

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

**CWP No.9825 of 2016 (O&M)
Date of decision : 01.02.2023**

Preeti and others

....Petitioners

Versus

Union of India and others

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Jagram S. Cooner, Advocate
for the petitioners.

Mr. Sunil K. Sharma, Advocate
for respondents No.1 and 2.

Mr. Sehajbir S. Aulakh, Asstt. Advocate General, Punjab
for respondent No.3.

Ms. Samridhi Sareen, Advocate
for respondents No.4 to 6.

PANKAJ JAIN, J. (ORAL)

By way of present writ petition filed under Article 226/227 of the Constitution of India, petitioners pray for issuance of a writ in the nature of mandamus/certiorari directing the respondents to pay compensation on account of unfortunate death of Narender Kumar due to electrocution.

2. Brief facts that need to be noticed for adjudication of the present *lis* are that the deceased namely Narender Kumar was working as J.B.T. Teacher in Govt. High School, Village Sulehra, District Jind

(Haryana). On 5th of June, 2013 the deceased Narender Kumar son of (petitioner No.2 and 3) along with his wife (petitioner No.1) went to Wagha Border, Amritsar to be part of retreat ceremony. While attending the same, the deceased came in contact of electric pole and suffered electric shock leading to his death. DDR No.8 dated 10th of June, 2013 was registered. Post mortem was conducted. As per medical opinion the cause of his death is “shock” as a result of “electric current injuries”. The petitioners represented to the respondents by way of legal notice dated 8th January, 2015 seeking compensation asserting that the death of Narender Kumar was on account of negligence of the respondent-Corporation. However respondent-Corporation only sent formal intimations to the petitioners *qua* legal notice and remained inert w.r.t. the compensation as sought for by the respondents. The petitioners thereafter filed CWP No.10194 of 2015 before this Court wherein this Court directed the respondent Corporation as under :-

“xxxxx

In the light of the statement made by the counsel for the petitioners, the present petition is disposed of, without going into merits of the case or commenting thereon, with directions to the Managing Director, Punjab State Power Corporation Limited respondent No.2 to consider and decide the legal notice dated 08.01.2015 (Annexure P-4) of the petitioners within a period of three months from the date of receipt of certified copy of this order.

In case, the claim of the petitioners is accepted, the

consequential benefits, if any, be released to them within a further period of two months, in accordance with law. Decision so taken be conveyed to the petitioners forthwith.”

3. In compliance of the aforesaid directions passed by this Court, respondent-Corporation decided the legal notice holding that the petitioners are not entitled to any compensation from PSPCL as the Corporation is not at fault. It is only the Border Security Force who is solely responsible for control of the electricity supplies as the area was under their jurisdiction. It has been further mentioned that the petitioners are at liberty to lodge claim/complaint against the BSF. Aggrieved thereof, petitioners again served a legal notice dated 18th of December, 2015 (Annexure P-9) to all the respondents respectively. However, till date petitioners are waiting to be compensated.

4. Ld. Counsel for the petitioner submits that it has come on record that the cause of death of the deceased is 'shock' as a result of 'electric-current injuries'. He further relies upon judgment passed by Apex Court in **M.P. Electricity Board vs. Shail Kumari, 2002(1) Civil Court Cases 685** to submit that the respondents being negligent are liable to pay compensation.

5. Per contra, stand of the State has been spelled out in Para No.3 of the preliminary submissions made in the written statement which reads as under :-

“3. That in reply to this para, it is submitted that on 09.06.2013, one civilian visitor Narender (Age approximately 32 years) R/o H. No.211, Ward No. 13, Town Dadri, Tehsil Dadri, Distt. Bhiwani, State Haryana came to witness the Retreat Ceremony Parade at JCP Attari and during the parade it was announced no body will try to cross the chain after completion of Retreat Ceremony Parade due to the security reasons as Zero Line Gate i.e. Indo-Pak International Boundary is just near that point. Thereafter, when ceremony was over, he came down from the general visiting gallery to road, which is blocked by a security chain to control the access of crowd from approaching upto Zero Line Gate due to the security reasons. As the viewers were returning back and there was rush near the chain he climbed up on the demarcation lamp pole by keeping foot on the junction box, to see what was happening ahead. Due to his weight, junction box broke and exposed electric wire touched the pole. Mr. Narnder (Deceased) was wearing leather sandals, due to which his feet came in contact with electric wire and decorative lamp pole. He got electrocuted through his feet as he was also holding the metallic polse with his hands. Crowd nearby could not remove him from the lamp pole because they thought he was standing normally by holding lamp ole. Dr. Harpreet Singh, GDMO, 154 Bn BSF, who was present for medical coverage at JCP Attari, immediately administered first aid and evacuated him to New Surinder Hospital, Chheharta Amritsar, the nearest en-route hospital from JCP Attari. After examination at hospital, Doctor declared him brought dead. Later, the dead body of the deceased was further shifted to GND Hospital mortuary, Amritsar and his relatives were informed about the incident. Wife of the deceased was accompanying him at the time of incident.”

6. Mr. Sharma appearing for respondents No.1 and 2 has invited attention of this Court to the affidavit of Sh. Jitender Singh

Oberoi, VSM, presently posted as Deputy Inspector of General Head Quarter, Boarder Security Force, Amritsar (Punjab) which was filed in compliance of order dated 9th of May, 2019. The Inquiry Court after going through inquiry report and statements of witnesses, opined as under :-

“Shri Narinder Singh S/o Shri Ram Singh V/PO – Charkhi Dadri, District Bhiwani (Haryana) came to witness the retreat ceremony at JCP Attari along with his zeal of watching the ceremony, he tried to climb on the junction box of the electric lamp pole. His left leg slipped into the box and got electric shock. He shifted to the hospital and declared brought dead. As per Post Mortem report the injuries are antemortem in nature. The cause of death in this case as the opinion of Dr. Kuldeep Kumar, Deptt of Forensic Medicine & Toxicology Govt. Medical College, Amritsar is 'Shock' as a result of 'Electric-current injuries' which is sufficient to cause death in the ordinary course of nature.

No one is blame worthy neither BSF personnel nor any civilian. BSF personnel did splendid job giving his first aid and CPR and shifted to hospital.”

7. I have heard counsel for the parties and have gone through records of the case.

8. Electricity Rules 1956 enacted under Section 37 of the Electricity Act, 1910 not only lay down the procedure for safety and protective devices but also cast obligation upon the owner of every minimum high and extra high voltage installation to affix permanently a danger notice on such installation so that person walking near such

installation is beware of the threat involved. Relevant Rule 35 reads as under :-

“35. Danger Notices- The owner of every medium, high and extra-high voltage installation shall affix permanently in a conspicuous position a danger notice in Hindi or English and the local language of the district, with a sign of skull and bones 1[of a design as per the relevant ISS No. 2551] on -

- (a) Every motor, generator, transformer and other electrical plant and equipment together with apparatus used for controlling or regulating the same;
- (b) All supports of high and extra-high voltage overhead lines which can be easily climb-upon without the aid of ladder or special appliances;

Explanation-- Rails, tubular poles, wooden supports, reinforced cement concrete poles without steps, I-sections and channels, shall be deemed as supports which cannot be easily climbed upon for the purposes of this clause.

- (c) Luminous tube sign requiring high voltage supply, X-ray and similar high frequency installations;

Provided that where it is not possible to affix such notices on any generator, motor transformer of other apparatus, they shall be affixed as near as possible thereto; or the word ‘danger’ and the voltage of the apparatus concerned shall be permanently painted on it.

Provided further that where the generator, motor, transformer of other apparatus is within an enclosure one notice affixed to the said enclosure shall be sufficient for the purposes of this rule.”

9. I may hastenly add here that even though 1948 Act stands repealed by 2003 Act but by virtue of Section 185(2)(d) these Rules continue to have effect. It is in the present mechanized world when use of energy and machine does involve many situations which are hazardous and pose threat to life and property that law has made the person handling life threatening devices liable. It is this principle that has been termed as Rule of Strict Liability. Near home in the enlightening judgment authored by Justice Rajiv Narain Raina in the case of '**Raman vs. State of Haryana and others**', 2013(3) R.C.R. (Criminal) 653, the Court held 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.”

10. After going through plethora of judgments dealing on the issue the Court further held as under :

“33. On a reading of the above case law the real question in this case which arises to my mind is whether the supplier of electricity can excuse himself by showing that the escape was owing to the petitioner's default. There is, however, little doubt on the other issues arising out of strict liability; burden of proof of escape of potentially dangerous thing causing injury wittingly or by surprise; standard of care required from Licensee which is

circumspect statutorily under the Act and rules to do certain acts and things in the manner specified; jurisdiction of this court to award compensation in appropriate cases in writ jurisdiction and the connected issue of quantification of compensation so that it is neither under compensation nor overcompensation etc.; that in the present case such factors tilt in favour of the injured and need not detain us. The claim made in the petition is an actionable claim and the case is an eminently fit one for grant of compensation in exercise of powers under Article 226 of the Constitution.”

11. In the present case so far as the presence of the deceased on the place of occurrence is concerned, the same is undisputed. The first version w.r.t. incident stands recorded in the DDR, on the statement of Preeti w/o Narender Kumar (deceased) whose presence on the spot is also not disputed. The contents of the DDR read as under :-

“Statement of Preeti w/o Late Sh. Narender Kumar, Caste Saini, r/o House No.494, Ward No.11, Charkhi Dadri, P.S. Charkhi Dadri, District Bhiwani (Haryana) aged about 29 years xxxxxx Xxxx as under: - Stated that I am resident of above address I alongwith my husband Narender Kumar who is working as JBT Teacher in Govt. High School, Village Sulehra, District Jind (Haryana) and due to summer vacation we on 5.6.13 started from our resident for Vaishno Devi and on way back reached Amritsar on 8.6.13 and paid obeisance at Golden Temple, Amritsar ad on 9.6.13 we both in the evening went to Wagha Border to see the retreat ceremony and after seeing the parade due to over crowd the hand of my husband Narender Kumar touched with electric pole in which electric current was

running and due to electric shock my husband became unconscious and he was taken to New Surendra Hospital, Cherta in B.S.F. Ambulance where the doctor declared brought dead. My husband has died due to electric current and on one is responsible for the same and I do not want action against anyone. I got my statement recorded which is heard and accepted corrected.”

12. Further the opinion w.r.t. cause of death as record in the Post-Mortem Report records that : *'Shock' as a result of 'Eletric-current Injuries'; which is sufficient to cause death in the ordinary course of nature.*

13. At the same time, the post-mortem report records the following :-

“Description of injuries :

1. Electric current injury size - 2.62x2.6cm present on the sole of right foot, almost circular situated 6.5 cm below great toe.
2. Electric current injury size – 3x2.5cm present just beneath the left great toe of (L) foot.
3. Electric current injury size – 0.6x0.4cm present beneath the 2nd toe of left foot, adjoining to great toe.”

14. In view of above, there can't be any denial to the fact that deceased died of electrocution. The source of electrocution i.e. the pole was installed in an area thronged by public at large to visit Retreat Ceremony. The respondents i.e. the Union of India as well as the supplier i.e. the Corporation definitely had a duty of care casted upon

them under the Electricity Act. Not only the pole should have been cordoned by some safety circle they should have put a statutory 'Danger Notice' as contemplated under Rule 35 so that the people in the gathering were not only saved but also were beware of going near the pole. Deceased was not a regular visitor and was thus not expected to know that standing on the box attached to the pole would result in electrocution. People visit the said place as a tourist and thus have to be made aware of the threat perceptions regarding installations in and near the premises. Both the respondents being negligent in adopting statutory measures cannot escape their liability *qua* the mishap that took place. Rather the authorities should have been alive not only to the amount and nature of crowd but also to the enthusiasm attached with the retreat ceremony and could not have afforded such negligence as is written large in the present case. The principle of 'doctrine of strict liability' evolved in the judicial pronouncements is fully attracted in the present case.

15. Keeping in view the negligence of the respondents PSPCL and Union of India which led to the present accident both are held jointly and severally liable to compensate the petitioners.

16. Coming on to the question of compensation the principles governing computation of compensation in MACT have been relied upon by various Courts to calculate compensation and do provide fair

formula for the same. Resultantly, the compensation is computed as under :

Monthly salary of deceased Narender Kumar =	Rs.26,929/-
Age at the time of death of deceased was 31 year so multiplier applicable	= 16
Deduction to be applied	= 1/4 th
Future prospects as per law laid down by Apex Court in ‘National Insurance Company Limited vs. Pranay Sethi and others’, (2017) 16 SCC 680	= 50%
Loss of Consortium	= Rs.60,000/- each petitioner
Funeral expenses	= Rs.15,000/-

17. Keeping in view that the petitioners have suffered prolonged litigation since 2016 they are awarded litigation cost of Rs.1.00 lac.
18. Respondents are directed to release compensation to the petitioners within a period of eight weeks from the date of receipt of certified copy of this order.
19. Accordingly, the writ petition is allowed.

February 01, 2023

(PANKAJ JAIN)

Dpr

JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No