

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CWP No.20325 of 2018(O&M)

Reserved on:16.05.2022

Date of Decision.20.05.2022

Ishika @ Yashika

...Petitioner

Vs

State of Haryana and others

...Respondents

CORAM:HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Keshav Pratap Singh, Advocate
for the petitioner.

Mr. Tapan Kumar Yadav, DAG, Haryana.

Mr. R.D. Bawa, Advocate and
Mr. Samuel Gill, Advocate
for respondents No. 2 to 5.

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JAISHREE THAKUR J. (ORAL)

1. The petitioner herein approached this Court under Article 226/227 of the Constitution of India praying for issuance of a writ in the nature of mandamus, directing the respondents to pay compensation to the tune of Rs.2 crores to the petitioner, who got electrocuted from a broken electric pole lying on the street with live electric wires attached to it, resulting with amputation of both arms of the petitioner.

2. In brief, the facts as enumerated in the writ petition, are that on 01.07.2016 at 4 PM, when the petitioner, who was aged 10 years at the time of unfortunate and heart-wrenching incident, was returning from school, near Bhogpur Mandi, Sohna, she came into contact with live electric wires attached with broken electric pole lying on the street, which wires were unguarded. The father of the petitioner immediately rushed the petitioner to the nearest hospital but considering her serious condition, she was referred to Safdarjung Hospital, Delhi. Thereafter, considering the critical medical

condition of the petitioner, doctors decided to amputate both arms of the petitioner in order to save her life, which caused 100% permanent disability to her. The father of the petitioner approached various authorities about the negligence of the concerned officials of the respondent-Nigam in performing their duties but his pleas fell on deaf ears. An FIR No.520 dated 13.09.2016 was registered under Section 338 IPC at Police Station Sohna, District Gurugram on account of this incident. The factum of broken electric pole was in the knowledge of the officials of the respondent-Nigam, however, due to their negligence in not taking appropriate timely action, the petitioner came into contact with live electric wires and lost both her arms.

3. Mr. Keshav Pratap Singh, learned counsel appearing on behalf of the petitioner would submit that the petitioner lost both her arms and the accident caused her 100% permanent disability owing to the negligence on the part of the respondents and therefore, they are liable to compensate the petitioner. He relies upon the judgment rendered by the Hon'ble Supreme Court in **M.C. Mehta and another Vs. Union of India and others 1987 (1) SCC 395** to contend that if any harm results to any one on account of an accident in the operation of hazardous or inherently dangerous activity, the enterprise running such activity is absolutely liable to compensate, regardless whether it is carried on carefully or not, as it is under obligation that such activity must be conducted with highest standards of safety. He further relies upon the judgment rendered by the Hon'ble Supreme Court in **M.P. Electricity Board Vs. Shail Kumari 2002 (1) CCC 685(SC)** wherein it has been held that electricity board is liable to pay compensation even in cases where there was no negligence on its part. Reliance has also been placed on the judgment rendered by a Coordinate Bench of this Court in CWP

No.14046 of 2012 titled as **Raman Vs. State of Haryana and others** decided on 02.07.2013 wherein while dealing with the case of a child, who had suffered a triple amputation of limbs, this Court awarded a compensation of Rs.60 lakhs, apart from issuing other directions to the respondent-Nigam.

4. Per contra, learned counsel appearing on behalf of respondents No.2 to 5 would submit that the electric pole was broken down due to a motor vehicular accident caused by an identified vehicle. No information was provided to the respondent-Nigam in that regard by any passer-by or villager and meanwhile, the petitioner came into contact with live wires attached to the broken pole and therefore, there is no negligence on the part of the officials of respondent-Nigam. The officials of the respondent-Nigam on receiving the information regarding the broken electric pole immediately repaired the same and therefore, neither the respondent-Nigam nor its employees are liable to pay any compensation.

5. I have heard learned counsel for the parties and with their assistance have perused the pleadings. Admittedly, the petitioner herein suffered amputation of both her arms due to electrocution and the disability certificate attached with the petition as Annexure P-5 reflects that she has suffered 100% permanent physical impairment. Now question is whether the respondent-Nigam was liable for the accident in question and is liable to pay compensation and if yes, what would be the quantum?

6. The respondent-Nigam being the supplier of electricity is bound to maintain live wire and other electricity system used for the purpose of transmission of electricity. In case of an incident involving electricity line, burden is essentially on the Electricity Board to plead and prove that it was not their fault and the snapping of the live wire can be described to be an act

of negligence. When an incident of this nature is involved, inference can surely be drawn that there has been an element of carelessness on the part of the Electricity Board in maintaining the supply line. The facts of the case in hand lead to application of principle of “strict liability”. The concept of strict liability has been discussed by the Hon’ble Supreme Court in the case of **Shail Kumari** (supra) wherein it has been held that the responsibility to supply electric energy in the particular locality was statutorily conferred on the Board. If the energy so transmitted causes injury or death of a human being, who gets unknowingly trapped into it, the primary liability to compensate the sufferer, is that of the supplier of the electric energy. The Hon’ble Supreme Court has further held that the Board is also liable under the strict liability rule and the basis of such liability is the foreseeable risk inherent in the very nature of such activity. The relevant paragraphs of the judgment are reproduced as under: -

"7. It is an admitted fact that the responsibility to supply electric energy in the particular locality was statutorily conferred on the Board. If the energy so transmitted causes injury or death of a human being, who gets unknowingly trapped into it the primary liability to compensate the sufferer is that of the supplier of the electric energy. So long as the voltage of electricity transmitted through the wires is potentially of dangerous dimension the managers of its supply have the added duty to take all safety measures to prevent escape of such energy or to see that the wire snapped would not remain live on the road as users of such road would be under peril. It is no defence on the part of the management of the Board that somebody committed mischief by

siphoning such energy to his private property and that the electrocution was from such diverted line. It is the look out of the managers of the supply system to prevent such pilferage by installing necessary devices. At any rate, if any live wire got snapped and fell on the public road the electric current thereon should automatically have been disrupted. Authorities manning such dangerous commodities have extra duty to chalk out measures to prevent such mishaps.

8. Even assuming that all such measures have been adopted, a person undertaking an activity involving hazardous or risky exposure to human life, is liable under law of torts to compensate for the injury suffered by any other person, irrespective of any negligence or carelessness on the part of the managers of such undertakings. The basis of such liability is the foreseeable risk inherent in the very nature of such activity. The liability cast on such person is known, in law, as "strict liability". It differs from the liability which arises on account of the negligence or fault in this way i.e. the concept of negligence comprehends that the foreseeable harm could be avoided by taking reasonable precautions. If the defendant did all that which could be done for avoiding the harm, he cannot be held liable when the action is based on any negligence attributed. But such consideration is not relevant in cases of strict liability where the defendant is held liable irrespective of whether he could have avoided the particular harm by taking precautions.

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10. There are seven exceptions formulated by means of case law to the doctrine of strict liability. It is unnecessary to enumerate those exceptions barring one which is this. "Act of stranger i.e. if the escape was caused by the unforeseeable act of a stranger, the rule doesnot apply". (vide Page 535 Winfield on Tort, 15th Edn.)

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13. In the present case, the Board made an endeavour to rely on the exception to the rule of strict liability (Rylands v. Fletcher) being "an act of stranger". The said exception is not available to the Board as the act attributed to the third respondent should reasonably have been anticipated or at any rate its consequences should have been prevented by the appellant Board. In Northwestern Utilities, Limited v. London Guarantee and Accident Company, Limited {1936 Appeal Cases 108}, the Privy Council repelled the contention of the defendant based on the aforesaid exception. In that case a hotel belonging to the plaintiffs was destroyed in a fire caused by the escape and ignition of natural gas. The gas had percolated into the hotel basement from a fractured welded joint in an intermediate pressure main situated below the street level and belonging to the defendants which was a public utility company. The fracture was caused during the construction involving underground work by a third party. The Privy Council held that the risk involved in the operation undertaken by the defendant was so great that a high degree care was expected of him since the defendant ought to have appreciated the possibility of such a leakage."

Similarly, the **Hon'ble Supreme Court in Union of India Vs.Prabhakaran Vijaya Kumar and others (2008) 9 SCC 527** has held as follows:

"22. Strict liability focuses on the nature of the defendants' activity rather than, as in negligence, the way in which it is carried on (vide Torts by Michael Jones, 4th Edn. p.247). There are many activities which are so hazardous that they may constitute a danger to the person or property of another. The principle of strict liability states that the undertakers of these activities have to compensate for the damage caused by them irrespective of any fault on their part. As Fleming says "permission to conduct such activity is in effect made conditional on its absorbing the cost of the accidents it causes, as an appropriate item of its overheads" (see Fleming on 'Torts' 6th Edn p. 302).

23. Thus, in cases where the principle of strict liability applies, the defendant has to pay damages for injury caused to the plaintiff, even though the defendant may not have been at any fault.

24. The basis of the doctrine of strict liability is two- fold: (i) The people who engage in particularly hazardous activities should bear the burden of the risk of damage that their activities generate and (ii) it operates as a loss distribution mechanism, the person who does such hazardous activity (usually a corporation) being in the best position to spread the loss via insurance and

higher prices for its products (vide 'Torts' by Michael Jones 4th Edn p. 267)."

Therefore, in view of the well settled law, this Court has no hesitation in holding that the respondent-Nigam is liable to pay compensation to the petitioner in the instant case.

7. Now with regard to the question of quantum of compensation, a Coordinate Bench of this Court in the judgment rendered in **Raman's case** (supra) where a four years old boy lost his limbs and while substantively dealing with the issue, awarded a compensation of Rs.60 lakhs along with interest @8.5% per annum, apart from Rs.2 lakhs to the mother for trauma, mental shock, pain and agony as well as Rs.20,000/- quantified towards litigation costs. Similarly, a Division Bench of Himachal Pradesh High Court in the judgment rendered in CWP No. 475 of 2013 decided on 09.01.2015 titled as **Naval Kumar alias Rohit Kumar vs. State of H.P. & others**, awarded a compensation of Rs.1.25 crores to a boy aged 8 years, who suffered 100% permanent disability on account of amputation of his both arms. The relevant portion of the said judgment is reproduced as under:-

"49. Now, we have to award the just and fair compensation as per the principles laid down in the judgments cited herein above, taking into consideration the 100% disability of 8 years old boy at the time of electrocution. According to the averments made in the petition, he was a brilliant student. The petitioner would normally had started earning at least Rs.30,000/- per month after attaining the age of 20 years. His life expectancy can safely be taken as per the prevailing trends to 70 years. He would have safely worked for 38 years. The appropriate multiplier, in the

present case, would be 25. There is no possibility of marriage of the petitioner, therefore, no standard deductions can be made from the income. The income in entirety has to be taken into consideration. The annual income of the petitioner would be Rs.3,60,000/-, which is required to be multiplied by 25. The total future loss of the income of the petitioner comes to (30,000 x 12 x 25 = Rs.90,00,000/-) i.e rupees ninety lacs. The petitioner is also entitled to standard damages of Rs.10,00,000/- towards loss of companionship, life amenities/pleasures and loss of happiness. The petitioner is entitled to Rs.10,00,000/- for pain and suffering, including mental distress, trauma and discomfort and inconvenience. He is entitled to Rs.10,00,000/- towards attendant/nursing expenses for his life. He is also entitled to a sum of Rs.5,00,000/- for securing artificial/robotic limbs and future medical expenses.

50. The writ petition is allowed and in order to secure financial amenities for future of the petitioner, the respondents No. 2 & 3 would pay compensation of Rs.1,25,00,000/- (Rupees one crore twenty five lacs) to the petitioner. The amount will be deposited in a Fixed Deposit in the name of the petitioner under joint guardianship of his mother at Nationalized Bank, Chowari, Distt. Chamba, H.P., within a period of 60 days of the receipt of certified copy of this judgment, failing which, the amount shall carry interest @ 9% p.a. till deposited in the bank. The interest so accrued will be transferred in a separate Savings Account to be opened in the same Branch in the name of the petitioner, to be

operated jointly by the parents, payable to the petitioner on regular monthly basis. The Manager, Nationalized Bank, Chowari, where the compensation amount shall be deposited, would release a sum of Rs.10,000/- per month to the petitioner, through his guardian, to meet his daily expenses. This amount would take care of the petitioner's educational expenses, nutritious food and cost of attendant. A sum of Rs.5,00,000/- deposited in this Court shall be adjusted towards the amount to be paid to the petitioner as ordered herein above. The respondents No. 2 & 3 are directed to take all remedial measures to raise the height of the 'Lahru-Chowari Line' to make it safe and render the inhabitants electrically harmless and to make it beyond the reach of children and local residents of the inhabited localities.

The aforesaid decision passed by the Division Bench in the case of ***Naval Kumar's case*** (supra) was tested by the State of Himachal Pradesh before the Hon'ble Supreme Court in **State of Himachal Pradesh & Ors. Versus Naval Kumar alias Rohit Kumar (2017) 3 SCC 115** wherein the Hon'ble Supreme Court while reducing the compensation from Rs.1.25 crores to Rs.90 lakhs, held as under:-

17. In our considered view, taking into consideration the facts and circumstances of the case such as respondent's family background, his age (8 years), nature of permanent disability suffered by the respondent, his performance in studies, the determination of monthly/yearly income made by the High Court, expenses incurred and all the relevant factors, which are usually

taken into account in awarding compensation to the victim, the respondent is held entitled for a total lump sum compensation of Rs.90,00,000/- (Rs. Ninety lacs) together with interest payable at the rate of 6% p.a. in place of Rs.1,25,00,000/- awarded by the High Court. 18. The award of Rs.90,00,000/- together with interest payable at the rate of 6% p.a., in our view, would fetch sufficient regular monthly income to the respondent by way of interest alone, if the awarded sum is deposited in the Bank and would thus take care of respondent's upbringing and other needs for the rest of his life. The award of compensation determined by us is just and reasonable compensation payable to the respondent.

19. In view of foregoing discussion, the appeal succeeds and is allowed in part. The impugned order is modified to the extent indicated above by reducing the compensation awarded by the High Court.

20. In other words, the compensation awarded by the High Court is, accordingly, reduced from Rs.1,25,00,000/- to Rs.90,00,000/- with interest payable at the rate of 6% p.a. from the date of filing of the writ petition.

21. Let the appellant-State deposit the entire amount, as has been awarded by this Court, within 3 months from the date of receipt of the copy of this judgment in the High Court or pay to the respondent through his parents after proper verification.

8. The judgement rendered in Naval Kumar's case (supra) as decided by the Supreme Court in the year 2017 held an amount of Rs.90 lakhs

as adequate compensation. Keeping in view the principles laid down for awarding compensation in Naval Kumar's case (supra) and the fact that the case in hand is similar to that of Naval Kumar, this Court deems it appropriate to award a compensation of Rs.95 lakhs to the petitioner with interest payable @7% per annum from the date of filing of the writ petition. The amount stands enhanced considering the fact that 5 years have elapsed since the amount was awarded by the Supreme Court in almost similar circumstances and taking into account the cost of inflation, stated to be almost 15% as on date.

9. The aforesaid amount shall be deposited by the respondent-Nigam in the form of an FDR in a nationalized bank within a period of three months from the date of receipt of certified copy of this judgment. The interest accrued therein at the end of each month will be transferred in a separate Savings Account to be opened in the same Branch in the name of the petitioner, to be operated jointly with the parents, payable to the petitioner on regular monthly basis, which shall take care of the daily expenses of the petitioner. The petitioner on her attaining the age of 25 years shall be entitled to have the amount released in her name and operate the account solely.

10. The writ petition stands allowed in above terms.

(JAISHREE THAKUR)
JUDGE

May 20, 2022

Pankaj*

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No