

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH**  
**AT SRINAGAR**

**OWP no. 1042/2014**

**Reserved on 25.08.2022**  
**Pronounced on 09.09.2022**

Saleema Begum and others

.... Petitioners

Through: Mr Irshad Ahmad, Advocate

V/s

State of JK and others

... Respondent(s)

Through: Mr Asif Maqbool, Dy.AG

**CORAM:**

**Hon'ble Ms Justice Moksha Khajuria Kazmi, Judge**

**JUDGMENT**

1. The petitioners have invoked the writ jurisdiction of this Court in terms of Article 226 of the Constitution to seek a writ of mandamus to the effect that respondents be directed to pay them compensation of Rs. 30.00 lacs for the loss suffered on account of electrocution of the sole bread earner of their family due to the negligence of the respondents; to appoint the male member of the family in the respondent Department, on the grounds taken in the memo of writ petition.

**BRIEF FACTS**

3. The case of the petitioners is that the husband of petitioner no. 1 and father of petitioners 2 to 5, Nazir Ahmad Khan, went to offer Maghrib prayers on 24<sup>th</sup> July, 2013 at around 07.40 pm and on his way to the mosque 11000 KV live electric supply line fell from the transformer on the head of said Nazir Ahmad resulting in his on-the-spot death. The incident is attributed to the negligence of the respondents. A case in this behalf is also stated to have been registered with the concerned police which also reflects the electric shock as the cause of death of the deceased Nazir Ahmad Khan. The petitioners have pleaded that the deceased was the sole bread earner of the family who was earning Rs. 500/- per day in his capacity as a Master Carpenter. The petitioners, therefore, plead to have been deprived of the earnings of the deceased making them vulnerable for starvation. The petitioners, as such, are seeking compensation of Rs. 30.00 lacs for the loss caused to them because of the negligence of the respondents.

4. The respondents, upon notice, appeared and filed their reply, resisting the claim of the petitioners. They have sought dismissal of the writ petition for having raised the disputed questions of fact which cannot be adjudicated upon in the writ proceedings. The respondents have pleaded that the deceased had fiddled with the electric supply lines which resulted in falling of an electric supply line causing death of the deceased, therefore, the negligence is attributed to the deceased.

5. Heard learned counsel for the parties and considered the submissions made.

6. Admit.

7. The admitted position of the case is that the deceased has died on 24<sup>th</sup> July, 2013 at around 7.40 pm because of an electric shock received by him through 11000 KV line attached with the electric transformer installed at DazanLachpora, Uri. The liability, however, to compensate the petitioners for the loss caused to them due to the death of the deceased is denied by the respondents on the count that there was no negligence on their part.

8. In order to appreciate the issue raised in the writ petition as regards the liability of compensation it is essential to note as to how the death of the deceased has been caused. The death of the deceased has, as taken note of hereinbefore, admittedly been caused because of an electric shock received by the deceased through 11000 KV Electric Supply Line of the area. It cannot be said that the respondents were not liable to maintain the electric supply lines of the area and take good care of any unforeseen situation that may result in a damage to human life and property.

9. The respondents have stated in their reply that the negligence in the incident in question is attributable to the deceased only as he fiddled with the electric transformer. In support of such stance, the respondents have taken refuge in a letter addressed by the Assistant Executive Engineer, Sub Division Mohra to the SHO of Police Station Bijhama for lodging FIR in the case. The respondents further go on to add that the victim had illegally climbed on 100 KV transformer at DazanLachpora (Uri) for unknown reasons as a result of which he sustained shock and died on the spot.

10. The learned counsel for the respondents referred to and relied upon the judgment of the Hon'ble Apex Court delivered in case titled *SDO, GRID CORPORATION OF ORISSA LTD. AND OTHERS v. TIMUDU ORAM* reported as (2005) 6 SCC 156

11. The petitioners have invoked the writ jurisdiction of this Court seeking compensation against the loss suffered by them in the death of the deceased who

was their sole bread earner. The following few questions arise for determination in this case:

*“a) Whether this Court, in its writ jurisdiction, can award compensation to the petitioners for the loss suffered by them allegedly at the hands of the respondents?”*

*b) Whether the respondents can escape liability to pay compensation to the petitioners by simply projecting that the matter involves disputed questions of fact?”*

**Question (a)**

12. The Hon’ble Apex Court in cases titled *Nilabati Behera v. State of Orissa & others* reported as *1993 (2) SCC 746* and *Dr Mehmood Nayyar Azam v. State of Chatisgarh* reported as *JT 2012 (7) SC 178* has laid down a principle that the Supreme Court and the High Court being the protectors of the civil liberties of the citizen, have not only the power and jurisdiction but also an obligation to grant relief in exercise of its jurisdiction under Articles 32 and 226 of the Constitution. Therefore, the exercise of writ jurisdiction for awarding compensation for contravention of human rights and fundamental freedoms is recognized by the Hon’ble Apex Court.

13. The Hon’ble Apex Court has also laid down that where the fundamental rights under Article 21 of the Constitution are infringed, the State can be called to do the necessary repairs to the damage done by its officers to the fundamental rights of the aggrieved person(s), notwithstanding the right of the aggrieved to a remedy of civil suit or criminal proceedings. Thus, this Court can hold respondents liable and award compensation to the petitioners in its writ jurisdiction and such compensation would be independent of the right of the aggrieved to claim compensation under the *law of torts* through a suit instituted before the competent court of law.

14. In view of above, the **question (a)** is answered in affirmative.

**Question (b)**

15. The respondents being the managers of the electric supply of the area were duty bound in law to ensure that the requisite measures are in place to prevent the leakage, loss of such energy or to see that the wire snapped would not remain live on the road to endanger the lives of the people. It would not suffice the respondents to say that an individual indulged in siphoning/ fiddling or any other mischief which resulted in his death. Such mischiefs are to be prevented by the managers of the electric supply by installing the necessary devices at the spots where the

electric transformers are placed. The respondents are duty bound to take extra care, being the supervisors of such dangerous supplies to prevent mishaps. A mechanism needs to be evolved that would not only detect but prevent also any mischief that may be resorted to illegally by any individual. The authorities need to think out of the box to find solutions to the unforeseen situations, they cannot afford to be mechanical in an era that is witnessing a tremendous industrial and technological advancement which increases the number of hazardous and inherently dangerous activities, therefore, more number of such activities demand equally more advanced measures in place to prevent mishaps as the hazardous activities should and must always be carried out by its managers at their own peril.

16. Even otherwise, the respondents, being the supervisors and suppliers of the electricity because of which the petitioners have suffered, under the provisions of *law of torts*, are liable to pay compensation to the victim who has suffered because of their activities irrespective of any negligence or carelessness on the part of the managers of such undertakings. Such liability is known as “strict liability”. The strict liability principle finds its origin in “*Rylands v. Fletcher*” and the case in hand does not fall within the seven exceptions prescribed therein. The Hon’ble Supreme Court in case titled *M. C. Mehta v. Union of India* reported as *1987 AIR 1086* has gone even beyond the principle laid down in “*Rylands v. Fletcher*” by holding as under:

*“We are of the view that an enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas owes an absolute and nondelegable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous nature of the activity which it has undertaken. The enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity in which it is engaged must be conducted with the highest standards of safety and if any harm results on account of such activity, the enterprise must be absolutely liable to compensate for such harm and it should be no answer to the enterprise to say that it had taken all reasonable care and that the harm occurred without any negligence on its part. Since the persons harmed on account of the hazardous or inherently dangerous activity carried on by the enterprise would not be in a position to isolate the process of operation from the*

*hazardous preparation of substance or any other related element that caused the harm must be held strictly liable for causing such harm as a part of the social cost for carrying on the hazardous or inherently dangerous activity.” (Emphasis supplied)*

17. The respondents, in the instant case, have also not provided any material that may lend support to the plea taken by them in their defence that the negligence was of the deceased and not the respondents. Merely because a communicate is issued by one of the functionaries of the respondent department in the name of the police concerned, seeking registration of FIR for the incident in question, cannot form a ground for framing an opinion that the negligence was that of the deceased and not of the respondent department. Since the incident in question had been caused because of an electric shock, therefore, it was quite obvious that the authorities of the respective department would seek registration of a case as the electric transformer must have suffered a damage in the process. However, it does not in any way reflect *ipso facto* that the deceased had fiddled with the electric supply line as alleged. Therefore, the plea taken in defence by the respondents seems to be a ploy to deprive the petitioners from the lawful compensation they are entitled to on account of the death of the deceased, the lone bread earner of the petitioners. Furthermore, Mr Asif Maqbool, learned Dy.AG, during the course of arguments, had submitted that although the respondents sought registration of FIR for the act of fiddling, but he does not know as to whether FIR stands registered or not. The defence taken by the respondents, on this count also, loses significance as there is no documentary support to the plea of registration of FIR, rendering the whole story as doubtful.

18. In view of the above discussion the **question (b)** is answered in negative and the respondents are held liable to pay the compensation to the petitioners on account of the loss suffered by them in the incident in question.

19. The Court is now required to see as to how the compensation payable to the petitioners can be assessed. The Court in such cases, as is settled by the ratio laid down by the Hon'ble Supreme Court in case titled *National Insurance Company Ltd., v. Pranoy Sethi, reported as (2017) 16 SCC, 680*, may seek guidance from the principles governing assessment of compensation in Motor Accidents Cases having regard to the fact that the assessment must be just compensation and not an excuse for undue enrichment.

20. Let us now assess the compensation payable to the dependents of the deceased on the basis of the guidelines laid down in *Pranoy Sethi's case supra*.

The petitioners have taken specific pleas, which are not disputed by the other side, that the deceased at the time of his death was 40 years of age and he was earning Rs. 500/- per day i.e.15000/- per month. In terms of the guidelines laid down in the *Pranoy Sethi's case supra*, an addition of 30% is to be made to the income of the deceased. Thus, the monthly income of the deceased comes to Rs. 19500/- out of which 1/3<sup>rd</sup> has to be deducted as personal and living expenses of the deceased. After deduction the annual loss of dependency comes to Rs. 156,000/-. Having regard to the age of the deceased, multiplier 15 has to be applied. Thus, the total loss of dependency of the petitioners would be Rs. 23,40,000/-. Besides the loss of dependency, the petitioners would be entitled to Rs. 15000/- for the loss of estate; Rs. 40,000/- for the loss of consortium; Rs. 20,000/- as cost of litigation and Rs. 15000/- on account of funeral expenses. Therefore, the petitioners are held entitled to the compensation as under:

1.	Loss of dependency	= 23,40,000/-
2.	Loss of estate	= 15,000/-
3.	Loss of consortium	= 40,000/-
4.	Cost of litigation	= 20,000/-
5.	Funeral expenses	= 15,000/-
	Total	= 24,30,000/-.

### **CONCLUSION**

21. In view of above discussion, the petitioners are held entitled to a compensation of Rs. 24,30,000/- (Twenty-four lacs thirty thousand) along with interest @ 6% per annum from the date of filing of this petition till its realization. The petitioner No. 4 & 5, at the time of filing of this writ petition were shown to be 13 and 11 years of age respectively, therefore, had filed instant petition through their mother, i.e. petitioner No. 1. However, during the pendency of the writ petition, petitioner No. 4, has attained the age of majority while as, petitioner No. 5 continues to be a minor. In that view of the matter, respondent No.1 to 5 are saddled with the liability to pay the compensation to the petitioners in equal shares except for petitioner No. 5 whose share of compensation shall be kept in FDR till she attains the age of majority. The amount of her share shall be released in her favour after she attains the age of majority.

22. The writ petition is accordingly disposed of on the above lines.

(Moksha Khajuria Kazmi)  
Judge

Srinagar  
09.09.2022  
Amjad lone, Secretary

Whether approved for reporting: Yes/No