
(2014) 02 MAD CK 0231
In the Madras High Court
Case No : Writ Petition No. 33142 of 2013

M. Arulappan

APPELLANT

Vs

Secretary to Government

RESPONDENT

Date of Decision : 14-02-2014

Acts Referred:

Constitution of India, 1950 — Article 12, 142, 21, 225, 226
Criminal Procedure Code, 1973 (CrPC) — Section 174
Electricity Act, 2003 — Section 166, 68
General Clauses Act, 1897 — Section 2(42)

Citation : (2014) 4 MLJ 517

Hon'ble Judges : S. Manikumar, J

Bench : Single Bench

Judgement

S. Manikumar, J.—Mr. M. Arulappan, aged about 76 years, who has lost his daughter A. Anthony Sahaya Rani, due to electrocution has filed the present writ petition representing the interest and welfare of his grand daughter, Minor Judith Rani aged about 5 years. A sum of Rs. 15 Lakhs is claimed as compensation from the Secretary to Government, Government of Tamil Nadu, Electricity Board Department, Secretariat Building, Chepuak, Chennai and the Chairman, Tamilnadu Electricity Board, Anna Salai, Chennai, respondents 1 and 2, respectively. According to him, his daughter A. Anthony Sahaya Rani was married to one Mr. Arokiyaraj. Due to family dispute, husband of A. Anthony Sahaya Rani deserted the matrimonial home. His whereabouts are not known. Now due to sudden demise of his daughter, his grand daughter minor Judith Rani, has become a orphan. Therefore, in the above circumstances, the petitioner/grandfather, representing the minor grand child has filed the writ petition claiming compensation, as stated supra. According to him, on 18.07.2013, there was heavy rain in the entire locality. About 8.30 pm, when his daughter A. Anthony Sahaya Rani went out for purchasing household articles, she was electrocuted, due to contact with a live wire in the street.

2. It is the case of the petitioner, that death of his daughter was only due to the

negligence on the part of the officials of the 2nd respondent electricity board. He also submitted that the abovesaid accident was widely reported in the newspapers. In this context, a case in Cr. No. 1010/13, was registered under Section 174 Cr.P.C. (Electric Shock) on 18.07.2013, by the Stationed House Officer, J-8, Neelankarai Police Station. The death report also confirmed that the cause of death was due to electrocution.

3. The petitioner has further submitted that after considering the bonafides in the claim and the welfare of the orphan minor child, aged about 5 years, who is now nurtured by the writ petitioner, grandfather, the Hon'ble Chief Minister has directed exgratia payment of Rs. 1,50,000/- to be paid to the minor child. Accordingly, the District Collector, Kancheepuram has deposited the said sum in a bank.

4. According to the petitioner, the amount ordered to be paid as exgratia does not represent just compensation for the loss of the life of the petitioner's daughter and mother of minor Judith Rani, aged about 5 years. He further submitted that the said amount is not sufficient to provide health, education and other basic amenities to the minor child. It is further submitted that though, representation has been made to the 2nd respondent, to provide just compensation, the same has not been considered. Hence, the present writ petition.

5. The Superintending Engineer, CEDC/South/K.K. Nagar, Chennai, has filed a counter affidavit denying the negligence of the Electricity Board, in not maintaining the lines. According to him, on the fateful day, a live wire got snapped due to heavy wind and gale, which led to this untoward incident, resulting in the loss of life of the petitioner's daughter, which is an Act of God. He has further submitted for the Act of God, liability cannot be fixed on the Electricity Board. Maintainability of the writ petition is also one of the grounds, raised for dismissal of the writ petitioner. Reliance has been placed on the decision of the Supreme Court in Chairman, Grid Corporation of Orissa Ltd. (Gridco) and Others Vs. Smt. Sukamani Das and Another, , Tamil Nadu Electricity Board Vs. Sumathi and Others, and Khaleel Ahmed Dakhani Vs. The Hatti Gold Mines Co. Ltd., .

6. Without prejudice to the above, Superintending Engineer, CEDC/South/K.K. Nagar, Chennai, has further submitted that a proposal for payment of compensation is already under consideration and final decision would be taken on the production of the post mortem/legal heir certificate. According to him, as and when the abovesaid requirements are satisfied, the claim of the petitioner would be considered. Quite contrary to the same, at paragraph No. 8 of the counter affidavit, the Superintending Engineer, CEDC/South/K.K. Nagar, Chennai, has stated that the petitioner is not entitled to claim any damage from the Tamilnadu Electricity Board and consequently, the claim of the petitioner is not sustainable in law or on facts. Quantum of compensation claimed, is also disputed.

7. On the last occasion, when the matter came up for hearing, placing reliance on the Board proceedings in (Per.)(F.B) TANGEDCO Proceedings No. 5 dated 29.04.13 issued by TANGEDCO, Mr. P. Gunaraj, learned counsel for the respondent submitted that even if compensation has to be paid by the board, in respect of fatal cases, the amount payable, as per the Board's proceedings shall not exceed Rs. 2,00,000/- and therefore, without prejudice to the above contentions, he has submitted that the claim for compensation of Rs. 15 Lakhs by the petitioner is excessive. Proceedings in (Per.) (F.B.) TANGEDCO Proceedings No. 5 dated 29.04.13, issued to the Chief Engineer, was also produced to the effect that the concerned Chief Engineers have been conferred with the powers to sanction the exgratia payment, payable on compassionate grounds in respect of fatal/non-fatal, electrical/mechanical accidents to non-departmental persons/animals, as stated in Board Proceedings No. 5 dated 29.04.2013, stated supra.

8. When the matter came up for hearing on 06.01.2014, this Court felt that the petitioner should obtain a Postmortem certificate. Subsequently, the petitioner has obtained the postmortem certificate dated 19.07.2013, issued by Tutor/Asst. Professor, Forensic Medicine Department, Government Royapettah Hospital, Chennai, which states that the cause of death was due to electrocution. Inquest report conducted on the body of Mrs. A. Anthony Sahaya Rani, prepared by the Inspector of Police, J8 Neelangarai Police Station, Chennai, also supports the case of the petitioner that she died due to electrocution. As per the legal heir certificate dated 20.11.2013, issued by the Tahsildar, Sholinganallur, minor Judith Rani, is the only legal heir to the deceased Mrs. A. Anthony Sahaya Rani.

9. As stated supra, the whereabouts of the husband of the deceased is not known. Even the Government have granted exgratia payment of Rs. 1,50,000/- only in favour of the minor Judith Rani, and that the same has been deposited in a bank. As rightly contended by the learned counsel for the petitioner, Rs. 1,50,000/- paid as compensation, does not represent just compensation. Value of life, is immeasurable and it cannot be restricted to such a low sum. The petitioner is stated to be 75 years. Minor child has lost the love and affection of her mother. Whereabouts of the father is not known.

10. The Government have ordered exgratia of Rs. 1,50,000/- for the loss of life of the petitioner's daughter, and the mother of the minor Judith Rani, aged about 5 years and subsequently deposited the exgratia payment in her name.

11. Ex-gratia in Latin is "by favour" or "out of goodwill". Something has been done, ex-gratia, it has been done voluntarily, out of kindness or grace. In law, ex-gratia payment is a payment made without the giver recognising any liability or legal obligation. Merely because an ex-gratia payment has been made by the Hon"ble Chief Minister, extending her goodwill that would not curtail the rights of minor Judith Rani to claim a just compensation from the respondents. At the time, when ex-gratia payment is made by the government, the giver may not recognise the liability or the legal obligation to pay just compensation to the accident victim, but when the victim approaches the Court, negligence and

liability, both can always be adjudicated and determined, and suitable compensation be awarded. Exgratia does not take away the right of a person to claim just compensation. In the case on hand, the electricity board, is blowing "hot and cold". At one stage, Board says that there is no liability to pay compensation, as death was due to "Act of God" and on the other hand, an averment is made to the effect that if the petitioner produces, post mortem and legal heir certificates, then the claim would be considered. If God has determined to take away the life of A. Anthony Sahaya Rani, by electrocution, why should the Board deny payment of just compensation to the accident victim? For every action or inaction, Poor God, is always blamed. This Court fails to understand, whether God also ordered the Board not to pay compensation?

Maintenance of Electric Wires:

12. On the aspect of maintenance of electric wires by the Board, and rejecting the challenge to maintainability of the writ petition at paragraph No. 7, this Court in *Arulmeri Vs. Superintendent Engineer, Tamil Nadu Electricity Board and Another*, has considered and held as follows:

When the petitioner's husband had not committed any act, contrary to law or the provisions of the Electricity Act, and when the death had occurred due to fall of electric wire, whether it is due to unprecedented rain or Act of God, there is no need for the petitioner to go before the Civil Court and establish the cause of the death or negligence. Certainly the death had not occurred due to the negligence of the petitioner, on the contrary, indisputably, due to the fall of the electric wire, the accident had occurred. Therefore, this Court has no hesitation to hold that the officials of the Board were negligent in properly maintaining the electric wires. Even, according to them, the electric lines were mutilated.

13. At paragraph No. 8 of the abovesaid decision, this court rejected the challenge to maintainability of the writ petition and the same is extracted hereunder.

5. Though the Superintending Engineer, Electricity Distribution Circle, Madurai, the first respondent, has placed reliance on the decisions of the Supreme Court in (i) *Tamil Nadu Electricity Board v. Sumathi and Others* (supra) and (ii) *S.D.O. Grid Corporation of Orissa Ltd. and Others Vs. Timudu Oram*, and objected to the maintainability of the writ petition on the ground that public law remedy under Article 226 of the Constitution of India, cannot be sought for, this Court is not inclined to accept the said contention in view of the following decisions:

(i) In *The State of Rajasthan Vs. Mst. Vidhyawati and Another*, it has been held that:

Viewing the case from the point of view of first principles, there should be no difficulty in holding that the State should be as much liable for tort in respect of a tortious act committed by its servant within the scope of his employment and functioning as such as any other employer. The immunity of the Crown in the

United Kingdom, was based on the old feudalistic notions of justice, namely, that the King was incapable of doing a wrong, and, therefore, of authorising or instigating one, and that he could not be sued in his own courts. In India, ever since the time of the East India Company, the sovereign has been held liable to be sued in tort or in contract, and the Common Law immunity never operated in India.

(ii) In *Joginder Kaur Vs. The Punjab State and Others* wherein it has been observed that:

In the matter of liability of the State for the torts committed by its employees, it is now the settled law that the State is liable for tortious acts committed by its employees in the course of their employment.

(iii) In *M.C. Mehta and another Vs. Union of India and others*, , dealing with a writ petition filed for closure of certain units, the Supreme Court observed that when violations of fundamental right is brought to the notice of the Court, then hyper technical approach should not be avoided, to meet the ends of justice. The Apex Court has observed as follows:

The applications for compensation are for enforcement of the fundamental right to life enshrined in Art. 21 of the Constitution and while dealing with such applications, a hyper-technical approach which would defeat the ends of justice could not be adopted. If the Court is prepared to accept a letter complaining of violation of the fundamental right of an individual or a class of individuals who cannot approach the Court for Justice, there is no reason why the applications for compensation which have been made for enforcement of the fundamental right of the persons affected by the oleum gas leak under Art. 21 should not be entertained. The Court while dealing with an application for enforcement of a fundamental right must look at the substance and not the form.

(iv) In *Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others*, , regarding the powers of the Court to grant compensation for deprivation of fundamental right, the Hon''ble Supreme Court extensively considered the same and held as follows:

11. In *Rudul Sah Vs. State of Bihar and Another*, , it was held that in a petition under Article 32 of the Constitution, this Court can grant compensation for deprivation of a fundamental right. That was a case of violation of the petitioner's right to personal liberty under Article 21 of the Constitution. CHANDRACHUD, CJ., dealing with this aspect, stated as under: (paras 9 and 10)

It is true that Article 32 cannot be used as a substitute for the enforcement of rights and obligations which can be enforced efficaciously through the ordinary processes of courts, civil and criminal. A money claim has therefore to be agitated in and adjudicated upon in a suit instituted in a court of lowest grade competent to try it. But the important question for our consideration is whether in the exercise of its jurisdiction under Article 32, this Court can pass an order for

the payment of money if such an order is in the nature of compensation consequential upon the deprivation of a fundamental right. The instant case is illustrative of such cases....

...The petitioner could have been relegated to the ordinary remedy of a suit if his claim to compensation was factually controversial, in the sense that a civil court may or may not have upheld his claim. But we have no doubt that if the petitioner files a suit to recover damages for his illegal detention, a decree for damages would have to be passed in that suit, though it is not possible to predicate, in the absence of evidence, the precise amount which would be decreed in his favour. In these circumstances, the refusal of this Court to pass an order of compensation in favour of the petitioner will be doing mere lip-service to his fundamental right to liberty which the State Government has so grossly violated. Article 21 which guarantees the right to life and liberty will be denuded of its significant content if the power of this Court were limited to passing orders to release from illegal detention. One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Article 21 secured, is to mulct its violators in the payment of monetary compensation. Administrative sclerosis leading to flagrant infringements of fundamental rights cannot be corrected by any other method open to the judiciary to adopt. The right to compensation is some palliative for the unlawful acts of instrumentalities which act in the name of public interest and which present for their protection the powers of the State as a shield. If civilisation is not to perish in this country as it has perished in some others too well known to suffer mention, it is necessary to educate ourselves into accepting that, respect for the rights of individuals is the true bastion of democracy. Therefore, the State must repair the damage done by its officers to the petitioner's rights. It may have recourse against those officers.

15. The decision of Privy Council in *Maharaj v. Attorney-General of Trinidad and Tobago* (No. 2) (1978) 2 All. ER 670 is useful in this context. That case related to Section 6 of the Constitution of Trinidad and Tobago 1962, in the chapter pertaining to human rights and fundamental freedoms, wherein Section 6 provided for an application to the High Court for redress. The question was, whether the provision permitted an order for monetary compensation. The contention of the Attorney General therein, that an order for payment of compensation did not amount to the enforcement of the rights that had been contravened, was expressly rejected. It was held, that an order for payment of compensation, when a right protected had been contravened, is clearly a form of "redress" which a person is entitled to claim under Section 6, and may well be "the only practicable form of redress".

.....

20. We respectfully concur with the view that the court is not helpless and the wide powers given to this Court by Article 32, which itself is a fundamental right, imposes a constitutional obligation on this Court to forge such new tools, which

may be necessary for doing complete justice and enforcing the fundamental rights guaranteed in the Constitution, which enable the award of monetary compensation in appropriate cases, where that is the only mode of redress available. The power available to this Court under Article 142 is also an enabling provision in this behalf. The contrary view would not merely render the court powerless and the constitutional guarantee a mirage, but may, in certain situations, be an incentive to extinguish life, if for the extreme contravention the court is powerless to grant any relief against the State, except by punishment of the wrongdoer for the resulting offence, and recovery of damages under private law, by the ordinary process. If the guarantee that deprivation of life and personal liberty cannot be made except in accordance with law, is to be real, the enforcement of the right in case of every contravention must also be possible in the constitutional scheme, the mode of redress being that which is appropriate in the facts of each case. This remedy in public law has to be more readily available when invoked by the have-nots, who are not possessed of the wherewithal for enforcement of their rights in private law, even though its exercise is to be tempered by judicial restraint to avoid circumvention of private law remedies, where more appropriate.

30. On basis of the above conclusion, we have now to examine whether to seek the right of redressal under Article 32 of the Constitution, which is without prejudice to any other action with respect to the same matter which may be lawfully available, extends merely to a declaration that there has been contravention and infringement of the guaranteed fundamental rights and rest content at that by relegating the party to seek relief through civil and criminal proceedings or can it go further and grant redress also by the only practicable form of redress--by awarding monetary damages for the infraction of the right to life.

31. It is axiomatic that convicts, prisoners or under trials are not denuded of their fundamental rights under Article 21 and it is only such restrictions, as are permitted by law, which can be imposed on the enjoyment of the fundamental right by such persons. It is an obligation of the State to ensure that there is no infringement of the indefeasible rights of a citizen to life, except in accordance with law, while the citizen is in its custody. The precious right guaranteed by Article 21 of the Constitution of India cannot be denied to convicts, under trials or other prisoners in custody, except according to procedure established by law. There is a great responsibility on the police or prison authorities to ensure that the citizen in its custody is not deprived of his right to life. His liberty is in the very nature of things circumscribed by the very fact of his confinement and therefore his interest in the limited liberty left to him is rather precious. The duty of care on the part of the State is strict and admits of no exceptions. The wrongdoer is accountable and the State is responsible if the person in custody of the police is deprived of his life except according to the procedure established by law. I agree with Brother VERMA, J. that the defence of "sovereign immunity" in such cases is not available to the State and in fairness to Mr. Altaf Ahmed it may

be recorded that he raised no such defence either.

32. Adverting to the grant of relief to the heirs of a victim of custodial death for the infraction or invasion of his rights guaranteed under Article 21 of the Constitution of India, it is not always enough to relegate him to the ordinary remedy of a civil suit to claim damages for the tortious act of the State as that remedy in private law indeed is available to the aggrieved party. The citizen complaining of the infringement of the indefeasible right under Article 21 of the Constitution cannot be told that for the established violation of the fundamental right to life, he cannot get any relief under the public law by the courts exercising writ jurisdiction. The primary source of the public law proceedings stems from the prerogative writs and the courts have, therefore, to evolve "new tools" to give relief in public law by moulding it according to the situation with a view to preserve and protect the Rule of Law. While concluding his first Hamlyn Lecture in 1949 under the title "Freedom under the Law" Lord Denning in his own style warned:

No one can suppose that the executive will never be guilty of the sins that are common to all of us. You may be sure that they will sometimes do things which they ought not to do: and will not do things that they ought to do. But if and when wrongs are thereby suffered by any of us what is the remedy? Our procedure for securing our personal freedom is efficient, our procedure for preventing the abuse of power is not. Just as the pick and shovel is no longer suitable for the winning of coal, so also the procedure of mandamus, certiorari, and actions on the case are not suitable for the winning of freedom in the new age. They must be replaced by new and up-to date machinery, by declarations, injunctions and actions for negligence....This is not the task for Parliament...the courts must do this. Of all the great tasks that lie ahead this is the greatest. Properly exercised the new powers of the executive lead to the welfare state; but abused they lead to a totalitarian state. None such must ever be allowed in this country.

33. The old doctrine of only relegating the aggrieved to the remedies available in civil law limits the role of the courts too much as protector and guarantor of the indefeasible rights of the citizens. The courts have the obligation to satisfy the social aspirations of the citizens because the courts and the law are for the people and expected to respond to their aspirations.

34. The public law proceedings serve a different purpose than the private law proceedings. The relief of monetary compensation, as exemplary damages, in proceedings under Article 32 by this Court or under Article 226 by the High Courts, for established infringement of the indefeasible right guaranteed under Article 21 of the Constitution is a remedy available in public law and is based on the strict liability for contravention of the guaranteed basic and indefeasible rights of the citizen. The purpose of public law is not only to civilize public power but also to assure the citizen that they live under a legal system which aims to protect their interests and preserve their rights. Therefore, when the court

moulds the relief by granting "compensation" in proceedings under Article 32 or 226 of the Constitution seeking enforcement or protection of fundamental rights, it does so under the public law by way of penalising the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizen. The payment of compensation in such cases is not to be understood, as it is generally understood in a civil action for damages under the private law but in the broader sense of providing relief by an order of making "monetary amends" under the public law for the wrong done due to breach of public duty, of not protecting the fundamental rights of the citizen. The compensation is in the nature of "exemplary damages" awarded against the wrongdoer for the breach of its public law duty and is independent of the rights available to the aggrieved party to claim compensation under the private law in an action based on tort, through a suit instituted in a court of competent jurisdiction or/and prosecute the offender under the penal law.

35. This Court and the High Courts, 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 to the victim or the heir of the victim whose fundamental rights under Article 21 of the Constitution of India are established to have been flagrantly infringed by calling upon the State to repair the damage done by its officers to the fundamental rights of the citizen, notwithstanding the right of the citizen to the remedy by way of a civil suit or criminal proceedings. The State, of course has the right to be indemnified by and take such action as may be available to it against the wrongdoer in accordance with law--through appropriate proceedings. Of course, relief in exercise of the power under Article 32 or 226 would be granted only once it is established that there has been an infringement of the fundamental rights of the citizen and no other form of appropriate redressal by the court in the facts and circumstances of the case, is possible. The decisions of this Court in the line of cases starting with *Rudul Sah Vs. State of Bihar and Another*, granted monetary relief to the victims for deprivation of their fundamental rights in proceedings through petitions filed under Article 32 or 226 of the Constitution of India, notwithstanding the rights available under the civil law to the aggrieved party where the courts found that grant of such relief was warranted. It is a sound policy to punish the wrongdoer and it is in that spirit that the courts have moulded the relief by granting compensation to the victims in exercise of their writ jurisdiction. In doing so the courts take into account not only the interest of the applicant and the respondent but also the interests of the public as a whole with a view to ensure that public bodies or officials do not act unlawfully and do perform their public duties properly particularly where the fundamental right of a citizen under Article 21 is concerned. Law is in the process of development and the process necessitates developing separate public law procedures as also public law principles. It may be necessary to identify the situations to which separate proceedings and principles apply and the courts have to act firmly but with certain amount of

circumspection and self-restraint, lest proceedings under Article 32 or 226 are misused as a disguised substitute for civil action in private law. Some of those situations have been identified by this Court in the cases referred to by BROTHER VERMA, J..

(v) In Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others, . In that case, the deceased was arrested by the police, handcuffed and kept in a police custody. The next day, his dead-body was found on a railway track. This Court awarded compensation to the mother of the deceased. J.S. VERMA J., (as he then was) spelt out the following principles:

Award of compensation in a proceeding under Article 32 by this Court or by the High Court under Article 226 of the Constitution is a remedy available in public law, based on strict liability for contravention of fundamental rights to which the principle of sovereign immunity does not apply, even though it may be available as a defence in private law in an action based on tort.

Enforcement of the constitutional right and grant of redress embraces award of compensation as part of the legal consequences of its contravention.

A claim in public law for compensation for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution, is an acknowledged remedy for enforcement and protection of such rights, and such a claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right is "distinct from, and in addition to, the remedy in private law for damages for the tort" resulting from the contravention of the fundamental right. The defence of sovereign immunity being inapplicable, and alien to the concept of guarantee of fundamental rights, there can be no question of such a defence being available in the constitutional remedy. It is this principle which justifies award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution, when that is the only practicable mode of redress available for the contravention made by the State or its servants in the purported exercise of their powers, and enforcement of the fundamental right is claimed by resort to the remedy in public law under the Constitution by recourse to Articles 32 and 226 of the Constitution.

(emphasis supplied)

Dr. A.S. ANAND J., (as he then was) in his concurring judgment elaborated the principle thus:

...Convicts, prisoners or under-trials are not denuded of their fundamental rights under Article 21 and it is only such restrictions, as are permitted by law, which can be imposed on the enjoyment of the fundamental rights by such persons. It is an obligation of the State to ensure that there is no infringement of the indefeasible rights of a citizen to life, except in accordance with law, while the citizen is in its custody.

The public law proceedings serve a different purpose than the private law

proceedings. The relief of monetary compensation, as exemplary damages, in proceedings under Article 32 by the Supreme Court or under Article 226 by the High Courts, for established infringement of the indefeasible right guaranteed under Article 21 is a remedy available in public law and is based on the strict liability for contravention of the guaranteed basic and indefeasible rights of the citizen. The purpose of public law is not only to civilize public power but also to assure the citizen that they live under a legal system which aims to protect their interests and preserve their rights. Therefore, when the court moulds the relief by granting "compensation" in proceedings under Article 32 or 226 seeking enforcement or protection of fundamental rights, it does so under the public law by way of penalizing the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizen. The payment of compensation in such cases is not to be understood, as it is generally understood in a civil action for damages under the private law but in the broader sense of providing relief by an order of making "monetary amends" under the public law for the wrong done due to breach of public duty, of not protecting the fundamental rights of the citizen. The compensation is in the nature of "exemplary damages" awarded against the wrongdoer for the breach of its public law duty and is independent of the rights available to the aggrieved party to claim compensation under the private law in an action based on tort, through a suit instituted in a court of competent jurisdiction or/and prosecute the offender under the penal law.

(vi) In *M.S. Grewal and Another Vs. Deep Chand Sood and Others*, , the issue before the Supreme Court was regarding the direction given by the High Court to pay a sum of Rs. Five lakhs as compensation to the parents of each of the children who died on account of drowning while they were in the custody of the school authorities. While considering the maintainability of the Writ Petition for payment of compensation, Supreme Court indicated the march of law on the subject of public law remedy thus:

28. Currently judicial attitude has taken a shift from the old draconian concept and the traditional jurisprudential system-affectation of the people has been taken note of rather seriously and the judicial "concern thus, stands on a footing to provide expeditious relief to an individual when needed rather than taking recourse to the old conservative doctrine of the civil Court's obligation to award damages. As a matter of fact the decision in *D.K. Basu* has not only dealt with the issue in a manner apposite to the social need of the country but the learned Judge with his usual felicity of expression firmly established the current trend of "justice-oriented approach." Law Courts will lose their efficacy if they cannot possibly respond to the need of the society-technicalities there might be many but the justice-oriented approach ought not to be thwarted on the basis of such technicality since technicality cannot and ought not to outweigh the course of justice.

(vii) In *Rabindra Nath Ghosal Vs. University of Calcutta and Others*, , again

indicated the obligation of Courts to meet the social aspiration of the people thus:

9. The Courts having the obligation to satisfy the social aspiration of the citizens have to apply the tool and grant compensation as damages in public law proceedings. Consequently when the Court moulds the relief in proceedings under Articles 32 and 226 of the Constitution seeking enforcement or protection of fundamental rights and grants compensation, it does so under the public law by way of penalising the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizens. But it would not be correct to assume that every minor infraction of public duty by every public officer would commend the Court to grant compensation in a petition under Articles 225 and 32 by applying the principle of public law proceeding. The Court in exercise of extraordinary power under Articles 226 and 32 of the Constitution, therefore, would not award damages against, public authorities merely because they have made some order which turns out to be ultra vires, or there has been some inaction in the performance of the duties, unless there is malice or conscious abuse. Before exemplary damages can be awarded it must be shown that some fundamental right under Article 21 has been infringed by arbitrary or capricious action on the part of the public functionaries and that the sufferer was a helpless victim of that act.

(viii) In *Chairman, Grid Corporation of Orissa Ltd. (Gridco) and Others Vs. Smt. Sukamani Das and Another*, the Supreme Court held that the fact relating to the proper maintenance of transmission lines and snapping of wire where it is beyond the control of the Grid Corporation or due to unauthorised intervention of third parties or as to whether the deceased had not died in the manner stated in the Writ Petition requires factual appreciation and that cannot be settled under Article 226 of the Constitution of India on the basis of affidavits only. In that case the Grid Corporation of Orissa against which the claim of compensation for the death caused to the deceased due to its negligence had been raised. The Grid Corporation has denied the accident and also contended that it was due to the intervention of the third parties, the electric wire got snapped resulting in electrocution. While the High Court has granted compensation on the basis that it was the duty of Grid Corporation of Orissa to maintain electric lines in a proper manner and the non-maintenance would amount to negligence, the Supreme Court, while reversing the said judgment held that it was the specific case of the Grid Corporation of Orissa in their counter affidavit that because of the thunderbolt and lightning one of the conductors of the 12 WLT line had snapped even though proper guarding was provided. It was also the specific case of the Grid Corporation of Orissa that the deceased died due to the lightning and not because of his contact with snapped live wire. It was on the basis of the factual situation, the Apex Court has held that the High Court ought not to have granted compensation while exercising jurisdiction under Article 226 of the Constitution of India. At paragraph 6, the Supreme Court has held as under:

6. In our opinion, the High Court committed an error in entertaining the writ

petitions even though they were not fit cases for exercising power under Article 226 of the Constitution. The High Court went wrong in proceeding on the basis that the deaths had taken place because of electrocution as a result of the deceased coming into contact with snapped live wires of the electric transmission lines of the appellants, that "admittedly/prima facie amounted to negligence on the part of the appellants." The High Court failed to appreciate that all these cases were actions in tort and negligence was required to be established firstly by the claimants. The mere fact that the wire of the electric transmission line belonging to Appellant 1 had snapped and the deceased had come in contact with it and had died was not by itself sufficient for awarding compensation. It also required to be examined whether the wire had snapped as a result of any negligence of the appellants and under which circumstances the deceased had come in contact with the wire. In view of the specific defences raised by the appellants in each of these cases they deserved an opportunity to prove that proper care and precautions were taken in maintaining the transmission lines and yet the wires had snapped because of circumstances beyond their control or unauthorised intervention of third parties or that the deceased had not died in the manner stated by the petitioners. These questions could not have been decided properly on the basis of affidavits only. It is the settled legal position that where disputed questions of facts are involved a petition under Article 226 of the Constitution is not a proper remedy. The High Court has not and could not have held that the disputes in these cases were raised for the sake of raising them and that there was no substance therein. The High Court should have directed the writ petitioners to approach the civil court as it was done in OJC No. 5229 of 1995.

(ix) In *Nirmala Thirunavukkarasu v. Tamil Nadu Electricity Board*, reported in 1997 L.W. 42, this Court after considering the maxim "*res ipsa loquitur*" held that the usual plea of "Act of God" or mechanical failure cannot be considered as a defence while deciding a case for compensation arising out of electrocution. In cases of negligence, relating to electrocution, it was held that in order to render justice to the parties, the general rules as to damages to be construed liberally and not with rigidity. It was also held that the Courts should take into consideration not allowing a calamity to turn into a windfall and the amount of compensation should be decided only with reference to pecuniary loss.

Issue No. 4: As the deceased has died as a result of the negligence of the defendants, they are bound to pay compensation to the plaintiffs for the loss suffered by them. Now to the quantum of compensation. The amount of money as reparation for the results of tortious conduct for which the law holds the wrong doer responsible is determined by applying as far as possible the general principle of restitution integrum. In many cases, however, a perfect compensation is hardly possible and would even be unjust. The court in doing justice between the parties considers the general rules as to damages with some liberality and does not apply them rigidly, and, thus, the damages are in difficult case normally limited to a sum which can in the circumstances be considered as

a reasonable amount of compensation. Courts should not also in such cases allow a calamity to turn into a windfall. In ascertaining the pecuniary loss caused to the dependants, it must be borne in mind that these damages are not to be given as solatium for the loss of a son or daughter, wife or husband, father or mother, not on sympathetic or sentimental consideration, but only with reference to pecuniary loss.

(x) In *D. Matsa Gandhi Vs. Tamil Nadu Slum Clearance Board*, , this Court held that in cases where there is denial of tortious liability the writ petitions cannot be maintained. However, when negligence per se is visible the same has to be construed as violation of right to life and liberty guaranteed under Article 21 of the Constitution of India and the High Court has jurisdiction to grant compensation under Article 226 of the Constitution of India. At paragraph 10, this Court has held as follows:

10. In the course of argument it is brought to my notice the recent decision of the Hon"ble Supreme Court reported in *Nath Bros. Exim International Ltd. Vs. Best Roadways Ltd.*, and power of this Court under Article 226. No doubt, the Hon"ble Supreme Court has not accepted the action of the High Court in granting compensation to the family of the victim who died by electrocution in a writ petition filed under Article 226. It is equally true that when disputed questions of fact arises and if there is clear denial of tortious liability remedy under Article 226 of the Constitution may not be proper. However, in the very same judgment their Lordships after saying so, in paragraph 10 have observed.

....However it cannot be understood as laying a law that in every case of tortious liability recourse must be had to a suit. When there is negligence on the face of it and infringement of Article 21 is there it cannot be said that there will be any bar to proceed under Article 226 of the Constitution.

(Italics Supplied)

In such circumstance and in view of the factual conclusion as referred to above, I am of the view that the petitioner is entitled reasonable compensation from the respondent for the death of her daughter and in the interest of justice this Court would be justified in considering the relief prayed by the petitioner.

After considering the above decision and also of the objections raised by the Tamil Nadu Electricity Board as regards the maintainability of the writ petition and also of the fact as to whether the petitioner therein should be driven to the Civil Court, a learned single Judge of this Court in an unreported decision in *R. Saroja v. The Chairman, Tamil Nadu Electricity Board, Chennai, and two Others* (W.P. No. 6437 of 1998 dated 16.04.2008) on the facts of the case held that,

The factum of electrocution and the death of the petitioner's husband is not denied either by the 1st respondent or by the 2nd respondent, I am of the considered view that it is not proper at this point of time, especially, when the accident took place in the year 1997 and the writ petition was filed in the year

1998 and the same has been pending for the past 10 years to drive the parties to Civil Court. Such course will only cause further injury to the family of the deceased.

So saying, this Court has awarded compensation.

(xi) In *Susanta Samanta and Others Vs. WBSEB and Others*, death was due to electrocution. A writ petition was filed for compensation. Public law remedy was opposed. Negligence was also attributed against the deceased. On the objections to the maintainability of the writ petition, it was contended as follows:

8. Mr. Sumit Panja learned Lawyer appearing for the respondents contends that there is no dispute that the Court has ample power under Article 226 in the public law field to award compensation on the established and admitted case of negligence on the part of the respondent No. 1. In this case it is totally incorrect to allege that the said deceased died owing to negligence of the respondent No. 1. The Criminal case was dropped and this shows there was no fault not to speak of negligence, and it was mere an accident which might have occurred due to his own fault. In view of this serious disputed question of fact this Court cannot award any compensation unlike Apex Court under Article 142. What the Apex Court can do under Article 142 cannot be done by the High Court even overstretching power under Article 226 of the Constitution of India. He submits that the decision cited by the learned Lawyer for the petitioner of the Supreme Court is not a binding precedent and it was rendered on taking special facts and circumstances into consideration and the Apex Court had explained expressly not to treat this judgment as a precedent. He submits the Supreme Court explained in fairly recent decision under what circumstances the High Court can grant compensation in the public law field under Article 226 of the Constitution of India. In support of his submission he has relied on the decision of the Supreme Court reported in *Tamil Nadu Electricity Board Vs. Sumathi and Others*, and *C.M. Singh Vs. H.P. Krishi Vishva Vidyalaya and Others*, .

After considering *Tamil Nadu Electricity Board Vs. Sumathi and Others*, , a learned single Judge of the Calcutta High Court at paragraph 10 held as follows:

10. Therefore, it is clear from the aforesaid decision of the Supreme Court that it is not a bar to grant relief in the public law field in exercise of jurisdiction under Article 226 in case of the deprivation of life due to negligence on the part of the State, which includes statutory authority. The only decision cited by the learned Lawyer for the petitioners cannot be accepted to be precedent in view of the expressed pronouncement of the Supreme Court itself in the penultimate sentence of the last paragraph.

(xii) In *Chairman, Tamil Nadu Electricity Board, Madras and the Superintending Engineer, Tamil Nadu Electricity Board, Thiruvannamalai v. Mrs. Lalitha and two Others*, (A.S. No. 20 of 1996, dated 23.11.2007), the Legal Representatives of one V. Shanmugam, who died on 27.09.1989, claimed compensation. According to them, while he set his feet on a severed live electric wire that had fallen on

the ground in an agricultural field, belonging to one Munuswamy Naidu in S.U. Vanam, Arni Taluk, he died of electrocution instantaneously. It was reported to the police, FIR was registered and postmortem was conducted. A suit was filed for compensation. It was defended that there was a heavy rain and wind, which started in mid night on 26.09.1989 and continued till the next day morning. As there was sudden rain and speedy wind, without any prior symptom, the department could not take steps to switch off the current. The service connection in S.C. No. 33 was not under use and the concerned consumer had not intimated to disconnect the electric line, otherwise, the appellants could have taken immediate steps to disconnect the line and restore its original position. After considering Rule 91 of the Electricity Rules and on the facts and evidence, this Court at paragraphs 14 to 16 held as follows:

14. It is clear that Rule 91 of the Indian Electricity Rules, 1956 stipulates that every overhead electric line erected over any part of a street or other public place or any factory or mine or any consumer's premises shall be protected with a device approved by the Inspector for rendering the line electrically harmless in case it breaks. It is seen that the electrocution had occurred only in the open place of the village and a poor man and his dependents were made victims.

75. Considering the heavy rain and storm and also the non usage of the electric service for a long time by the consumer, as admitted by the appellants in the written statement the same should have been disconnected or at least the particular service connection could have been switched off, on account of the heavy rain and storm. On the facts and circumstances of the case and also the evidence available on record, I am of the view that the principle of "res ipsa loquitur" is applicable to infer that the electrocution and the instantaneous death of V. Shanmugam, husband of the first respondent and the father of the minor respondents 2 and 3 had occurred only due to the negligence of the Electricity Board.

16. It is seen that the mandatory safety measures stipulated under Rule 91 of the Indian Electricity Rules, 1956 were not complied with by the concerned officials of the appellants, which had caused the death of the husband of the first respondent. The plea of the appellants that it was an act of God or nature cannot be taken as a legal defence.

(xiii) In *Lilly Stanislaus v. The Chairman, Tamil Nadu Electricity Board, Chennai and three Others*, 2008 WLR 278, the petitioner's husband went out to procure milk from the nearby Aavin Milk Booth. It is the case of the petitioner that earlier, there was heavy rain and when her husband was passing near a tea shop, he had to step on the live wire, snapped from electrical post No. 146 and was thrown out to electrocution. A boy who tried to pull him out, also was electrocuted. Two hours later, electric supply was disconnected. In the meantime, the petitioner's husband died. A complaint was lodged to the Sub Inspector of Police, G-1, Madhavaram Police Station and an FIR was registered in Crime No. 559/96. In the postmortem conducted on 17.06.1996 it was found that there was blackening

and charring of the skin. The cause of death was due to electrocution. The petitioner therein contended that due to the negligence, carelessness and failure to perform duty on the part of the board officials in maintaining electric posts properly, the accident had occurred resulting in the death of her husband. It was also contended that there was negligence in not maintaining the electric poles with automatic fuse. The board disputed the contentions and inter alia contended that the poles and the wires were in good condition. It was also contended that the accident took place due to heavy rain and that it is an Act of God, beyond the control of the electricity board and that therefore there was no negligence on the part of the respondent board. On behalf of the petitioner, reliance was also placed on Madhya Pradesh Electricity Board Vs. Shail Kumari and Others, , Smt. Kumari Vs. State of Tamil Nadu and others, , M.C. Mehta and another Vs. Union of India and others, , Tamil Nadu Electricity Board Vs. Sumathi and Others, and an unreported decision in P. Kumaraesan v. Tamil Nadu Electricity Board and Others, (W.P. No. 10310 of 1999 dated 31.07.2006) and Parezade Mama v. State of Tamil Nadu, rep. by Secretary to Government, Electricity Department and Others (W.P. No. 5217 of 1999 dated 05.01.2007, and it was contended that the High Court or the Supreme Court in exercising the powers under Articles 226 and 32 of the Constitution, can award compensation in the case of infringement of a right. Though the Electricity Board contended that tortious liability cannot be fixed on the electricity board and a writ petition cannot be entertained, as there was dispute regarding negligence of the board and that the accident was stated to be an Act of God, beyond the control of the electricity board, The Hon'ble Mr. Justice JYOTHIMANI, upon consideration of the medical evidence, which proved that the death was due to electrocution, at paragraphs 11 to 14, held as follows:

11. It is also not in much dispute that the petitioner's husband was the only breadwinner of the family and the petitioner has three children out of whom one daughter got married and there is one unmarried daughter and an un-married son. It was held by the Hon'ble Supreme Court in Madhya Pradesh Electricity Board Vs. Shail Kumari and Others, that the liability of the Electricity Board under Law of Torts to compensate for the injuries suffered cannot be denied on the basis that the Electricity Board has taken all safety measures since the liability of the Department is strict liability, relying upon the renowned and celebrated case on the issue, viz., Rylands v. Fletcher (1868(3) HL 330: 1861-73 All ER Rep. 1). The Supreme Court has held as follows:

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(3) HL 330: 1861-73 All ER Rep. 1). BLACKBURN, J., the author of the said rule had observed thus in the said decision: (All ER p. 7E-F)

"(The true rule of law is that the person who, for his own purposes, brings on his land, and collects and keeps there anything likely to do mischief if it escapes, must keep it at his peril, and, if he does not do so, he is *prima facie* answerable for all the damage which is the natural consequence of its escape."

Therefore, it is too late for the respondent Board to raise the plea as if the respondent Board is not negligent and they are not liable.

12. In *Tamil Nadu Electricity Board Vs. Sumathi and Others*, , even though the Hon"ble Supreme Court has held that in cases of disputed questions of fact in existence, on the face of unequivocal denial of tortious liability, seeking remedy under Article 226 may not be proper, it was held that the same cannot be understood that in every case of tortious liability the affected party should be directed to resort to filing of suit, holding that when there is negligence on the face of it, the same to be treated under Article 21 of the Constitution of India and in such circumstances, to enforce the basic human rights, Article 226 can be pressed into service. On the facts of the said case, the Supreme court has come to the conclusion that a disputed questions of fact was involved, but held in the circumstances of the case that the appellant Electricity Board shall not recover the amount which has been paid to the respondents/victims. In that context, the Supreme Court has held as under:

10. In view of the clear proposition of law laid by this Court in *Chairman, Grid Corporation of Orissa Ltd. (Gridco) and Others Vs. Smt. Sukamani Das and Another*, when a disputed question of fact arises and there is clear denial of any tortious liability remedy under Article 226 of the Constitution may not be proper. However, it cannot be understood as laying a law that in every case of tortious liability recourse must be had to a suit. When there is negligence on the face of it and infringement of Article 21 is there it cannot be said that there will be any bar to proceed under Article 226 of the Constitution. Right of life is one of the basic human rights guaranteed under Article 21 of the Constitution. In *U.P. State Cooperative Land Development Bank Ltd. Vs. Chandra Bhan Dubey and Others*, where one of us (WADHWA, J.) was a party, this Court after examining various decisions of the courts on the power of the High Court under Article 226 of the Constitution observed that the language of Article 226 of the Constitution does not admit of any limitation on the powers of the High Court for the exercise of

jurisdiction thereunder though by various decisions of this Court with varying and divergent views, it has been held that jurisdiction under Article 226 can be exercised only when a body or authority, the decision of which is complained, was exercising its power in the discharge of public duty and that writ is a public law remedy. This Court then observed: (SCC pp. 758-59, para 27)

"(It may not be necessary to examine any further the question if Article 226 makes a divide between public law and private law. Prima facie from the language of Article 226, there does not appear to exist such a divide. To understand the explicit language of the article, it is not necessary for us to rely on the decision of English courts as rightly cautioned by the earlier Benches of this Court. It does appear to us that Article 226 while empowering the High Court for issue of orders or directions to any authority or person, does not make any such difference between public functions and private functions. It is not necessary for us in this case to go into this question as to what is the nature, scope and amplitude of the writs of habeas corpus, mandamus, prohibition, quo warranto and certiorari. They are certainly founded on the English system of jurisprudence. Article 226 of the Constitution also speaks of directions and orders which can be issued to any person or authority including, in appropriate cases, any Government. Under clause (1) of Article 367, unless the context otherwise requires, the General Clauses Act, 1897, shall, subject to any adaptations and modifications that may be made therein under Article 372, apply for the interpretation of the Constitution as it applies for the interpretation of an Act of the legislature of the Dominion of India. "Person" under Section 2(42) of the General Clauses Act shall include any company, or association or body of individuals, whether incorporated or not. The Constitution is not a statute. It is a fountainhead of all the statutes. When the language of Article 226 is clear, we cannot put shackles on the High Courts to limit their jurisdiction by putting an interpretation on the words which would limit their jurisdiction. When any citizen or person is wronged, the High Court will step in to protect him, be that wrong be done by the State, an instrumentality of the State, a company or a cooperative society or association or body of individuals, whether incorporated or not, or even an individual. Right that is infringed may be under Part III of the Constitution or any other right which the law validly made might confer upon him. But then the power conferred upon the High Courts under Article 226 of the Constitution is so vast, this Court has laid down certain guidelines and self-imposed limitations have been put there subject to which the High Courts would exercise jurisdiction, but those guidelines cannot be mandatory in all circumstances. The High Court does not interfere when an equally efficacious alternative remedy is available or when there is an established procedure to remedy a wrong or enforce a right. A party may not be allowed to bypass the normal channel of civil and criminal litigation. The High Court does not act like a proverbial "bull in a china shop" in the exercise of its jurisdiction under Article 226.

(emphasis supplied)

13. In yet another case in Smt. Kumari Vs. State of Tamil Nadu and others, , when a six year old boy of the appellant died falling in a 10 feet deep uncovered sewerage tank in the City of Madras and the writ petition filed by the appellant was dismissed by the High Court, while setting aside the said judgment, the Supreme Court has directed the State Government to pay compensation of Rs. 50,000/- with interest to the appellant, however with a direction that the State Government can recover the said amount from appropriate authority, since the authority who is liable for negligence was not able to be determined. The operative portion of the above cited judgment is as follows:

3. In the facts and circumstances of this case we set aside the High Court judgment and direct that respondent 1, the State of Tamil Nadu shall pay to the appellant a sum of Rs. 50,000 (Rupees fifty thousand) with interest at 12 per cent per annum from January 1, 1990 till the date of payment. The amount shall be paid within six weeks from today. It will be open to the State of Tamil Nadu to take appropriate proceedings to claim the said amount or any part thereof from any of the respondents or any other authority which might be responsible for keeping the sewerage tank open. The claim, if made, will be decided in accordance with law. The appeal is allowed in the above terms. There will be no order as to costs.

14. A Division Bench of this Court (P.K. MISRA and S. RAJESWARAN, JJ.) in W.P. No. 5217 of 1999 (Parezade Mama v. State of Tamil Nadu rep. By Secretary to Government, Electricity Department and Others), while dealing with the case of death of the mother and father of the children, who died when the children playing in a lodge were to touch the running over head high tension line approximately 3 feet from the balcony of the lodge and the parents while attempted to rescue the children, by relying upon the judgment of the Supreme Court in Nath Bros. Exim International Ltd. Vs. Best Roadways Ltd., held that on the face of the conduct of the public authority, there is infringement of Article 21, and there is no bar for the High Court to proceed under Article 226 of the Constitution of India by granting necessary damages, as follows:

77. It is true that writ petitions for claiming damages cannot be resorted when there is a clear denial of tortious liability. At the same time when the negligence is per se visible and it infringes Article 21, relief claiming damages could be granted under Article 226 of the Constitution of India.

18. In Nath Bros. Exim International Ltd. Vs. Best Roadways Ltd., the Hon''ble Supreme Court no doubt held that the writ petition filed under Article 226 of the Constitution of India, High Court cannot grant compensation to the family of victim who died by electrocution. However, in the very same judgment the Hon''ble Supreme Court held that when there is negligence on the face of it and infringement of Article 21 is there, it cannot be said there will be any bar to proceed under Article 226 of the Constitution of India.

Ultimately, leaving it to the appropriate forum to decide the final compensation,

an interim compensation of Rs. 2 lakhs was awarded in the following terms.

22. Therefore, in our opinion negligence on the part of the Electricity Board, municipality and the lodge is per se visible and this negligence definitely infringes Article 21 of the Constitution of India and therefore we are of the considered opinion that interim compensation can be awarded in this writ proceedings, leaving the final quantum to be decided by an appropriate forum.

23. Considering the nature of the extensive injuries suffered by the minor children, the loss of their parents and the exorbitant medical expenses, to rehabilitate the children we award a sum of Rs. 6 lakhs in total to be paid equally by the municipality-4th respondent, Tamil Nadu Electricity Board (second respondent) and the lodge-6th respondent. As such, each of them shall pay a sum of Rs. 2 lakhs as interim compensation to respondents 9 and 10 within a period of three months from the date of receipt of a copy of this order.

(xiv) In Smt. S.K. Shangring Lamkang and Another Vs. State of Manipur and Others, , a writ petition was filed by the widows for the death of their respective husbands, who died due to falling of a high tension electric line from its pole while they were proceeding in a Scooter. According to the petitioners therein, the electric line was broken and detached from its pole as it was very old and it was not also repaired, despite request made by one R.D. Kowar Anal, Chairman, Chief Area Association of Sulam Chandel on 18-4-2002 to respondent No. 3, for repairing the electric post, as well as about the weakness of the electric wire between Khongjon village and Bongku village. The case of the petitioners was to the effect that, had the respondents taken appropriate steps in respect of the electric post and wire, the said falling of the wire would not have taken place leading to the electrocution, resulting in death of two persons. The respondents contended that the fall of the electric wire was due to the lightning stroke resulting breaking of a tension disc Insulator and not due to negligence of any of the respondents. Further, according to the respondents, no one complained to respondent No. 3, for repairing the electric post and also about the weakness of electric wiring at or near the place of occurrence. It was the case of the respondents that since there are disputed questions of fact in the case in respect of the question of negligence, it will not be proper on the part of the Court to award any compensation in exercise of its power under Article 226 of the Constitution of India. Reliance was placed on Chairman, Grid Corporation of Orissa Ltd., v. Sukamani Das. After considering the subsequent decision of the Supreme Court in Tamil Nadu Electricity Board Vs. Sumathi and Others, , Parvati Devi v. Commissioner of Police, Delhi (2000) 3 SCC 754, Madhya Pradesh Electricity Board Vs. Shail Kumari and Others, , a Division Bench of the Gauhati High Court, at paragraphs 8 to 10, held as follows:

8. After noting about following the rule of strict liability in India in many earlier decisions the Hon''ble Supreme Court applied the said rule of strict liability and dismissed the appeal. The Board made an attempt to rely on the exception to the said rule of strict liability being "an act of stranger", the Hon''ble Supreme Court

held that the said exception was not available to the Board. The Hon'ble Supreme Court referred to the decision of Privy Council in Quebec Rly. Light, Heat, Power Co. Ltd. v. Vandry 1920 SC 662 wherein the Privy Council held that the Co. supplying electricity is liable for the damages without proof that they had been negligent. Even the defence that the cables were disrupted on account of violent wind and high tension current found its way through the low tension cable into the premises of the respondent was held to be not a justifiable defence. In the opinion of the Hon'ble Supreme Court, 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. Though the above said case before the Hon'ble Supreme Court arose out of a civil suit, the law laid down therein regarding strict liability of the State Electricity Board in case of live wire getting snapped and falling on the public road is relevant in a writ proceeding also. I do not find any appreciable reason as to why the said law should not be applicable in the writ proceeding.

9. In my considered opinion, the possibility of falling of high tension electric line from its pole as a result of storm or lightning should have been reasonably anticipated by the respondents and as such appropriate steps should have been taken by them so that no harm was caused when someone touched the fallen electric line. The risk involved in the management of supply of electricity was very great and a high degree care was expected of the respondents Inasmuch as they ought to have appreciated the possibility of falling of the electric line from its pole as a result of storm or lightning. Apart from the said consideration, since the management of supply of electricity is a hazardous or inherently dangerous activity, when harm is caused to any one on account of any cause in the operation of the activity, the respondent, who are responsible in respect of the said activity, shall be strictly and absolutely liable to compensate to those who are harmed in the course of, operation of the said activity. Such liability is not to be subject to any exception to the principle of strict liability under the rule in Ryland v. Fletcher. Accordingly, the respondents are liable to pay compensation in respect of the death of the said two persons resulting from electrocution.

10. It is to be noted that the question of strict liability was never considered in Chairman, Grid Corporation of Orissa Ltd. (supra) and S.D.O. Grid Corporation of Orissa Ltd. (supra).

(xv) In Mr. E. Joseph v. Tamil Nadu Electricity Board, Rep. by its Chairman, Mount Road, Chennai, (W.P. No. 4992 of 2001 dated 30.10.2008), the plaintiff's father died due to electrocution, when he came in contact with a live wire, which was lying on the road. The request of the petitioner for compensation was refused. Hence the writ petition. The Board denied negligence and contended that death was due to an accident which happened due to heavy rain and wind and not due to the negligence of the Board. An objection was also raised regarding the maintainability of the writ petition. After considering the objections, and decision of this Court in Lilly Stanislaus Vs. The Chairman,

T.N.E.B., The Chief Engineer, T.N.E.B. and The Assistant Engineer, T.N.E.B., , this Court held as follows:

15. Once it is accepted by the respondent electricity Board that the death was caused as a consequence of the snapped electricity line belonging to the respondent Electricity Board, there would be an obligation cast on the respondent Board to pay atleast a reasonable compensation to the legal heirs of the deceased person. Raising of technical pleas to avoid payment of such compensation is not to be appreciated. Only when there are seriously disputed facts, the party making the claim for compensation may be asked to go before the Civil Courts to seek his remedies. Such a situation does not prevail in the present case, as the basic facts are not in dispute.

16. In such circumstances, in view of the averments made on behalf of the petitioner, as well as on behalf of the respondent Board and in view of the decision cited above, this Court is of the view that the respondent Electricity Board, is liable to compensate the petitioner and the other legal heirs of the deceased person. Since it has been stated that both the sisters of the petitioner had submitted a consent letter to the respondent Board stating that they have no objection for the compensation amount to be paid to the petitioner, the respondent Electricity Board is directed to pay an amount of Rs. 75,000/- to the petitioner as compensation, within a period of twelve weeks from the date of receipt of a copy of this order. Accordingly, the proceedings of the second respondent is set aside and the respondent Electricity Board is directed to pay the compensation to the petitioner within the specified period.

(xvi) In *K. Sundari v. State of Tamil Nadu*, rep. by its Secretary to Government, Department of Electricity, Chennai, (W.P. No. 19668 of 1999, dated 15.04.2009), the case of the petitioner was that her husband was working as a civil contractor. While he was returning to his house, on the way, he came in contact with the live wire hanging from above snapped and fell on the street, and died on the spot, due to electrocution. The further case of the petitioner was that the second respondent department gave a police complaint and that the body of her husband was also subjected to postmortem examination. The opinion of the Doctor as per the postmortem certificate was that the deceased died due to electrocution. It was submitted that the live wire which fell on the street wherein, the occurrence was said to have taken place was under the care and maintenance of the department. She claimed compensation. No reply was given. Hence the writ petition. Reliance was placed on the Rule 91 of the Indian Electricity Rules, 1956 (hereinafter referred to as "the Rules") to the effect that it is the duty of the Electricity Board Officials to protect the every overhead line erected over any part of a street or other public place with a device approved by the Inspector for rendering the electricity line harmless in case it breaks. It was also pointed out that there was absolutely no factual dispute in respect of the manner of occurrence, in which the husband of the petitioner died due to electrocution.

Per contra, the Electricity Board contended that Writ Petition itself is not maintainable on the ground that it was a case involving disputed questions of fact. It was further contended that it is the burden of the petitioner to prove that the deceased died due to the negligence on the part of the second respondent officials. It was also contended that it was an Act of God and the Board also relied on a decision in S.D.O. Grid Corporation of Orissa Ltd. and Others Vs. Timudu Oram, of the rules considered by this Court is extracted hereunder:

91. Safety and protective devices: (1) Every overhead line (not being suspended from a dead bearer wire not being covered with insulating material and not being a trolley wire) erected over any part of a street or other public place or in any factory or mine or on any consumer's premises shall be protected with device approved by the Inspector for rendering the line electrically harmless in case it breaks.

(emphasis supplied)

This Court held as follows:

A reading of the above said provision makes it crystal clear that it is the statutory obligation, duty and responsibility of the second respondent officials to provide safety and protective devices for rendering the electricity live wires line harmless in case it breaks. The Electricity Board Officials should take care and caution in respect of laying, installing and maintaining the over head lines as the said electric wires were carrying heavy load and as such it is highly dangerous. The Electricity Board officials should strictly follow Rule 91 of the Rules by taking safety measures by providing with a device approved by the Electrical Inspector for rendering the line electrically harmless in case it breaks.

(xvii) In Rani v. The State of Tamil Nadu, represented by its Secretary, Department of Electricity, Chennai, and seven Others, (W.P. (MD) No. 7415 of 2007, dated 03.08.2010), the petitioner therein claimed compensation of Rs. 5,00,000/- with interest @ 12% per annum for the period between 21.08.2001 to till the date of payment for the accidental death of the 1st petitioner's husband who died due to electrocution. A criminal case was registered. Opposing the relief sought for in the writ petition, the respondents 2 to 4 therein, contended that on 21.08.2001, a lorry with a heavy load and abnormal height has dragged the service connection of D. 26 Palukal fed from Manoorkonam SS about 600 meters from the spot of accident and due to the above-said incident, the service was damaged and cut. In view of the same, the electric wire fell on the telephone wire at one end and got energised. It was the case of the claimants therein, that the deceased came in contact with a telephone wire which was in the air, muchless than a man's height from the ground, got electrocuted and died. Though the Board objected to the relief sought for in the writ petition on the ground that they were not negligent and hence not liable to pay compensation, this Court after considering Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others, , C. Thekkamalai Vs. State of Tamil

Nadu, , Lakshmana Naidu (deceased) and Others Vs. The State of Tamil Nadu, , CSDO Grid Corporation of Orissa Ltd., TNEB v. Sumathi, (supra), rejected the objections of the board, as regards the maintainability of the writ petition and awarded compensation by applying multiplier method.

(xviii) In Karuppaye Ammal and Mrs. Guruvammal v. The Chairman, Tamil Nadu Electricity Board, Anna Salai, Chennai, and two Others, W.P. (MD). Nos. 9555 and 9557 of 2007, dated 29.06.2011, widows filed separate writ petitions for the death of their husbands due to electrocution. One Krishnasamy was the husband of the petitioner in W.P. (MD). No. 9555 of 2007 and Velusamy was the husband of the petitioner in W.P. (MD). No. 9557 of 2007. Krishnasamy owned lands in S. Nos. 152/1B and 1A and he had grown lemon trees and cotton. To irrigate those lands using motor pumps, he went to the agricultural field along with his neighbour Velusamy. While they were proceeding towards the aforesaid lands, Krishnasamy came in contact with the live wire in S. No. 152/3. The land in S. No. 152/3 belonged to one Pandia Naicker, whose land was very near to Krishnasamy's land. He died due to electrocution as he came in contact with the snapped live wire. When, Velusamy attempted to rescue Krishnasamy, he also got electrocuted. Both of them died. A First Information Report on 01.06.1998 was lodged on the file of Vasudevanallur Police Station and that the same was registered in Cr. No. 233 of 1998 under Section 174 Cr.P.C. Each of the petitioners was paid a sum of Rs. 25,000/- towards ex gratia by the TNEB. Thereafter, representations were made for compensation. They filed writ petitions. Preliminary objection was raised regarding maintainability. Limitation was also a ground for opposing the prayer for compensation. It was stated that there was no negligence on the part of the electricity board and therefore, the petitioners therein were not entitled to claim compensation for the death of their husbands. On the aspect of maintainability, at paragraph 7, this Court held as follows:

7.....There is no limitation as such provided for invoking Article 226 of the Constitution of India and the parties should be vigilant to approach the Court claiming relief under Article 226 of the Constitution of India. But, the Court cannot shut eyes and reject the applications at the threshold without taking notice of the facts of each case. When the records of the respondents itself disclose that the snapping of live wire was due to the ageing of conductors, the claim for compensation could not be rejected without examining the same on merits. Furthermore, the respondent being State, under Article 12 of the Constitution of India, is duty bound to answer the claim on merits and they could not take the technical plea more particularly in these type of cases. It is not the case where the respondent board is fighting against the persons who have indulged in theft of electrical energy. On the other hand, victims are the persons who came in contact with the live wire and lost their precious life.....

On the basis of the evidence on record and arriving at a categorical finding that the death had occurred due to the negligence of the Board, this Court computed

the compensation.

(xix). In a recent decision in Ponnu Sankan @ Kumar Vs. The State of Tamil Nadu and The Tamil Nadu Electricity Board, , a learned Judge had an occasion to consider the case of death due to electrocution and while dealing with the aspect of safety and protective devices to be made by the Tamil Nadu Electricity Board, at paragraphs 13 to 15, held as follows:

13. Section 68 of the Electricity Act, 2003 contains provisions relating to overhead lines. The said provision reads thus:

68. Overhead lines.- (1) An overhead line shall, with prior approval of the Appropriate Government, be installed or kept installed above ground in accordance with the provisions of sub-section (2).

(2) The provisions contained in sub-section (1) shall not apply-

(a) in relation to an electric line which has a nominal voltage not exceeding 11 kilo-volts and is used or intended to be used for supplying to a single consumer;

(b) in relation to so much of an electric line as is or will be within premises in the occupation or control of the person responsible for its installation; or

(c) in such other cases, as may be prescribed. (3) The Appropriate Government shall, while granting approval under sub-section (1), impose such conditions (including conditions as to the ownership and operation of the line) as appear to it to be necessary.

(4) The Appropriate Government may vary or revoke the approval at any time after the end of such period as may be stipulated in the approval granted by it.

(5) Where any tree standing or lying near an overhead line or where any structure or other object which has been placed or has fallen near an overhead line subsequent to the placing of such line, interrupts or interferes with, or is likely to interrupt or interfere with, the conveyance or transmission of electricity or the accessibility of any works, an Executive Magistrate or authority specified by the Appropriate Government may, on the application of the licensee, cause the tree, structure or object to be removed or otherwise dealt with as he or it thinks fit.

(6) When disposing of an application under sub-section (5), an Executive Magistrate or authority specified under that sub-section shall, in the case of any tree in existence before the placing of the overhead line, award to the person interested in the tree such compensation as he thinks reasonable, and such person may recover the same from the licensee.

14. Rule 91 of the Indian Electricity Rules, 1956 also provides for safety and protective devices. The said provision reads thus:

91. Safety and protective devices.- (1) Every overhead line; (not being suspended from a dead bearer wire and not being covered with insulating

material and not being a trolley-wire) erected over any part of street or other public place or in any factory or mine or on any consumers" premises shall be protected with a device approved by the Inspector for rendering the line electrically harmless in case it breaks.

(2) An Inspector may by notice in writing require the owner of any such overhead line wherever it may be erected to protect it in the manner specified in sub-rule (1).

75. Section 68 gives authority to a District Magistrate to remove the trees, structures or objects placed near an overhead line. The Board should be vigilant in the matter of maintenance of electric lines and they cannot be heard to say that without their permission, political parties have erected flex board and the incident has happened only because of the contact of such flex boards with the electric line.

The objection to the maintainability of the writ petition, is rejected.

14. Having agreed to consider the proposals, subject to the production of the post mortem/legal heir certificate, its unfortunate that the Superintending Engineer, CEDC/South/K.K. Nagar, Chennai, has denied the liability to pay compensation payable to the minor child.

15. At this juncture, it is to be noted that the petitioner who has taken steps in the welfare of the minor child, though aged about 75 years, has made a clear statement that he is not interested in taking even a single pie from the compensation and in this context Mr. P. Joseph, learned counsel for the petitioner submitted that the entire compensation to be determined, by this Court can be deposited in the nationalised bank, in the name of the minor, proximate to the residence of the petitioner and that the grandfather may be permitted to withdraw only the interest periodically, to be spent for genuine purposes, such as education, health and other basic amenities to be provided to the minor Judith Rani. Submission of the petitioner is placed on record.

Compensation case awarded under Article 226 of the Constitution of India:

16. Considering the interest of the minor Judith Rani, who has lost her mother and now become an orphan, and having regard to genuine intention of the grandfather, this Court proposes to determine the quantum of compensation. Whether it is an accident involving a motor vehicle or train or electrocution or any other manner, there is loss of life due to negligence. Therefore, when if there is no methodology or procedure provided in the electricity laws, for determining the quantum of compensation due and payable to the legal representatives or the claimants as the case may be, this Court is inclined to proceed to compute the quantum of compensation as per the decision of the Apex Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, .

17. According to the petitioner at the time of accident on 18.07.2013, his daughter A. Anthony Sahaya Rani, was aged about 38 years. She was stated to

be a tailor. Though, no document has been filed to prove her avocation, still considering the age of the petitioner, i.e., 75 years, he would have been supported with some income earned by the deceased and the need to take care of the minor child, aged about five years, the deceased mother would have engaged in some avocation to maintain the family. Even otherwise both the petitioner and the minor daughter have lost her gratuitous services. No one can replace the mother. It can only be perceived. Minor Judith is blessed with a grandfather and she has lost the love and affection of her parents.

18. Insofar as determination of the monthly income of the deceased is concerned, even taking it for granted, she was a house wife, at the time of accident, this Court deems it fit to consider a decision of the Apex Court in Arun Kumar Agrawal and Another Vs. National Insurance Company and Others, , wherein, after considering the services, which the husband and the family stand to lose, due to the death of the house wife, as per Kemp on Negligence, at paragraph Nos. 23 to 27, held as follows:

23. In India the Courts have recognised that the contribution made by the wife to the house is invaluable and cannot be computed in terms of money. The gratuitous services rendered by wife with true love and affection to the children and her husband and managing the household affairs cannot be equated with the services rendered by others. A wife/mother does not work by the clock. She is in the constant attendance of the family throughout the day and night unless she is employed and is required to attend the employer's work for particular hours. She takes care of all the requirements of husband and children including cooking of food, washing of clothes, etc. She teaches small children and provides invaluable guidance to them for their future life. A housekeeper or maidservant can do the household work, such as cooking food, washing clothes and utensils, keeping the house clean 2 etc., but she can never be a substitute for a wife/mother who renders selfless service to her husband and children.

24. It is not possible to quantify any amount in lieu of the services rendered by the wife/mother to the family i.e. husband and children. However, for the purpose of award of compensation to the dependents, some pecuniary estimate has to be made of the services of housewife/mother. In that context, the term "services" is required to be given a broad meaning and must be construed by taking into account the loss of personal care and attention given by the deceased to her children as a mother and to her husband as a wife. They are entitled to adequate compensation in lieu of the loss of gratuitous services rendered by the deceased. The amount payable to the dependants cannot be diminished on the ground that some close relation like a grandmother may volunteer to render some of the services to the family which the deceased was giving earlier.

25. In *Lata Wadhwa v. State of Bihar* (supra), this Court considered the various issues raised in the writ petitions filed by the petitioners including the one relating to payment of compensation to the victims of fire accident which occurred on 3.3.1989 resulting in the death of 60 persons and injuries to 113. By

an interim order dated 15.12.1993, this Court requested former 2 Chief Justice of India, Shri Justice Y.V. CHANDRACHUD to look into various issues including the amount of compensation payable to the victims. Although, the petitioners filed objection to the report submitted by Shri Justice Y.V. CHANDRACHUD, the Court overruled the same and accepted the report. On the issue of payment of compensation to housewife, the Court observed: So far as the deceased housewives are concerned, in the absence of any data and as the housewives were not earning any income, attempt has been made to determine the compensation on the basis of services rendered by them to the house. On the basis of the age group of the housewives, appropriate multiplier has been applied, but the estimation of the value of services rendered to the house by the housewives, which has been arrived at Rs. 12,000 per annum in cases of some and Rs. 10,000 for others, appears to us to be grossly low. It is true that the claimants, who ought to have given data for determination of compensation, did not assist in any manner by providing the data for estimating the value of services rendered by such housewives. But even in the absence of such data and taking into consideration the multifarious services rendered by the housewives for managing the entire family, even on a modest estimation, should be Rs. 3000 per month and Rs. 36,000 per annum. This would apply to all those housewives between the age group of 34 to 59 and as such who were active in life. The compensation awarded, therefore, should be recalculated, taking the value of services rendered per annum to be Rs. 36,000 and thereafter, applying the multiplier, as has been applied already, and so far as the conventional amount is concerned, the same should be Rs. 50,000 instead of Rs. 25,000 given under the Report. So far as the elderly ladies are concerned, in the age group of 62 to 72, the value of services rendered has been taken at Rs. 10,000 per annum and the multiplier applied is eight. Though, the multiplier applied is correct, but the values of services rendered at Rs. 10,000 per annum, cannot be held to be just and, we, therefore, enhance the same to Rs. 20,000 per annum. In their case, therefore, the total amount of compensation should be redetermined, taking the value of services rendered at Rs. 20,000 per annum and then after applying the multiplier, as already applied and thereafter, adding Rs. 50,000 towards the conventional figure.

(emphasis supplied)

26. The judgment of *Lata Wadhwa v. State of Bihar* (supra) case was referred to with approval in *M.S. Grewal and Another Vs. Deep Chand Sood and Others*, for confirming the award of compensation of Rs. 5 lacs in a case involving death of school children by drowning due to negligence of teachers of the school. In *Municipal Corporation of Greater Bombay v. Laxman Iyer and Another* (2003) 8 SCC 731, a two-Judge Bench while deciding the issue of award of compensation under Sections 110-A and 110-B of the Motor Vehicles Act, 1939, referred to the judgments in *Lata Wadhwa v. State of Bihar* (supra) case and *M.S. Grewal and another v. Deep Chand Sood and Others* (supra) case.

27. In *A. Rajam Vs. M. Manikya Reddy and Another*, M. JAGANNADHA RAO, J. (as he then was) advocated giving of a wider meaning to the word "services" in cases relating to award of compensation to the dependants of a deceased wife/mother. Some of the observations made in that judgment are extracted below: The loss to the husband and children consequent upon the death of the housewife or mother has to be computed by estimating the loss of "services" to the family, if there was reasonable prospect of such services being rendered freely in the future, but for the death. It must be remembered that any substitute to be so employed is not likely to be as economical as the housewife. Apart from the value of obtaining substituted services, the expense of giving accommodation or food to the substitute must also be computed. From this total must be deducted the expense the family would have otherwise been spending for the deceased housewife. While estimating the "services" of the housewife, a narrow meaning should not be given to the meaning of the word "services" but it should be construed broadly and one has to take into account the loss of "personal care and attention" by the deceased to her children, as a mother and to her husband, as a wife. The award is not diminished merely because some close relation like a grandmother is prepared to render voluntary services.

At paragraph No. 32, the Apex Court further held that,

the gratuitous services rendered by wife/mother to the husband and children cannot be equated with the services of an employee and no evidence or data can possibly be produced for estimating the value of such services. It is virtually impossible to measure in terms of money the loss of personal care and attention suffered by the husband and children on the demise of the housewife. In its wisdom, the legislature had, as early as in 1994, fixed the notional income of a non-earning person at Rs. 15,000/- per annum and in case of a spouse, 1/3rd income of the earning/surviving spouse for the purpose of computing the compensation. Though, Section 163A does not, in terms apply to the cases in which claim for compensation is filed under Section 166 of the Act, in the absence of any other definite criteria for determination of compensation payable to the dependents of a non-earning housewife/mother, it would be reasonable to rely upon the criteria specified in clause (6) of the Second Schedule and then apply appropriate multiplier keeping in view the judgments of this Court in *General Manager Kerala State Road Transport Corporation v. Susamma Thomas (Mrs.) and Others*, *U.P. S.R.T.C. v. Trilok Chandra, Sarla Verma (Smt.) and Others v. Delhi Transport Corporation and Another* and also take guidance from the judgment in *Lata Wadhwa v. State of Bihar* (supra) case.

19. In *Arun Kumar Agrawal and Another v. National Insurance Co. Ltd. and Others* (supra) case, though the legal representatives claimed that she earned Rs. 50,000/- per month by painting and handicrafts, the tribunal therein, fixed the monthly income at Rs. 5,000/- for computing the loss of contribution to the family and awarded Rs. 6,00,000/- as compensation. But then, on appeal, the High Court reduced the same. When the correctness of the decision of the High

Court was tested, the Supreme Court by considering various principles, The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), gratuitous service rendered by the wife/mother and also observing that gender equality has to be maintained in assessing compensation for house wives, victims of road accident, restored the original compensation awarded by the claims tribunal.

20. In the light of the above, this Court deems it fit to fix the monthly income of the mother/house wife at Rs. 4,500/-. Multiplier that can be adopted for the purpose of calculating the loss of contribution to the family is 15. After deducting 1/3 towards the personal expenses of the deceased, the loss of contribution to the family is arrived at Rs. 5,40,000/-.

21. In addition to the above, a sum of Rs. 5,000/- for funeral expenses, Rs. 2,500/- for transportation, Rs. 500/- towards damage to cloth and Rs. 20,000/- towards loss of love and affection, are also awarded. The overall compensation computed at Rs. 5,68,000/-. As the Government have already ordered payment of Rs. 1,50,000/-, the balance amount of Rs. 4,18,000/- is directed to be paid by the respondents 1 and 2 jointly and severally and that the said amount should be deposited in the name of the minor daughter Judith Rani aged about 5 years, in a nationalised bank, proximate to the residence of the grandfather, within one month from the date of receipt of a copy of this order. The writ petitioner/grandfather of the minor is permitted to withdraw only the interest, once in three months. Amount shall not be permitted to be withdrawn except with the leave of this Court, on an application to be made in future for any bonafide reason, till minor Judith Rani attains majority. With the above directions, the writ petition is allowed. No costs.