

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.9538 OF 2016

1. Anuradha w/o Vikas Ghuge,
age 27 years, Occ. Household.
2. Nilwati w/o Vitthalrao Ghuge,
age 55 years, Occ. Household.
3. Vitthalrao Ghuge,
age 60 years, Occ. Agril.

All R/o Shivpuri Colony, Padegaon,
Aurangabad, Tq. & Dist. Aurangabad.

Petitioners

Versus

The Maharashtra State Electricity
Distribution Company Ltd.,
Mill Corner, Aurangabad.
Through it's Chief Engineer.

Respondent

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Mr. Sachin S. Deshmukh, advocate for petitioners
Mr. U S Malte, advocate for respondent.

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**CORAM : NITIN W. SAMBRE & S. G.
CHAPALGAONKAR, JJ.**

Dated: April 26, 2023

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ORDER :- (Per Nitin W. Sambre, J.)

1. Deceased Vikas was married to petitioner no.1, whereas petitioner nos.2 and 3 are the mother and father of deceased Vikas, respectively. Deceased Vikas was employed as a Labour on a private construction site. While discharging his duty as a

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daily wager on a private construction site, he came in direct contact with high tension line, resulting in his electrocution. As a consequence, he died of head injury with electrocution. Based on above, the petitioners, legal heirs have approached the respondent for grant of compensation. However, since their prayer is not attended till this date, they have approached this Court.

2. Contention of Mr. Deshmukh, learned counsel appearing for the petitioners are from the record, it can be inferred that Vikas died of electrocution. So as to substantiate his claim, he has relied on the statement of the complainant Anuradha Ghuge, petitioner no.1, wherein she has specifically stated about the accident and cause of death, certificate issued by the department of Forensic Medicine and Toxicology, Government Medical College and Hospital, Aurangabad, postmortem report, wherein the cause of death is shown to be "head injury with electrocution". Apart from above, he has also relied on the accidental death report no.35 of 2014 in relation to death of Vikas, submitted by Assistant Manager, GTL Manager on 17.7.2014 to the Electrical Inspector, Electrical Inspection Division, Aurangabad, about accident in question. According

to Mr. Deshmukh, on the date of death of Vikas, he was aged about 27 years. According to him, considering the nature of work discharged by him, dependency of the petitioners, they are entitled for the compensation pursuant to the policy of the respondent authority. He would urge that there is delay on the part of the respondent of about 9 years in payment of compensation in favour of the petitioners. That being so, respondent should be penalized by directing the payment of compensation with exemplary costs.

3. So as to substantiate his contentions, Mr. Deshmukh, learned counsel for the petitioners has relied on the following judgments :-

- i. State of Himachal Pradesh and others Vs. Naval Kumar Alias Rohit Kumar reported in (2017) 3 Supreme Court Cases 115.
- ii. M.P Electricity Board Vs. Shail Kumari and others reported in (2002) 2 Supreme Court Cases 162.
- iii. Bibekanada Dash and another Vs. CEO NESCO (Electrical), Balesore and others in WP 19039 of 2008 (HC Orissa).

4. While countering aforesaid submissions, Mr. Malte learned counsel appearing for respondent would strenuously opposed the claim. Mr. Malte would urge that at the relevant

time, maintenance of the line was handled by Private company namely G.T.L. and G.T.L. is a necessary party to the petition. According to him, respondent cannot be held responsible for payment of compensation for the default, if any, committed by the said private company, who is appointed as an agency by the respondent for the purpose of operation and maintenance of the line in question. Apart from above, Mr. Malte would urge that, it is always open for the respondent to ascertain whether the respondent is responsible for payment of compensation. According to him, in the given set of facts and circumstances of the case, as it is reflected in the copy of the FIR, the report submitted by the representative of G.T.L. company, agency of respondent, he would urge that respondent is not liable to pay any damages.

5. We have appreciated the said submissions.

6. From the record it is apparent that petitioner no.1 on 28.8.2014 has lodged a complaint with the Police Station Chhavani, Aurangabad specifically stating that her husband was working as a Labour on private construction site. According to her, at the said construction site, a high tension

line was passing which was not was not insulated. In this background, she has claimed that at about 1.15 p.m. on 16th July, 2014 her husband suffered an electric shock resulting into he being hospitalized at Government Medical College and Hospital, Aurangabad, where he lost his life. Said fact is proved from the death certificate issued by the Government Medical College, Aurangabad, so also the Postmortem report.

7. Apart from above, the G.T.L. company, who was acting as an agent on the part of the respondent herein, has already submitted a report of aforesaid accident to Electrical Inspector on 17th July, 2014. The details of the occurrence of the accident submitted by the Assistant Manager of said Agency of the respondent herein categorically affirms the contents of the FIR, which is lodged by petitioner no.1-wife of deceased Vikas.

8. In the aforesaid backdrop, what can be noticed is occurrence of the accident because of the electric shock is very much established and the cause of death of Vikas is having suffered head injury with as electrocution as can also be inferred from the post-mortem report and death certificate.

9. Apart from above it is admitted on record by the respondent viz. occurrence of accident, report submitted to the Electrical Inspector sufficiently establishes about death of Vikas because of the electrocution.

10. According to Mr. Malte in view of the circular dated 17.1.1990 the respondent is entitled to call for the documents and ascertain whether Board is responsible for the accident and liable to pay the compensation. Mr. Malte has claimed that, it was the deceased Vikas, who was negligent in conducting himself at the work site, because of whom aforesaid accident was caused. If we appreciate the aforesaid submissions, contents of the FIR are required to be kept at the back of the mind. It is brought on record that live wires were passing above the place where the deceased was working out of said live electric line. Open wires to the extent of only 10 feet were insulated. PVC covering used as an insulator was loose fitted, which was moved towards other side live wire, thereby exposing the wiring, which has resulted into causing of the accident. There is no countering to the aforesaid submissions by the respondent. If the Respondent is claiming that cause of death of Vikas was because of his negligence, once petitioner

having discharged initial burden, the respondent must prove the same. The respondent has failed to discharge the same.

11. Apart from above report submitted by the Assistant Manager of the G.T.L., agent of the respondent herein has specifically mentioned about the aforesaid fact. The only explanation tendered by the representative of GTL that work was executed at the said site without there being any intimation to the authority. The said claim of the representative of G.T.L. i.e agent of respondent is without any authority or legal base.

12. In view of above, we have to record the finding that deceased Vikas cannot be said to be doing his work in negligent manner, rather it was default of the respondent in not insulating live wiring properly. As such, said contention of the counsel for respondent stands rejected.

13. We are also required to consider the law laid down by the Supreme Court in the case of **M.P. Electricity Board Vs. Shail Kumari and others** reported in (2002) 2 SCC page 162. The law laid down in the aforesaid judgment from paragraph

nos.9, 10 and 11 supports the case of the petitioners, reads thus :-

“9. The doctrine of strict liability has its origin in English Common Law when it was propounded in the celebrated case of Rylands v. Fletcher Blackburn J., the author of the said rule had observed thus in the said decision:

"The rule of law is that the person who, for his own purpose, brings on his lands and collects and keeps there anything likely to do mischief if it escapes, must keep it at his peril; and if he does so he is prima facie answerable for all the damage which is the natural consequence of its escape."

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 does not apply".

11. The rule of strict liability has been approved and followed in many subsequent decision in England. A recent decision in recognition of the said doctrine is rendered by the House of Lords in Cambridge Water Co. Ltd. v. Eastern Counties Leather Plc. The said principle gained approval in India, and decisions of the High Courts are a legion to that effect. A Constitution Bench of this Court in Charan Lal Sahu v. Union of India and a Division Bench in Gujarat State Road Transport Corporation v. Ramanbhai Prabhatbhai had followed with approval the principle in Rylands v. Fletcher. By referring to the above two decisions a two Judge Bench of this Court has reiterated the same principle in Kaushnuma Begum v. New India Assurance Co. Ltd.”

14. We need to be also sensitive to the principles of strict liability as has been discussed above, which prompts us to fasten the liability on the respondent.

15. In this background, it was expected of the respondent to honour the claim of the petitioners at first instance,

particularly, when occurrence of the accident and death of Vikas because of electrocution is admittedly inferred, there is no scope for the respondent to draw any other inference than one which is referred to herein above from the facts narrated.

16. It appears that respondent has tried to shift its responsibility and liability in the matter of payment of compensation by raising a defence that, at the relevant time, a private contractor namely G.T.L. was maintaining the line and it was his responsibility to pay the compensation.

17. There is hardly any material brought on record by the respondent to justify said claim on record. Apart from above, even if, the aforesaid arguments of Mr. Malte are accepted for the purpose of consideration, what can be noticed is said G.T.L. company was acting as an agent of the respondent. The respondent herein being principal cannot do away with its liability of payment of compensation. It is always open for the respondent to recover the said amount from its agent under alleged agreement in accordance with law.

18. In this background, the case in our opinion for grant of compensation is made out.

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19. At the relevant time, it is brought to our notice that the policy which was governing the field was vide administrative circular dated 22.3.2011, which provides for the maximum compensation of Rs.2,50,000/-. Said policy underwent changed on 9.3.2016, wherein the compensation was enhanced from Rs.2,50,000/- to Rs.4,00,000/-.

20. The respondent ought to have granted compensation to the petitioners the moment of occurrence of the accident was pointed to it, however, though the respondent is State Government Company have chosen not to respond. Rather the respondent a State entity has conducted itself like a private litigant or businessman. Failure on the part of the respondent, in our opinion, prompted to pay interest on the amount of compensation which was due and payable to the petitioners.

21. As such, we hereby direct the respondent to deposit an amount of Rs.2,50,000/- (Rs. Two Lakh Fifty Thousand) with interest @ 9% p.a. from the date of report made to the Electrical Inspector by the Assistant Manager i.e. on 17.7.2014. We direct the aforesaid amount be deposited in this Court within a period of 10 (Ten) weeks from today. In addition to

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above, we direct the respondent to deposit costs of Rs.25,000/- (Rs. Twenty Five Thousand) to be deposited towards legal expenses and suffering of the petitioners. Petition accordingly stands allowed in above terms and stands disposed off.

(S. G. CHAPALGAONKAR, J.)

(NITIN W. SAMBRE, J.)

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