

(2026) 04 GUJ CK 0159

In the Gujarat High Court

Case No : R/First Appeal No. 2440 Of 2004, 844 Of 2005, Civil Application (For Stay) No. 1 Of 2005

Gujarat Electricity Board

APPELLANT

Vs

Ramaben Balkrishna Purohit (Dec. Thro Legal Heirs) & Ors

RESPONDENT

Date of Decision : 02-04-2026

Acts Referred:

Electric Supply Rules, 1956 — Rule 74, 75, 76, 77, 78, 79, 80, 82
Fatal Accidents Act, 1855 — Section 1A
Indian Succession Act, 1925 — Section 306
Code Of Civil Procedure, 1908 — Section 2(11)

Citation : (2026) 04 GUJ CK 0159

Hon'ble Judges : J. C. Doshi, J

Bench : Single Bench

Advocate : RV Acharya, Sachin D Vasavada, Salil M Thakore

Final Decision : Dismissed

Judgement

J. C. Doshi, J

1. The captioned First Appeals arise out of the judgment and decree dated 30.04.20004 passed by the learned City & Civil Court, Ahmedabad, in Civil Suit No.2764 of 1992, whereby the plaintiffs' suit was partly decreed and it was held that the plaintiffs are entitled to Rs.1,90,000/- with interest at the rate of 9% per annum from the date of suit till actual realization, along with proportionate cost, jointly and severally, from the defendants.

2. The First Appeal No.844 of 2005 has been filed by Gujarat Electricity Board – original defendant No.2. First Appeal No.2440 of 2004 is filed by Torrent Electricity Power Limited (formerly Ahmedabad Electricity Company Limited) (for short 'TPL'), who was the original defendant No.1 in the suit.

3. Since both appeals are arising out of same accident and from common judgment and award, both appeals are decided by this common judgment.

4. For the sake of brevity and convenience, the parties are referred to their original status.

5 The brief facts borne out from the record are that the mother and brother of the deceased – Shayan being plaintiff Nos.1 and 2, filed a suit against Ahmedabad Electricity Company (for short 'AEC') and Gujarat Electricity Board (for short 'GEB') for recovery of compensation to the tune of Rs.7,00,000/- with interest at 18% per annum and cost, jointly and severally from the defendant of the suit. The case of the plaintiffs was that, on 21.01.1991, at about 15 to 15.30 hours, the deceased Shayan and his friend Pershottam Mistry, were on terrace of Bhadreshwar Flat, Block No.B, Naranpura, Ahmedabad, for the purpose of laying cable wires for a T.V. connection. While they were carrying out the work, a sudden short circuit took place in a 132 KV line passing adjacent to Bhadreshwar Flat. As a result, the deceased and his friend, sustained burn injuries. They both were initially taken to V.S.Hospital for treatment and thereafter, the deceased Shayan was shifted to private hospital for further treatment. However, he succumbed to his injuries on 04.02.1991 during the course of treatment. The Executive Magistrate recorded dying declaration of the deceased Shayan.

5.1 The Plaintiffs asserted that the defendants failed to take precaution as required under Rules 74 to 80 and 82 of the Electric Supply Rules, 1956. It was further pleaded that the occupier and owner of the flat had put up illegal construction on existing buildings, thereby reducing the clearance of the overhead lines, which was one of the reasons for the mishap. The plaintiffs pleaded absolute liability on the part of defendants and asserted that the deceased died due to electrocution caused by their negligence. It was further pleaded that the deceased was 30 years of age at the time of the accident and was unmarried. He was earning approximately Rs.40,000/- to 50,000/- per annum by carrying on business in the name and style of Parimal Builders & Shilp Associates. On the basis of these pleadings, the plaintiffs estimated damages of Rs.7,00,000/- towards loss of estate, medical expenses and other heads. AEC filed its written statement at Exh.32 and resisted the suit by denying negligence. It was contended that the 132 KV line belonged to GEB and that AEC was merely using the electricity passing through the said line under an agreement. Therefore, AEC (now Torrent) was not liable to pay compensation.

5.2 It was further contended that statutorily as well as contractually, it was the duty of GEB to maintain and protect the electricity lines owned by it. A plea of contributory negligence was also raised, contending that the deceased was laying a TV cable and had thrown a co-axial wire from the terrace of Bhadreshwar Flat to the adjoining Mahagujarat Society, and the co-axial wire came into contact with the 132 KV overhead conductor, resulting in electric shock. GEB also filed its written statement at Exh. 24 and raised a defence similar to that of AEC (now Torrent), with an additional contention that the 132 KV line had been given to AEC under an agreement, and as per the said agreement, AEC was responsible for maintaining the line. Therefore, if any tortious liability arose, AEC would be

liable to pay compensation.

5.3 The learned Trial Court permitted both the parties to lead evidence. During the pendency of the suit, plaintiff No.1-mother of the deceased, died and therefore, an application at Ex.99, was filed to bring on record the legal heirs/representatives of the deceased before the learned Trial Court. The said application was allowed and the legal heirs/representatives were brought on record as plaintiffs. The order passed below Ex.99 was not challenged by any of the defendants.

5.4 Upon appreciation of the evidence, the suit of plaintiff No.1 was partly decreed. Plaintiff No.2 was not considered a dependent of the deceased under Section 1A of the Fatal Accidents Act, 1855, and his claim was dismissed. The said dismissal was accepted by plaintiff No.2, and has not challenged the decision by way of appeal. The learned Trial Court awarded compensation of Rs.1,90,000/- with interest at 9% per annum, holding the defendants jointly and severally liable. Being aggrieved, both defendants preferred the present First Appeals.

6. I have heard learned advocate Ms.R.V.Acharya for the Gujarat Electricity Board in First Appeal No. 844 of 2005, learned advocate Mr.Salil Thakore for "Torrent" in both appeals, learned advocate Mr.Sachin Vasavda for the original plaintiffs in both appeals, and learned advocate Ms.Maya Desai for GEB or its successor in First Appeal No.2440 of 2004. In First Appeal No.844 of 2004, Mr.Salil Thakore appears as an advocate for defendant No.3, and in First Appeal No.2440 of 2004, he appears as an advocate for the appellant.

7. Learned advocate Ms.Acharya referred to the deposition of the witness and para 6 of the written statement of GEB and submitted that although the electricity line, being a 132 KV line, was owned by GEB, it had been leased to AEC by executing an agreement. As per the agreement, AEC was required to maintain, preserve and repair the 132 KV line. In view of this, she submit that the GEB is not a necessary party to the suit and, consequently, cannot be held liable for compensation arising from the electrocution incident that occurred on the said 132 KV line under the use of AEC/Torrent. She further referred to the deposition of the officer of defendant No.1 at Ex.96, namely Hasmukhbhai Maganbhai Patel, and submitted that the execution of the agreement has been admitted by the witness. According to her, this oral evidence clearly stipulates that AEC/Torrent was responsible for payment of compensation. On these grounds, learned advocate Ms. Acharya urged that the appeal filed by GEB be allowed and GEB be exonerated from liability to pay compensation.

8. Learned advocate Mr.Salil Thakore, appearing for AEC/Torrent, on the other hand, sought to fasten liability upon the GEB to pay compensation, if any, on the ground that GEB is the owner and occupier of the 132 KV line. He further submitted that, as per common law principles, it is the owner, who is liable to pay compensation and not the user. In these circumstances, he contended that

the learned Trial Court committed a serious and manifest error in fastening liability upon AEC/Torrent to pay compensation jointly and severally. Another contention raised by learned advocate Mr.Thakore is that, upon the death of Ramaben Balkrishan Purohit, the mother of the deceased Shayan, her heirs/legal representatives, namely Mr. Kishore Balkrishna Purohit, Mr. Anant Balkrishna Purohit, Kokilaben Atulbhai Buch (married sister of the deceased), Dr.Ushaben Sharadbhai Dave (another married sister) and Naliniben Dilipbhai Mehta, were joined as plaintiffs. He submitted that, in view of Section 1A of the Fatal Accidents Act, 1855, siblings are not entitled to claim compensation for the death of brother. He further submitted that, although the provisions of the Fatal Accidents Act, are archaic, they continue to govern claims under act of tortious liability, except in cases arising under the Motor Vehicles Act. Therefore, he argued that upon the death of plaintiff No.1-Ramaben (mother of the deceased), the right to sue did not survive, and the siblings, who were joined as heirs and legal representatives, are not entitled to receive any compensation. He submitted that therefore the learned City Civil Court committed a serious error in awarding compensation to the siblings of the deceased -Shayan.

8.1 Mr.Thakor, learned advocate further submitted that, in view of Section 306 of the Indian Succession Act, the right to sue, being a personal cause of action of Ramaben, extinguished upon her death and did not survive in favour of her heirs and legal representatives. In these circumstances, he submitted that the appeal filed by AEC/Torrent deserves consideration. To fortify his submissions, learned advocate Mr. Thakore referred to the judgment of the Division Bench of the Kerala High Court in the case of P.B.Kader & Ors. Vs.Thatchamma & Ors. reported in AIR 1970 Kerala 241.

8.2 In light of the aforesaid submissions, learned advocate Mr. Thakore prayed that First Appeal No. 2440 of 2004 be allowed and the impugned decree against AEC/Torrent be quashed and set aside.

9. Learned advocate Ms.Maya Desai, appearing for the respondent in First Appeal No.2440 of 2005, adopted the submissions made by learned advocate Ms. Acharya and also placed handwritten notes on record.

10. Learned advocate Mr.Schin D Vasavda appearing for the original plaintiffs, mainly referred to the judgment of this Court in the case of Gujarat Vidyut Board Vs. Chintan Tulsibhai Patel Minor through Tulsibhai Khodabhai reported in (2023)4 GLH 408 and submitted that the principle of strict liability operates against the Company since it is engaged in the activity of supplying and selling electricity. He would further submit that, undoubtedly, the Company is involved in dealing with a hazardous commodity, thereby exposing human life to risk. The law of torts, as aforesaid, recognizes liability for injuries suffered by any person irrespective of negligence or carelessness on the part of the electricity company. He further submitted that, in the present case, the learned City Civil Court has awarded a meager amount of Rs.1,90,000/-towards the loss of human life. Therefore, the said meager award, as decreed, should not be disturbed in the

First Appeals.

10.1 Upon the aforesaid submissions, learned advocate Mr.Sachin Vasavda prayed to dismiss both the appeal.

11. Regard being had to the rival submissions of learned advocates for the respective parties and perusal of the impugned judgment and decree as well as record and proceedings, at the outset, two questions arise for consideration. Firstly, whether AEC (now Torrent) or GEB can be absolved of their liability from paying compensation? Secondly, whether plaintiff Nos.1/1 to 1/5 joined as legal heirs/representatives of Ramaben, vide order below Ex.99, would not be entitled to compensation for the death of the deceased Shayan on the ground that they are siblings?

The incident in which the deceased Shayan lost his life is not in dispute. Though the learned advocate appearing for the electricity Company raised questions on the issue of negligence, considering the meager amount of Rs.1,90,000/- awarded for loss of life, the arguments on the issue of negligence appear to have been found perfunctorily. Even otherwise, upon perusal of the impugned judgment, more particularly, the reports at Exs.112 & 113, their comparison, the dying declaration of the deceased at Ex.81, and the oral deposition of the witness of defendant, it is sufficiently proved that a spark from 132KV line flashed at the relevant time, causing fire to the deceased and his friend, resulting in burn injuries which ultimately proved fatal to the deceased Shayan. Apt to note that the Electricity Company seeks exemption from liability by relying upon inter se agreements, contending that 132KV line, being the sole cause of electrocution, is owned by GEB, and therefore GEB is solely liable to pay compensation. As against this contention, GEB contended that AMC/Torrent, which is using the line under an executed agreement, is solely responsible for maintaining the electricity line and is therefore liable to pay compensation. Though both electricity companies have vehemently contested the issue inter se, neither of them have produced the agreement during the trial, despite it being a vital document for determining their respective liabilities. The learned Trial Court has elaborately dealt with this issue in paragraph 24 of the judgment and has rightly held that, in the absence of such an agreement, both company are jointly and severally liable to pay compensation, as one owns the 132 KV line and the other uses it, and both are responsible for its maintenance. The negligence in maintenance has thus been duly established. The learned advocate for the electricity company could not point out any material overlooked by the learned City Civil Court while arriving at the conclusion to fasten joint and several liability upon both company.

12. Now, the core question to be decided by this Court, as argued by learned advocate Mr. Salil Thakore, is whether the siblings of the deceased Shayan, who have been joined as party plaintiffs as heirs/legal representatives of the original plaintiff No.1 (mother of the deceased), are entitled to claim compensation, in view of Section 1A of the Fatal Accidents Act, 1855? It is contended that siblings are not entitled to claim compensation under the said provision. It is further

submitted that although the original plaintiff Ramaben, being the mother of deceased, was entitled to claim compensation, her right to sue, being personal in nature, does not survive upon her death so as to be inherited by her heirs and legal representatives.

13. I am not impressed by this submission. The learned Trial Court framed Issue No.3, whether the plaintiffs are entitled to compensation of Rs.7,00,000/- with interest at the rate of 18% per annum? If yes, what amount and from whom? What order and decree? The reasons for partly allowing Issue No.3 is recorded in paragraph 22 of the judgment as under:

"Now this takes me to decide as to what amount of compensation should be awarded to the plaintiff no.1 namely mother of the deceased. It needs to be noted here that the present suit is preferred by the mother and brother of deceased Shayan. But since the Fatal Accident Act permits the action to be brought for benefit of wife, husband, parent and child, the action initiated for and on behalf of plaintiff no.2 is not at all maintainable at law. Suffice to refer the principle laid down in the case between Smt.N.V. Santkumari & Others Vs. Dharuji Chogaji & Others reported in XXII G.L.R., P.650."

14. Thus, it is noticeable that the learned City Civil Court was conscious of the provisions of the Fatal Accidents Act, particularly Section 1A, and also referred to the judgment of the Co-ordinate Bench, extracting para 14 thereof, to hold that plaintiff No.2, who is the real brother of the deceased Shayan, is not entitled to compensation.

15. In the aforesaid background, the question that arises for consideration is whether the siblings, who are joined as heirs/legal representatives of plaintiff No.1 being a mother of the deceased Shayan, are entitled to claim compensation. The Fatal Accidents Act, 1855, was brought on the statute book w.e.f. 27.03.1855 and has since remained unchanged.

16. Having considered the aforesaid, archaic nature of law, I now refer to the record and proceedings, which indicate that, by the order below Ex.99, the proposed heirs of plaintiff No.1, who had expired, were brought on record without any objection from the Electricity Company. Learned advocate Mr.Thakore, who vehemently argued that heirs/legal representatives of deceased-mother since are sibling of deceased can not claim compensation, could not point out that why electricity company did not raise issue at first instance and allowed jointly of them. Be that as it may, appellant Nos.1/1 to 1/5 were joined as plaintiffs as they were representing the plaintiffs. However, they may be sibling of deceased but equally they were legal representatives of deceased plaintiff-mother and thus legally they are entitled to claim compensation, which was received to deceased plaintiff-mother.

17. Section 2(11) of the Code of Civil Procedure, 1908 defines the term 'legal representative' as under:-

"2(11) legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued."

If a person represents the estate of a deceased person, he is deemed to be a legal representative, and the term also includes any person who intermeddles with the estate of the deceased.

18. Apposite to fact that learned advocate argued that the legal representatives of the deceased plaintiff No.1, being siblings, are not entitled to claim compensation under Section 1A of the Fatal Accidents Act, 1855. However, he could not dispute that plaintiff No.1 being the mother of the deceased, was entitled to sue for compensation for the death of her son resulting from electrocution. Plaintiff No.1 expired during the pendency of the trial. Under the Indian Succession Act, any compensation that would have been awarded to Plaintiff No.1 becomes part of her estate. Consequently, her Class-I heirs, in their capacity as legal representatives, are entitled to claim such estate by stepping into the shoes of Plaintiff No.1. Thus, merely because Plaintiff Nos. 1/1 to 1/5 are siblings of the deceased does not disentitle them from claiming the compensation, which is part of the estate of Plaintiff No.1-mother of the deceased. The contention based on Section 306 of the Indian Succession Act, is misplaced, as the present case does not involve a purely personal right of Plaintiff No.1 that would extinguish upon her death. Rather, it is a case where she had a subsisting right to claim compensation for the death of her son due to electrocution, and such right, upon crystallization, forms part of her estate. The said estate can, therefore, be claimed by her legal representatives in view of Section 2(11) of the Code of Civil Procedure, 1908. There is no gainsaying that the argument that Section 306 of the Indian Succession Act bars Plaintiff Nos.1/1 to 1/5 from claiming compensation, on the ground that the right to sue of Plaintiff No.1 stood extinguished upon her death, is unacceptable rather, totally baseless and meritless.

19. In view of the above, the contentions raised by the learned advocate appearing for the electricity company fail to apprise this Court. In the case of Gujarat Vidyut Board (supra), the issue of strict liability and its extension to absolute liability has been thoroughly discussed. The provisions of Electricity Act cast upon the electricity company to maintain the service lines overhead lines, and in the event of any default, the Company is liable to pay compensation in case of mishap. Since the electricity Company is engaged in an inherently dangerous activity, explaining the risk to human life, the principle of absolute liability means strict liability without defence as applied and thereby electricity company is liable to compensate for the loss of human life caused due to electrocution. As regards the compensation determined by the learned City Civil Court, the Electricity Company has not disputed the same. In any case, the compensation of Rs.1,90,000/- valued for the loss of human life, does not

require to be disturbed in the First Appeals.

20. For the foregoing reasons, this Court is of the considered opinion that learned City Civil Court has not committed any error either in appreciation of the facts or evaluation of evidence as well as understanding the provisions of law.

21. Resultantly, both the First Appeals stand dismissed. Interim relief, if any, stands vacated. R&P, if any, be sent back to the concerned Court. Consequently, Civil Application, if any, does not survive and stands disposed of accordingly. Decree be drawn.

22. If any amount lying and deposited before this Court, it shall be transferred to the learned City Civil Court with accrued interest. Consequently, the same shall be paid to original plaintiff Nos.1/1 to 1/5 with accrued interest thereon.

23. Registry is directed to keep a copy of the judgment in each of the appeal.