a Grade-IV job at MSPDCL. Although the process for payment of ex-gratia to the victim's family had already been initiated, the same could not be finalized for want of a report from the Sub-Divisional Officer, Ukhrul as regards the next of kin/ legal heir of the deceased. The MSPDCL is complying with the rules and regulations as per the Electricity Act, 2003 and the distribution transformer was kutcha fenced but could not be upgraded due to acute financial shortage of fund. The fatal accident occurred due to the boy entering the kutcha fenced distribution sub-station out of ignorance and touching the live HT bushings. As there was no negligence from the MSPDCL side, it is an electrical accident in nature.

[6] When the matter is listed today for consideration, it has been submitted by the learned Addl. Advocate General appearing for the respondents that since there was no negligence or fault on the part of the Power Department, the petitioner is not entitled to any compensation. Combating the submission of the learned Addl. Advocate General appearing for the respondents, the learned counsel appearing for the

petitioner has submitted that the instant writ petition can be disposed of in terms of the judgment and order dated 10-07-2018 in ***Somi Kamkara Vs. State of Manipur & ors., WP() No.894 of 2017***. The contention of the learned counsel appearing for the petitioner has substance and merit. Although the facts of the said case are not exactly identical to that of the present case, they are identical to some extent. The only difference is that while, in the said case, the victim got his hands amputated due to electrocution, the victim died to electrocution in the present case. The relevant paragraphs thereof read as under:

> ***"4.*** *Compensation can be broadly divided into two- one, a compensation that can be claimed in private law and two, a compensation that can be claimed in public law for violation of fundamental rights. So far as the present case is concerned, it falls in the second category, in the sense that the compensation is being claimed by the petitioners for the violation of fundamental rights. The law relating to payment of compensation on account of the violation of fundamental rights, is no longer res integra. In* ***Rudul Sah Vs. State of Bihar & ors., (1983) 4 SCC 141*** *which relates to an illegal detention of a person for about 14 years, the petitioner who was acquitted by the Court of Session, was released from the jail after about 14 years. A habeas corpus petition was filed praying for some reliefs, out which the one which is relevant for the present case, is the prayer for payment of compensation. Underlining the importance of Article 21 of the Constitution of India which guarantees the right to life and liberty, the Hon'ble Supreme Court ordered for payment of compensation in the nature of a palliative. Para 9 and 10 thereof are as under:*
>
> > ***"9.*** *It is true that Article 32 cannot be used as a substitute for the enforcement of rights and obligations which can be enforced efficaciously through the ordinary processes of courts, civil and criminal. A money claim has therefore to be agitated in and adjudicated upon in a suit instituted in a Court of lowest grade competent to try it. But the important*

question for our consideration is whether in the exercise of its jurisdiction under Article 32, this Court can pass an order for the payment of money if such an order is in the nature of compensation consequential upon the deprivation of a fundamental right. The instant case is illustrative of such cases. The petitioner was detained illegally in the prison for over 14 years after his acquittal in a full-dressed trial. He filed a habeas corpus petition in this Court for his release from illegal detention. He obtained that relief, our finding being that his detention in the prison after his acquittal was wholly unjustified. He contends that he is entitled to be compensated for his illegal detention and that we ought to pass an appropriate order for the payment of compensation in this habeas corpus petition itself.

10. *We cannot resist this argument. We see no effective answer to it save the stale and sterile objection that the petitioner may, if so advised, file a suit to recover damages from the State Government. Happily, the State's counsel has not raised that objection. The petitioner could have been relegated to the ordinary remedy of a suit if his claim to compensation was factually controversial, in the sense that a civil court may or may not have upheld his claim. But we have no doubt that if the petitioner files a suit to recover damages for his illegal detention, a decree for damages would have to be passed in that suit, though it is not possible to predicate, in the absence of evidence, the precise amount which would be decreed in his favour. In these circumstances, the refusal of this Court to pass an order of compensation in favour of the petitioner will be doing mere lip-service to his fundamental right to liberty which the State Government has so grossly violated. Article 21 which guarantees the right to life and liberty will be denuded of its significant content if the power of this Court were limited to passing orders of release from illegal detention. One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Article 21 secured, is to mulct its violators in the payment of monetary compensation.*

*Administrative sclerosis leading to flagrant infringementsof fundamental rights cannot be corrected by any other method open to the judiciary to adopt. The right to compensation is some palliative for the unlawful acts of instrumentalities which act in the name of public interest and which present for their protection the powers of the State as a shield. If civilisation is not to perish in this country as it has perished in some others too well known to suffer mention, it is necessary to educate ourselves into accepting that, respect for the rights of individuals is the true bastion of democracy. Therefore, the State must repair the damage done by its officers to the petitioner's rights. It may have recourse against those officers.***"**

In ***Nilabati Behera (Smt) Alias Lalita Behera Vs. State of Orissa & ors, (1993) 2 SCC 746****, a letter was sent to the Hon'ble Supreme Court by Smt. Nilabati Behera about the death of her son which was converted into a petition under Article 32 of the Constitution of India for determining the claim of compensation. The Hon'ble Supreme Court, after referring to its various decisions on the similar issues, was of the view that the liability of the State of Orissa to pay compensation could not be doubted but the Hon'ble Supreme Court went ahead spelling out the principles as regards the liability of the State for payment of compensation and the liability in private law for payment of compensation in an action tort. It has been observed that the award of compensation in a proceeding under Article 32 or under Article 226 of the Constitution of India is a remedy available in public law, based on strict liability for contravention of fundamental rights to which the principle of sovereign immunity does not apply, even though it may be available as defence in private law in an action based on tort. The Hon'ble Supreme Court held:*

"17. *It follows that 'a claim in public law for compensation' for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution, is an acknowledged remedy for enforcement and protection of such rights, and such a claim based on strict liability made by resorting to a constitutional remedy provided for the*

enforcement of a fundamental right is 'distinct from, and in addition to, the remedy in private law for damages for the tort' resulting from the contravention of the fundamental right. The defence of sovereign immunity being inapplicable, and alien to the concept of guarantee of fundamental rights, there can be no question of such a defence being available in the constitutional remedy. It is this principle which justifies award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution, when that is the only practicable mode of redress available for the contravention made by the State or its servants in the purported exercise of their powers, and enforcement of the fundamental right is claimed by resort to the remedy in public law under the Constitution by recourse to Articles 32 and 226 of the Constitution. This is what was indicated in Rudul Sah and is the basis of the subsequent decisions in which compensation was awarded under Articles 32 and 226 of the Constitution, for contravention of fundamental rights.

20. *We respectfully concur with the view that the court is not helpless and the wide powers given to this Court by Article 32, which itself is a fundamental right, imposes a constitutional obligation on this Court to forge such new tools, which may be necessary for doing complete justice and enforcing the fundamental rights guaranteed in the Constitution, which enable the award of monetary compensation in appropriate cases, where that is the only mode of redress available. The power available to this Court under Article 142 is also an enabling provision in this behalf. The contrary view would not merely render the court powerless and the constitutional guarantee a mirage, but may, in certain situations, be an incentive to extinguish life, if for the extreme contravention the court is powerless to grant any relief against the State, except by punishment of the wrongdoer for the resulting offence, and recovery of damages under private law, by the ordinary process. If the guarantee that deprivation of life and personal liberty cannot be made except in accordance with law, is to be real, the*

enforcement of the right in case of every contravention must also be possible in the constitutional scheme, the mode of redress being that which is appropriate in the facts of each case. This remedy in public law has to be more readily available when invoked by the have-nots, who are not possessed of the wherewithal for enforcement of their rights in private law, even though its exercise is to be tempered by judicial restraint to avoid circumvention of private law remedies, where more appropriate.

22. *The above discussion indicates the principle on which the court's power under Articles 32 and 226 of the Constitution is exercised to award monetary compensation for contravention of a fundamental right. This was indicated in Rudul Sah and certain further observations therein adverted to earlier, which may tend to minimise the effect of the principle indicated therein, do not really detract from that principle. This is how the decisions of this Court in Rudul Sah and others in that line have to be understood and Kasturilal distinguished therefrom. We have considered this question at some length in view of the doubt raised, at times, about the propriety of awarding compensation in such proceedings, instead of directing the claimant to resort to the ordinary process of recovery of damages by recourse to an action in tort. In the present case, on the finding reached, it is a clear case for award of compensation to the petitioner for the custodial death of her son.*

In ***D.K. Basu Vs. State of West Bengal, (1997) 1 SCC 416****, a letter came to be treated as a petition which raises an issue to develop custodial jurisprudence and to formulate modalities for awarding compensation to the victim and/ or family members of the victim for atrocities and death caused in police custody. The Hon'ble Supreme Court reiterated the decision rendered in Nilabati Behera case and held:*

"44. *The claim in public law for compensation for unconstitutional deprivation of fundamental right to life and liberty, the protection of which is guaranteed under the Constitution, is a claim based on strict liability and is in*

addition to the claim available in private law for damages for tortious acts of the public servants. Public law proceedings serve a different purpose than the private law proceedings. Award of compensation for established infringement of the indefeasible rights guaranteed under Article 21 of the Constitution is a remedy available in public law since the purpose of public law is not only to civilise public power but also to assure the citizens that they live under a legal system wherein their rights and interests shall be protected and preserved. Grant of compensation in proceedings under Article 32 or Article 226 of the Constitution of India for the established violation of the fundamental rights guaranteed under Article 21, is an exercise of the courts under the public law jurisdiction for penalising the wrongdoer and fixing the liability for the public wrong on the State which failed in the discharge of its public duty to protect the fundamental rights of the citizen.

45. *The old doctrine of only relegating the aggrieved to the remedies available in civil law limits the role of the courts too much, as the protector and custodian of the indefeasible rights of the citizens. The courts have the obligation to satisfy the social aspirations of the citizens because the courts and the law are for the people and expected to respond to their aspirations. A court of law cannot close its consciousness and aliveness to stark realities. Mere punishment of the offender cannot give much solace to the family of the victim — civil action for damages is a long drawn and a cumbersome judicial process. Monetary compensation for redressal by the court finding the infringement of the indefeasible right to life of the citizen is, therefore, useful and at time perhaps the only effective remedy to apply balm to the wounds of the family members of the deceased victim, who may have been the breadwinner of the family**."*

In ***M.C. Mehta & anr. Vs. Union of India & ors., (1987) 1 SCC 395****, the Hon'ble Supreme Court while observing that it has*

the power to grant remedial reliefs including the power to award compensation in appropriated cases, held:

"3. *The first question which requires to be considered is as to what is the scope and ambit of the jurisdiction of this Court under Article 32 since the applications for compensation made by the Delhi Legal Aid and Advice Board and the Delhi Bar Association are applications sought to be maintained under that article. We have already had occasion to consider the ambit and coverage of Article 32 in the Bandhua Mukti Morcha v. Union of India and we wholly endorse what has been stated by one of us namely, Bhagwati, J. as he then was in his judgment in that case in regard to the true scope and ambit of that article. It may now be taken as well settled that Article 32 does not merely confer power on this Court to issue a direction, order or writ for enforcement of the fundamental rights but it also lays a constitutional obligation on this Court to protect the fundamental rights of the people and for that purpose this Court has all incidental and ancillary powers including the power to forge new remedies and fashion new strategies designed to enforce the fundamental rights. It is in realisation of this constitutional obligation that this Court has in the past innovated new methods and strategies for the purpose of securing enforcement of the fundamental rights, particularly in the case of the poor and the disadvantaged who are denied their basic human rights and to whom freedom and liberty have no meaning.*

7. *We are also of the view that this Court under Article 32(1) is free to devise any procedure appropriate for the particular purpose of the proceeding, namely, enforcement of a fundamental right and under Article 32(2) the court has the implicit power to issue whatever direction, order or writ is necessary in a given case, including all incidental or ancillary power necessary to secure enforcement of the fundamental right. The power of the court is not only injunctive in ambit, that is, preventing the infringement of a fundamental right, but it is also remedial in scope and provides relief against a*

breach of the fundamental right already committed vide Bandhua Mukti Morcha case. If the court were powerless to issue any direction, order or writ in cases where a fundamental right has already been violated, Article 32 would be robbed of all its efficacy, because then the situation would be that if a fundamental right is threatened to be violated, the court can inject such violation but if the violator is quick enough to take action infringing the fundamental right, he would escape from the net of Article 32. That would, to a large extent, emasculate the fundamental right guaranteed under Article 32 and render it impotent and futile. We must, therefore, hold that Article 32 is not powerless to assist a person when he finds that his fundamental right has been violated. He can in that event seek remedial assistance under Article 32. The power of the court to grant such remedial relief may include the power to award compensation in appropriate cases. We are deliberately using the words "in appropriate cases" because we must make it clear that it is not in every case where there is a breach of a fundamental right committed by the violator that compensation would be awarded by the court in a petition under Article 32. The infringement of the fundamental right must be gross and patent, that is, incontrovertible and ex facie glaring and either such infringement should be on a large scale affecting the fundamental rights of a large number of persons, or it should appear unjust or unduly harsh or oppressive on account of their poverty or disability or socially or economically disadvantaged position to require the person or persons affected by such infringement to initiate and pursue action in the civil courts. Ordinarily, of course, a petition under Article 32 should not be used as a substitute for enforcement of the right to claim compensation for infringement of a fundamental right through the ordinary process of civil court. It is only in exceptional cases of the nature indicated by us above, that compensation may be awarded in a petition under Article 32. This is the principle on which this Court awarded compensation in Rudul Shah v. State of Bihar. So also, this Court awarded compensation to Bhim Singh, whose fundamental right to personal liberty was

grossly violated by the State of Jammu and Kashmir. If we make a fact analysis of the cases where compensation has been awarded by this Court, we will find that in all the cases, the fact of infringement was patent and incontrovertible, the violation was gross and its magnitude was such asto shock the conscience of the court and it would have been gravely unjust to the person whose fundamental right was violated, to require him to go to the civil court for claiming compensation."

5. *From the aforesaid decisions of the Hon'ble Supreme Court, it is clearly seen that the Hon'ble Supreme Court or for that matter, the High Court in exercise of power under Article 226 of the Constitution of India is competent to award compensation in cases where the fundamental rights, guaranteed in the Constitution of India, have been infringed by the State authorities. It may be noted that the aforesaid decisions have been rendered by the Hon'ble Supreme Court on the general issue relating to the liabilities of the States to pay compensation in the cases of violation of fundamental rights. There are certain cases in which the Hon'ble Supreme Court directed for payment of compensation to the persons who died or sustained injuries due to electrocution. In* ***MP Electricity Board Vs. Shail Kumari & ors., (2002) 2 SCC 162,*** *a workman in a factory, while returning from the factory, was riding a cycle and when he unknowingly rode over the wire, he was electrocuted and accordingly, he died. The stand of the Board was that it was not responsible for it and that one Hari Gaikwad had taken a wire from the main supply line in order to siphon the energy for his own use and the said act of pilferage was done clandestinely without even notice of the Board and that the line got unfastened from the hook and it fell on the road over which the cycle ridden by the deceased slided resulting in the instantaneous electrocution. In view of the responsibility conferred statutorily upon the Board, the Hon'ble Supreme Court rejected its contention that the electrocution was due to the clandestine pilferage committed by a stranger unauthorisedly siphoning the electric energy from the supply line and held:*

"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****."***

Similarly is the case in ***Raman Vs. Uttar Haryana Bijli Vitran Nigam ltd., Civil appeal No.11466 of 2014*** *decided by the Hon'ble Supreme Court on 17-12-2014. In the said case, the appellant, a four year old boy was electrocuted on 03-11-2011 by coming direct contact with the naked electric wire open on the roof of his house. Immediately after the incident, he was taken for first aid to a nearby Hospital at Panipat from where he was referred to Post Graduate Institute of Medical Sciences, Rohtak. The final treatment was given at Safdarjang Hospital, New Delhi, where the doctor left with no other option but carry out triple amputation by removing both his arms upto arm pit and left leg upto knee as the grievous injuries suffered were not curable. The appellant approached the High Court by way of a writ petition seeking for an award of compensation which was opposed by the respondents therein by filing a written statement denying the allegations made therein stating that the iron angle found on the roof of the house was not installed by any employee of the respondents; that the father of the appellant was to be blamed for installing the insulator himself on the roof of the house on which high tension wire was erected. In other words, the stand of the respondents therein was*

that its employees could not be held responsible for the mishap occurred on the fateful day. The learned Single Judge, while deciding the said writ petition, referred to various provisions of the Indian Electricity Act, 2003 and the rules made thereunder and in particular, Rules, 29, 44 and 46 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 also adverted to 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. After taking into account many factors and keeping all aspects of the matter including the application of the principle of multiplier method laid down in ***Sarla Verma & ors. Vs. Delhi Transport Corporation & anr****, the learned Single Judge awarded compensation with various directions including the one for payment of compensation of Rs.30 lacs and in addition thereto, the Board would pay and deposit compensation of Rs.30 lacs to be kept in a separate account, the interest accrued thereon shall be used towards monthly requirement of the appellant. On an appeal preferred by the respondents, the Division Bench of the High Court allowed it on the basis of the alleged concession given by the Advocate on behalf of the appellant resulting in the modifications as mentioned in the order. Being aggrieved by it, the appellant preferred the civil appeal before the Hon'ble Supreme Court which after, referring to its earlier decisions, allowed the appeal and upheld the judgment and order of the learned Single Judge except minor modifications, as detailed in para 21 thereof, being made by it.*

6. *In view of and in terms of the decisions, as referred to hereinabove, relating to payment of compensation in the cases arising out of incidents of electrocution due to the negligence on the part of the State authorities, this court is of the view that the instant writ petition deserves to be allowed by this court.*

Therefore, the question that arises for consideration by this court, is as to what amount of compensation would be just and reasonable in the facts and circumstances of the present case. In ***Raman case (supra****), the Hon'ble Supreme Court was confronted with a question as to how the just and reasonable compensation be determined in a case and after examining its earlier decisions, it came to the conclusion that it is difficult for any court to lay down rigid tests which should be applied in all situations and that in the Indian context, various factors like educational qualification, nature of job, past performance, scope of higher salary, the expenditure that the claimant has incurred and is likely to incur, family dependence, inflation etc. should be taken into consideration. While determining the compensation, the Hon'ble Supreme Court has emphasised the need to strike a balance between the inflated and unreasonable demands of a victim and the equally untenable claim of the opposite party saying that nothing is payable. In view of its earlier decisions referred to therein, the Hon'ble Supreme Court was of the view that the compensation awarded at Rs,60 lakhs in the judgment of the learned Single Judge, out of which Rs.30 lakhs were to be deposited jointly in the name of the appellant represented by his parents as natural guardian and the Chief Engineer or its nominee representing the respondents in a fixed deposit till he attains the age of majority, was just and proper but set aside the portion thereof as mentioned in its para 19 of the judgment and order and modified it accordingly. But the Hon'ble Supreme Court rejected the use of multiplier system as the only basis for purpose of determining the just and reasonable compensation in such cases like the present one****."***

[7] In the present case, it is not in dispute that the transformer was installed at the back of the school and that too, at a distance of hardly 25 feet from the school. The stand of the respondents is that since the transformer was kutcha fenced, there was no negligence on their part. It is hard to believe that the transformer was properly fenced. A child of three years is innocent and is completely ignorant about the electricity or

for that matter, the transformer. If it is fenced properly, a child of three years would not have had the capacity to enter into it. Before the transformer was installed, the respondents ought to have applied their minds as to the safety of the children in the school. Mere installation of transformer is not enough and it ought to have been properly fenced so that the children in the school would not have had any occasion to enter into it. The rules and regulations as prescribed in the Act appear to have not been followed by the respondents, otherwise the incident of electrocution could have been avoided without any problem. From the aforesaid circumstances, it can be easily inferred that the child died due to the negligence on the part of the part of the respondents. Keeping in mind the various factors including the age of the child, his performance in school, loss of pleasure and happiness, pain and suffering, mental distress of the petitioner, money spent towards performing rituals etc., this Court is of the view that the end of justice will be made if the respondents are directed to pay a sum of Rs.10 lakhs as compensation.

[8] In view of the above, the instant writ petition stands allowed with the direction that the respondents and in particular, the respondent No.2 & 3 shall pay to the petitioner a sum of Rs.10 lakhs as compensation. In order to facilitate the smooth disbursement of the said amount, the respondent No.2 & 3 are directed to deposit the said amount to the registry of this Court within six months from today which will, in turn, be paid to the petitioner, on his being identified by his counsel, through his

bank account which will be opened in a nationalized bank, if not already opened by him. There shall be no order as to costs.

JUDGE

FR/NFR

Devananda