

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

OWP No.498/2010

1 Balwant Singh son of Sh. Pehal SinghPetitioner(s)
2. Munish Singh alias Munish Kumar son of Sh. Pehal Singh and another, both residents of village Bravi, Tehsil Kalakote, District Rajouri

Through: Mr. Ashok Sharma Advocate.

Vs

1.State of Jammu and Kashmir th. Respondent(s)
Commissioner Secretary Power Development Department.
2. Chief Engineer M&RE
3. XEN PDD Rajouri
4. Mohd Yousuf son of Fateh Mohd resident of village Solki Lineman in PDD Tehsil Kalakote Rajouri

Through: Ms Pallavi Sharma Advocate vice
Mr. Ravinder Gupta Advocate.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1 The petitioners, through the medium of instant petition, have sought a direction upon the official respondents to pay compensation in the amount of Rs.25.00 lacs in their favour on account of death of their mother Smt. Satya Devi.

2 As per the case of the petitioners, on 28.06.2007, at about 9:00 pm, the Chowkidar of village Bravi informed Police Station, Dharamsal, Tehsil Kalakote, District Rajouri, that mother of the petitioners Smt. Satya Devi had gone to the forest in village Solki in search of her buffalo, but had not returned till late night. The police launched a search for Smt. Satya Devi and found her dead body in the forest. It was also found that she had died as a result of electric shock after coming in contact with the live electric wires passing

through the forest. The police commenced inquest proceedings under Section 174 Cr.PC and during the proceedings, it was found that there was a broken live electric wire lying on the ground, with which the deceased Satya had come in contact which resulted in her death. It was also found by the police that respondent No.4, the lineman, had failed to take any action, even though he had been informed by the villagers about breaking of live electric wires about 19/20 days prior to the incident. The police registered FIR No. 49/2007 for offence under Section 304-A RPC and after investigation of the case, found that offence under Section 304-A RPC is established against respondent No.4. Accordingly, challan was laid against respondent No.4 before the Court of Judicial Magistrate 1st Class (Munsiff), Kalakote.

3 It has been submitted that mother of the petitioners, namely Smt. Satya Devi who was aged 45 years at the time of her death, died on account of negligence on the part of the officials of respondent-Department, who had failed to maintain the live electric wire which they were supposed to do in terms of the provisions of the Electricity Act. According to the petitioners, deceased Satya Devi was earning Rs.25,000/- per month from the sale of milk etc. The petitioners have sought compensation in the amount of Rs.25.00 lacs from the official respondents on account of death of their mother.

4 The official respondents have contested the writ petition by filing their reply. In their reply, they have submitted that death of Smt. Satya Devi has not taken place due to electrocution, but the same has taken place due to lightning during a thunderstorm, as was reported by the 'Daily Excelsior' newspaper, in its edition dated 30.06.2007. It has been further submitted that the respondent-Department has taken all possible and necessary steps to maintain the electric lines in order to ensure that no human life or animal life

is lost. It has been contended that the writ petition gives rise to disputed questions of fact which cannot be adjudicated upon by this Court in exercise of its writ jurisdiction.

5. The first issue, that is required to be determined in this case is, as to whether the assertion that, Smt. Satya had died due to electrocution, is established from the material on record. The said assertion of the petitioners has been denied by the official respondents who have categorically taken a stand that death of the deceased had taken place due to lightening on account of a thunderstorm and not due to electrocution.

6 In the above context, the official respondents have relied upon a news item dated 29.06.2007 published in 'Daily Excelsior' newspaper. As per the said news item, one Sita Devi, wife of Behal Singh, resident of Sokri in Kalakote, died in an incident of lightening during a thunderstorm last evening i.e on 28.06.2007. As against this, the petitioners have placed on record a copy of post-mortem report of the deceased which indicates that death of the deceased had taken place due to electrocution. In the said post mortem report, it has been recorded that the deceased had suffered a wound on her neck caused by contact with a live electric wire. In addition to this, the petitioners have also placed reliance upon a copy of challan filed by the police against respondent No.4. In the said Challan, it is noted that, after investigation of the case, it was found that death of the deceased had taken place because she had come in contact with broken live wires. It is also recorded in the challan that at the place of occurrence, broken electric wires were found, one end of which was lying tied to a electric pole, whereas the other end of the wire was lying on the ground. The Investigating Agency also found that these live wires were lying broken for about 19/20 days and the people of the area informed

respondent No.4 about it, but he did not take any steps to repair the broken live electric wires which resulted in the accident leading to death of the deceased. The question arises as to which of the version of occurrence has to be relied upon.

7 So far as the news report is concerned, the same is based upon hearsay evidence of reporter of the newspaper. The assertion made in a newspaper cannot be treated as proved facts reported therein. A statement of fact contained in a newspaper is merely hearsay and, in the absence of statement of the maker of the news report, the same cannot be relied upon as a proved fact. As against this, the post-mortem report of the deceased, which is an admitted document, clearly indicates that the deceased had received injury which is possible by a live electric wire and it is also recorded in the post-mortem report that death of the deceased had taken place due to electrocution. Besides this, the police, after thorough investigation, has come to the conclusion that the broken live electric wire was found on spot, one of its ends was tied to a pole and the other end was lying on the ground. It was also found that the deceased had come in contact with the live electric wire lying on spot of occurrence. Therefore, the only inference that can be drawn, on the basis of the material placed on record by the parties, is that the deceased has died as a result of electrocution after coming into contact with the live electric wire which was lying on the ground. Merely because something contrary has come in the news report which otherwise, gives the name of the deceased as Sita Devi and not Satya Devi, the cause of death of the deceased does not become a disputed question of fact. The contention of the official respondents, in this regard, is, therefore, without any merit.

8 Having held that the deceased died as a result of electrocution after

having come in contact with the live electric wire which was lying on the ground, the next question that arises is, as to whether the accident has taken place due to the negligence of the employees of the respondent-Department and if so, whether they are liable to pay compensation to the petitioners.

9 Rule 77 of the Electricity Rules, 1978 provides for clearance above ground of the lowest conductor including service lines. As per the said Rule, the maximum clearance above ground of the conductor or service line has to be 20 ft. and the minimum clearance above ground has to be 13 ft., in all cases. In the present case, as is clear from the police Challan, the live electric wire had broken and one end of the said wire was on the ground with which the deceased came in contact resulting in her death, meaning thereby that the officials of the respondent-Department, who were obliged to maintain minimum ground clearance of 13 ft., in all cases, have derelicted their duty of maintaining the electric wires in the present case. Thus, the accident has arisen on account of want of care on the part of officials of the respondent-Department. There can be no dispute to the fact that the respondent-Department is licensed for transmitting and supplying electric energy of high voltage, which is hazardous and inherently dangerous activity, therefore, it is incumbent upon the officers/officials of the respondent-Department that no electric current is passed or transmitted through wires unless appropriate measures are taken to prevent its uncontrolled escape, so as to avoid loss to life and property. The omission on part of the officials of the respondent-department in discharging their duty, would certainly amount to negligence on their part and the respondent-department would vicariously become liable to compensate for the damage to the life and property which may ensue because of negligence or lack of care on part of its officials.

10 The Supreme Court, in the case of **Madhya Pradesh Electricity Board vs Shail Kumari and another, AIR 2002 SCC 55**, while dealing with a case where the deceased while riding on a bicycle came in contact with the live wire lying on the road resulting in his death, has observed 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.

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 (1868 Law Reports (3) HL 330). Blackburn J., the author of the said rule had observed thus in the said decision:*

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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.*

14. *The Privy Council has observed in Quebec Railway, Light Heat and Power Company Limited v. Vandry and Ors. {1920 Law Reports Appeal Cases 662} that the company supplying electricity is liable for the damage without proof that they had been negligent. Even the defence that the cables were disrupted on account of a violent wind and high tension current found it sway through the low tension cable into the premise of the respondents was held to be not a justifiable defence. Thus, merely because the illegal act could be attributed to a stranger is not enough to absolve the liability of the Board regarding the live wire lying on the road".*

11 From the foregoing enunciation of law on the subject, it is clear that once it is shown that the energy transmitted by its supplier has resulted in injury or death of a human being, the primarily liability to compensate the sufferer is that of supplier of the electric energy. Applying the said ratio to the

facts of the present case, there can be no escape from the conclusion that the respondents are liable to compensate the petitioners on account of death caused to their mother.

12 The final issue, that needs to be determined is, as to what should be the amount of compensation payable to the petitioners. It has been submitted by learned counsel for the petitioners that the Government of Jammu and Kashmir has framed a policy pursuant to SAC Decision No.271/22/2019 dated 22.10.2019 by virtue of Government Order No. 454-F of 2019 dated 24.10.2019 which provides an ex-gratia payment of Rs.10.00 lacs to the legal heirs of a person who dies due to electrocution. Learned counsel for the respondents has not disputed the issuance of aforesaid order by the Government. Thus, in terms of the aforesaid policy of the Government, the petitioners are entitled to compensation of Rs.10.00 lacs on account of death of their mother due to electrocution.

13 In view of the above, the writ petition is allowed and the respondents are directed to pay to the petitioners, a sum of Rs.10.00 lacs as compensation, which shall be payable to them in equal shares. The amount shall be paid to the petitioners within a period of two months from the date a copy of this order is made available to them, failing which, it shall carry interest @ 6% *per annum* from the date of filing of the writ petition till realization of the amount.

(SANJAY DHAR)
JUDGE

Jammu
31.10.2024
Sanjeev

Whether approved for reporting? Yes/No

