

(2015) 01 SHI CK 0012
In the High Court Of Himachal Pradesh
Case No : CWP No. 475 of 2013

Naval Kumar

APPELLANT

Vs

State of H.P.

RESPONDENT

Date of Decision : 09-01-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2
Constitution of India, 1950 — Article 136, 21, 226, 32
Consumer Protection Act, 1986 — Section 23
Electricity Act, 1910 — Section 37, 53
Electricity Act, 2003 — Section 161, 2(20), 2(48), 2(6), 2(72)
Motor Vehicles Act, 1988 — Section 140, 166
Penal Code, 1860 (IPC) — Section 176

Citation : (2015) 01 SHI CK 0012

Hon'ble Judges : Sureshwar Thakur, J.;Rajiv Sharma, J.

Bench : Division Bench

Advocate : Vijay Chaudhary, for the Appellant; M.A. Khan, A.A.G, J.S. Guleria, Asstt. A.G. and Ramesh Thakur, Advocates for the Respondent

Final Decision : Allowed

Judgement

Rajiv Sharma, J.—The petitioner is a minor. He has filed this petition through his natural guardian and next friend Smt. Lata Devi. The petitioner came in contact with a high tension live wire (11 KV) commonly known as "Lahru-Chowari Line". He got electrocuted. He received grievous burn and other injuries. He became unconscious. FIR was also registered on 18.3.2012. The petitioner was initially taken to Referral Hospital Chowari for treatment. He was referred to Dr. Rajendra Prasad Medical Hospital Tanda, District Kangra, H.P. He was operated upon on 25.3.2012. His both arms were amputated. He remained admitted in Dr. Rajendra Prasad Medical Hospital, Tanda, w.e.f. 18.3.2012 to 3.5.2012. The petitioner has suffered 100% disability as per Annexure P-4. He has become totally dependant upon family members even for day-to-day activities for his entire life. The petitioner was brilliant student and he had to discontinue his studies. The petitioner and his family members have also suffered mental agony

and pain. The case of the petitioner, precisely, is that the respondents were duty bound to lay and maintain the 11 KV "Lahru-Chowari High Tension Line" according to the provisions of the Electricity Act, 2003 and the Rules framed thereunder.

2. Respondents No. 2 and 3 have filed the reply. According to them, the accident has occurred due to the act of God and also on account of wanton and negligent act of the petitioner. According to the averments contained in the reply, as per Annexure RA-1, in between two ends of the poles, the line was crossing over a raised rock and there was no apprehension that any person can climb on the same. The petitioner had climbed on the rock and in the process got electrocuted. They have taken all the necessary precautions and there was no negligence on the part of the field/operating staff. The line was erected in accordance with the Rules and was equipped with all safety measures. It was patrolled periodically.

3. The petitioner has also filed a detailed rejoinder to the reply filed by respondents No. 2 and 3. The averments made in the reply are specifically denied in the rejoinder. According to the averments contained in the rejoinder, the high tension live wire was lying low which resulted in the electrocution of the petitioner.

4. The Parliament has enacted an Act to consolidate the laws relating to generation, transmission, distribution etc. called the Electricity Act, 2003 (hereinafter referred to as the Act). Section 2(6) of the Act defines the "Authority" to mean the Central Electricity Authority referred to in Sub-section (1) of Section 70. Section 2(20) defines the "electric line" to mean any line which is used for carrying electricity for any purpose and includes (a) any support for any such line, that is to say, any structure, tower, pole or other thing in, on, by or from which any such line is, or may be, supported, carried or suspended; and (b) any apparatus connected to any such line for the purpose of carrying electricity. Section 2(48) defines the "overhead line" to mean an electric line which is placed above the ground and in the open air but does not include live rails of a traction system. Section 2(72) defines the "transmission lines".

5. Sections 53, 68 and 161 of the Act read as under:

"Section 53. (Provisions relating to safety and electricity supply):

The Authority may in consultation with the State Government, specify suitable measures for -

(a) protecting the public (including the persons engaged in the generation, transmission or distribution or trading) from dangers arising from the generation, transmission or distribution or trading of electricity, or use of electricity supplied or installation, maintenance or use of any electric line or electrical plant;

(b) eliminating or reducing the risks of personal injury to any person, or damage to property of any person or interference with use of such property;

- (c) prohibiting the supply or transmission of electricity except by means of a system which conforms to the specification as may be specified;
- (d) giving notice in the specified form to the Appropriate Commission and the Electrical Inspector, of accidents and failures of supplies or transmissions of electricity;
- (e) keeping by a generating company or licensee the maps, plans and sections relating to supply or transmission of electricity;
- (f) inspection of maps, plans and sections by any person authorised by it or by Electrical Inspector or by any person on payment of specified fee;
- (g) specifying action to be taken in relation to any electric line or electrical plant, or any electrical appliance under the control of a consumer for the purpose of eliminating or reducing the risk of personal injury or damage to property or interference with its use.

Section 68. (Provisions relating to 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 kilovolts 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 subsection 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.

Explanation. - For the purposes of this section, the expression "tree" shall be deemed to include any shrub, hedge, jungle growth or other plant.

Section 161. (Notice of accidents and injuries):--

(1) If any accident occurs in connection with the generation, transmission, distribution, supply or use of electricity in or in connection with, any part of the electric lines or electrical plant of any person and the accident results or is likely to have resulted in loss of human or animal life or in any injury to a human being or an animal, such person shall give notice of the occurrence and of any such loss or injury actually caused by the accident, in such form and within such time as may be prescribed, to the Electrical Inspector or such other person as aforesaid and to such other authorities as the Appropriate Government may by general or special order, direct.

(2) The Appropriate Government may, if it thinks fit, require any Electrical Inspector, or any other person appointed by it in this behalf, to inquire and report-

(a) as to the cause of any accident affecting the safety of the public, which may have been occasioned by or in connection with, the generation, transmission, distribution, supply or use of electricity, or

(b) as to the manner in, and extent to, which the provisions of this Act or rules and regulations made thereunder or of any licence, so far as those provisions affect the safety of any person, have been complied with.

(3) Every Electrical Inspector or other person holding an inquiry under Sub-section (2) shall have all the powers of a civil court under the Code of Civil Procedure, 1908 for the purpose of enforcing the attendance of witnesses and compelling the production of documents and material objects, and every person required by an Electrical Inspector be legally bound to do so within the meaning of section 176 of the Indian Penal Code."

6. Section 185(c) provides that the Indian Electricity Rules, 1956 (hereinafter referred to as the Rules) made under section 37 of the Indian Electricity Act, 1910 as it stood before such repeal shall continue to be in force till the regulations under section 53 of this Act are made.

7. The Central Government has also framed the Rules called the Intimation of Accidents (Form and time of service of notice) Rules, 2005. Rule 3 reads as under:

"3. Intimation of accidents.--(1) If any accident occurs in connection with the generation, transmission, supply or use of electricity in or in connection with, any part of the electric lines or other works of any person and the accident results in or is likely to have resulted in loss of human or animal life or in any injury to a

human being or an animal, such person or any authorized person of the generating company or licensee, not below the rank of a Junior Engineer or equivalent shall send to the Inspector a telegraphic report within 24 hours of the knowledge of the occurrence of the fatal accident and a report in writing in Form A within 48 hours of the knowledge of occurrence of fatal and all other accidents. Where possible a telephonic message should also be given to the Inspector immediately, if the accident comes to the knowledge of the authorized officer of the generating company/licensee or other person concerned.

(2) For the intimation of the accident, telephone numbers, fax numbers and addresses of Chief Electrical Inspector or Electrical Inspectors, District Magistrate, police station, Fire Brigade and nearest hospital shall be displayed at the conspicuous place in the generating station, sub-station, enclosed substation/switching station and maintained in the Office of the in-charge/owner of the Medium Voltage (MV)/High Voltage (HV)/Extra High Voltage (EHV) installations."

8. Chapter IV of the Indian Electricity Rules, 1956 deals with general safety requirements. Rule 29 provides that all electric supply lines and apparatus shall be of sufficient ratings for power, insulation and estimated fault current and of sufficient mechanical strength, for the duty which they may be required to perform under the environmental conditions of installation, and shall be constructed, installed, protected, worked and maintained in such a manner as to ensure safety of human beings, animals and property. According to sub-rule (2) of Rule 29, the relevant code of practice of the Bureau of Indian Standards including National Electrical Code, if any, may be followed to carry out the purposes of this rule and in the event of any inconsistency, the provision of these rules would prevail. As per Sub-rule (3) of Rule 29, the material and apparatus used shall conform to the relevant specifications of the Bureau of Indian Standards where such specifications have already been laid down. Rule 30 reads as under:

"30. Service lines and apparatus on consumer's premises-

(1) The supplier shall ensure that all electric supply lines, wires, fittings and apparatus belonging to him or under his control, which are on a consumer's premises, are in a safe condition and in all respects fit for supplying energy and the supplier shall take due precautions to avoid danger arising on such premises from such supply lines, wires, fittings and apparatus.

(2) Service-lines placed by the supplier on the premises of a consumer which are underground or which are accessible shall be so insulated and protected by the supplier as to be secured under all ordinary conditions against electrical, mechanical, chemical or other injury to the insulation.

(3) The consumer shall, as far as circumstances permit, take precautions for the safe custody of the equipment on his premises belonging to the supplier.

(4) The consumer shall also ensure that the installation under his control is

maintained in a safe condition."

9. Rule 35 provides that the owner of every medium, high and extra-high voltage installation shall affix permanently in a conspicuous position a danger notice in Hindi or English and the local language of the district, with a sign of skull and bones. Rule 44-A provides that if accident occurs in connection with the generation, transmission, supply or use of energy in or in connection with, any part of the electric supply lines or other works of any person and the accident results in or is likely to have resulted in loss of human or animal life or in any injury to a human being or an animal, such person or any authorised person of the State Electricity Board/Supplier, not below the rank of a Junior Engineer or equivalent shall send to the Inspector a telegraphic report within 24 hours of the knowledge of the occurrence of the fatal accident and a written report in the form set out in Annexure XIII within 48 hours of the knowledge of occurrence of fatal and all other accidents.

10. Rule 46 provides for periodical inspection and testing of installation. Rule 51 provides for provisions required to be observed where energy at medium, high or extra-high voltage is supplied, converted, transformed or used. Rule 74 of the Rules provides that all conductors of overhead lines other than those specified in sub-rule (1) of rule 86 shall have a breaking strength of not less than 350 kg. Rule 77 provides for clearance above ground of the lowest conductor. Rules 79, 80 and 91 read as under:

"79. Clearances from buildings of low and medium voltage lines and service lines-

(1) Where a low or medium voltage, overhead line passes above or adjacent to or terminates on any building, the following minimum clearances from any accessible point, on the basis of maximum sag, shall be observed:--

(a) for any flat roof, open balcony, verandah roof and lean-to-roof-

(i) When the line passes above the building a vertical clearance of 2.5 metres from the highest point, and

(ii) When the line passes adjacent to the building a horizontal clearance of 1.2 metres from the nearest point,

and

(b) For pitched roof-

(i) When the line passes above the building a vertical clearance of 2.5 metres immediately under the lines, and

(ii) When the line passes adjacent to the building a horizontal clearance of 1.2 metres.

(2) Any conductor so situated as to have a clearance less than that specified in sub-rule (1) shall be adequately insulated and shall be attached at suitable intervals to a bare earthed bearer wire having a breaking strength of not less

than 350 kg.

(3) The horizontal clearance shall be measured when the line is at a maximum deflection from the vertical due to wind pressure.

[Explanation- For the purpose of this rule, expression "building" shall be deemed to include any structure, whether permanent or temporary]

80. Clearances from buildings of high and extra-high voltage lines-

(1) Where a high or extra-high voltage overhead line passes above or adjacent to any building or part of a building it shall have on the basis of maximum sag a vertical clearance above the highest part of the building immediately under such line, of not less than-

(2) The horizontal clearance between the nearest conductor and any part of such building shall, on the basis of maximum deflection due to wind pressure, be not less than-

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).

[(3) The owner of every high and extra-high voltage overhead line shall make adequate arrangements to the satisfaction of the Inspector to prevent unauthorised persons from ascending any of the supports of such overhead lines which can be easily climbed upon without the help of a ladder or special appliances. Rails, reinforced cement concrete poles and pre-stressed cement concrete poles without steps, tubular poles, wooden supports without steps, I-sections and channels shall be deemed as supports which cannot be easily climbed upon for the purpose of this rule.]"

11. The combined reading of the Electricity Act and the Rules framed thereunder and the Indian Electricity Rules, 1956, quoted hereinabove, provides safety measures required to be observed for supply of electricity. The electricity is a dangerous commodity and it is the statutory duty of the person responsible for the supply and maintenance to abide by all the protective measures. In case respondents in the present case had installed all the safety devices and had taken precautions, the accident could have been avoided. It is not believable that 8 years boy would climb the rock and get electrocuted, as projected in the reply by respondents. The boy has come in contact with the live wire lying low when he had gone to bring vegetables with his mother. It was a high tension live wire

called "Lahru-Chowari Line". Since it was lying low, no contributing negligence can be attributed to a boy aged 8 years. It is a fit case where principle of "res ipsa loquitur" would apply. There is no merit in the contention of Mr. B.S. Ranjan, Advocate, that it was an act of God. Rather, it is a sheer act of negligence on the part of the respondents, who have failed to take necessary safety measures in maintaining high tension live wires called "Lahru-Chowari Line". It was the duty of the field officers concerned under Rule 44-A of the Electricity Rules, 1956 and as provided under Rule 3 of Intimation of Accidents (Form and time of service of notice) Rules, 2005 to give information of the accident to the higher authorities. There is no tangible material placed on record by respondents No. 2 and 3 in the reply that Rule 44-A of the Electricity Rules, 1956 or Rule 3 of the Intimation of Accidents (Form And Time Of Service Of Notice) Rules, 2005, have been complied with. The respondents have failed to conduct periodical inspections as visualized under the Act and Rules framed thereunder. They have failed to protect the life and property of the general public. The present case falls within the ambit of strict liability. There is a flagrant violation of the Act and Rules by the respondents by not providing any safeguards, checks and balances to prevent escape of energy which caused electrocution in the instant case. The hanging of "Lahru-Chowari Line" at a low level was a potential danger and threat to public at large. The burden on the respondents was high involving the risk factor. The respondents have failed to discharge the onus placed upon them under the Statutes. There is also a criminal negligence on the part of the functionaries of respondents No. 2 and 3.

12. The petitioner has remained hospitalized w.e.f. 18.3.2012 to 3.5.2012 in Dr. Rajendra Prasad Medical Hospital, Tanda. He was operated upon on 25.3.2012. His both arms were amputated as per Annexure P-4. He has suffered 100% disability. The petitioner has been reduced to a vegetable form by the sheer negligence on the part of the Board and its functionaries. He has discontinued his studies. He cannot look after himself. He needs attendant and nursing throughout his life. He comes from a scheduled tribe family and that too from a very remote area of the State of Himachal Pradesh. He is to be fed by his family members. He cannot take even his bath. We can take judicial notice of the fact that the help of the family would not be available to him throughout his life. He cannot marry with this condition. He and his family members have suffered trauma after the accident. The petitioner has suffered pain and agony. He has to be provided with sufficient compensation for his entire future life.

13. A person injured by the negligent act of others is definitely entitled to general damages for non-pecuniary loss such as pain, suffering and loss of amenities and also pecuniary loss, both past and future. He has incurred medical expenses as well. The petitioner is entitled for compensation/damages for the embarrassment for the disability and disfigurement. The petitioner is also entitled to damages for the loss of ability to use his limbs, including the loss of pride and pleasure and loss of marriage prospects.

14. Now, as far as damages/compensation under pecuniary loss is concerned, the principle of "restitutio in integrum" would apply. The petitioner is entitled to be put in the same position in which he would have been if he had not sustained the wrong.

15. Now, as far as the loss of future earning is concerned, the Court has to look into the entire gamut of facts and circumstances of the case, including the background of the petitioner. The petitioner was a brilliant student. He would have earned at least 30,000/- to 40,000/- per month, after attaining the age of majority or after completing his education. It would have been easier for him to get job from the Scheduled Tribe quota.

16. The Court has to apply the appropriate multiplier by taking into consideration life expectancy of a child. In the present case, taking into consideration all the facts and circumstances even on the conservative side, the life expectancy of the petitioner with his disability would not be less than 70 years of age. The petitioner is also entitled to the empowerment of his ability to perform household chores. The petitioner has to employ housekeeper/servant etc. to perform them. Even if the family members are providing the chores performed by the petitioner, the petitioner is entitled to award of damages representing the value of those services. The petitioner is also entitled to medical and nursing expenses including special equipment which may be required for providing him artificial limbs and the cost of travel, to and fro journey to hospital and his family members.

17. Now, as far as the plea of act of God taken by the respondents is concerned, the principle is that the act of God amounts due to operation of natural force. In the present case, the plea of act of God raised by the respondents is not attracted. The child has come in contact with the live wire due to negligence and laxity of the functionaries of the respondents who have failed to maintain the supply lines by taking precautions required under the Act. There was no contributory negligence on behalf of the petitioner. The petitioner was only 8 years old. He could not foresee that the loose wire would be lying low on the ground.

18. The Privy Council in the case of Eastern and South African Telegraph Company, Limited v. Cape Town Tramways Companies Limited, reported in (1902) AC 381, has held that the principle of Rylands v. Fletcher, (1868) L.R. 3 H.L. 330, is not inconsistent with the Roman law. It imposes a liability on a proprietor which is measured by the non-natural user of his own property, not by that of his neighbor. It also applies to a proprietor who stores electricity on his land if it escapes therefrom and injures a person or the ordinary use of property. Their lordships have held as under:

"The respondents contended that the escape of electricity from the tram-rails to the earth and thence into the appellants' cable did not constitute a "leak" within the meaning of the Act. The respondents further contended that the words of the Act giving a remedy for damage "caused at any time by electrolysis or otherwise"

did not cover the sort of damage caused to the appellants. The respondents contended that the words "or otherwise" only included things ejusdem generis with electrolysis.

To this the appellants answered that the word "leak", whether as ordinarily used by electricians and others or as used in this Act, meant an escape of electricity from the conductor provided to carry the electricity, and that in this case such electricity escaping from the rails which were intended to carry the current, and finding its way into the appellants' cable, which was not intended to carry such current, was a leak within the meaning of the section. They further contended that the words "or otherwise" as used in this section were intended to be comprehensive, and not intended to be cut down to the narrow meaning contended for by the respondents.

Now, if regard be had solely to the action of the respondents in storing electricity on their lands, it must be allowed that the analogy is very close to the illustrations given in *Rylands v. Fletcher* of the kind of things which a proprietor can only do at his own peril. Electricity (in the quantity which we are now dealing with) is capable when uncontrolled of producing injury to life and limb and to property; and in the present instance it was artificially generated in such quantity, and it escaped from the respondents' premises and control. So far as the respondents are concerned, it appears to their Lordships that, given resulting injury such as a postulated in *Rylands v. Fletcher*, and the principle would apply."

19. In the case of *Corporation of The City of Glasgow v. Taylor*, reported in (1922) 1 AC 44, the House of Lords have held that in the case of child eating poisonous berries, the proprietors and custodians of the garden are liable. Their lordships have held as under:

"The father of a boy, aged seven, who died from eating the berries of a poisonous shrub growing in some public gardens in Glasgow, sued the Corporation as the proprietors and custodians of the gardens for damages for the death of his son. The pursuer averred that on a piece of fenced ground in the gardens the defenders grew, among other specimen plants, a shrub bearing poisonous berries which presented a tempting appearance to children; that this enclosed piece of ground was open to the public, access thereto being by a gate which could be easily opened by young children, and was in a part of the gardens much frequented by children; that the pursuer's son, with some other children, entered the gardens and ate some of the berries of this poisonous shrub and died; that the defenders knew that these berries were a deadly poison, but took no precautions to warn children of the danger of picking the berries of this shrub or to prevent them from doing so; and that there was no adequate notice in the gardens warning the public of the dangerous character of the specimen shrubs growing therein:--

Held, that the pursuer's averments disclosed a good cause of action against the defenders, and that the action ought to proceed to trial.

Cooke V. Midland Great Western Railway Co. of Ireland (1909) A.C. 229 applied."

20. In the case of Paine v. Colne Valley Electricity Supply Co., Ltd. And British Insulated Cables, Ltd. Reported in (1938) 4 All E.R. 803, it was held that as there was no efficient screening of the dangerous parts in accordance with the provisions of that Act, there was a breach of statutory duty by the first defendants and they were held liable. It was held as follows:

"In these circumstances, counsel for the first defendants admitted that if the kiosk were an electrical station within the definition given in the Factory and Workshop Act, 1901, Sched. VI, he had no defence, owing to the lack of efficient screening. As an electrical station is defined in Sched. VI, para (20) as

..... any premises or that part of any premises in which electrical energy is generated or transformed for the purpose of supply by way of trade..... and as the transformer here was enclosed in a separate cubicle, he argued that only that cubicle was an electrical station, and that those in which the switches and the oil switch were housed were not. With all respect, that seems to me to be an impossible argument. I think that it is clear that the whole of the kiosk was an electrical station, and that the division into cubicles was only a method of screening or protection. The definition is dealing with places where current is either generated and then distributed, or delivered in bulk and transformed for distribution to a commercial voltage. It may be possible to have a transformer with no switches, but, if they are both under the same roof, as in this case, both must be protected. It follows, in my opinion, not only that there had been a breach of the Factory and Workshop Act, 1901, but also that the first defendants had failed to provide a safe place for their workmen, and had, therefore, committed a breach of their common law duty as recently laid down in *Wilsons and Clyde Coal Co., Ltd., v. English*. This is a duty which cannot be avoided by delegation. It is no answer to say, as counsel for the first defendants submitted: "We employed competent contractors to provide a safe place or plant". The class of cases in which the employment of a competent contractor affords a defence belongs to a wholly different category in the law of negligence. I have no hesitation in holding that the first defendants have no defence whatever to the plaintiff's claim."

21. In the case of *Yachuk and another v. Oliver Blais Co., Ltd.*, reported in (1949) 2 All. E.R. 150, the Privy Council has held that when employee has given an explosive substance to a boy with a limited knowledge in respect of the likely effect of the explosion, the boy having done the act which the child of his years might be reasonably expected to do. This would not be a case of contributory negligence. It has been held as under:

".....It was contended on behalf of the plaintiffs that the learned Judge's findings were illogical and inconsistent. Black was negligent because he ought to have recognized that a boy of the age of the infant plaintiff not only lacked knowledge and experience, but was likely to have mischievous propensities. These defects

being characteristic of the normal boy, it was impossible (so ran the argument) to impute to this boy, whatever exceptional training or experience he might have had and however reckless he might appear to have been, any failure to take reasonable care for his own safety. In other words, he could not be found guilty of contributory negligence. Their Lordships do not find it necessary to decide whether there is a necessary inconsistency, in all cases in which the defendant owes a duty to show special care in his dealings with a child, in a finding of negligence by the defendant coupled with one of contributory negligence by an infant plaintiff. If the evidence had shown that the infant plaintiff in the present case had, in fact, greater knowledge of the dangerous properties of gasoline than would be imputed normally to a child of his age, a more debatable question would have arisen. A careful examination of the evidence has satisfied their Lordships that the boy had no knowledge of the peculiarly dangerous quality of gasoline. He knew, no doubt, that an object soaked in gasoline could be ignited with a match. He did not know, and there is no evidence that he had ever been told, that gasoline was a volatile liquid capable of producing a highly inflammable vapour likely to burst into flame if heat were brought near it. He knew the said (in his evidence) that "it would burn like a match....after you strike it." His father said that he had never warned him about gasoline, because he did not think that a boy could buy it. The boy himself said, what is likely enough, that his father had told him to keep away from his gasoline torch, but that he was "pretty sure" that neither of his parents had ever warned him "to be careful with gasoline." On the evidence it is, in their Lordships view, impossible to regard him as any more capable of taking care of himself in the circumstances in which he was placed than a normal boy of his age might be expected to be. In the words of DENMAN, C.J., although he may be said to have acted "without prudence or thought", he "showed these qualities in as great a degree as he could be expected to possess them." It is a fair inference from the evidence that it was the very property of gasoline which he neither knew, nor could be expected to know, which brought about his misadventure. Their Lordships are, accordingly, of opinion, in agreement with the Court of Appeal for Ontario, that on the facts of this case the finding of contributory negligence cannot be supported.

It follows from what their Lordships have already said that the attempt to attribute the disaster which happened solely to the acts of the infant plaintiff must fail. That defence cannot, indeed, be maintained in the light of the concurrent findings of fact in this case, for, when once the negligence of the plaintiff, it is impossible to say that a new cause has intervened so as to relieve the defendant of all responsibility for the evil consequences which followed his wrongful act. Their Lordships will add, however, that even without regard to the rule of practice as to concurrent findings they would have had no difficulty in arriving at the same conclusion. However the case is put, the answer made by McRUER, J.A., in the Court of Appeal for Ontario, seems to their Lordships to be conclusive in the light of the evidence when he said ([1945] Ont. Rep. 33):

"If one gives to a child an explosive substance and the child, with a limited

knowledge in respect of the likely effect of the explosion, is tempted to meddle with it to his injury, it cannot be said in answer to a claim on behalf of the child that he did meddle to his own injury, or that he was tempted to do that which a child of his years might be reasonably expected to do." 22. In the case of *Hawkins v. Coulsdon and Purley Urban District Council*, reported in (1954) 1 All. E.R. 97, the Court of Appeal has held the requisitioning authority liable in the case of defective steps of requisitioned house. It has been held as follows:

"If a licensor had actual knowledge of the physical condition of his property and a reasonable man would have realized that it was a danger, the licensor was under a duty to use reasonable care to prevent damage from the danger unless it was obvious, and he could not escape liability by showing that he himself did not appreciate the risk involved; the plaintiff had discharged the burden of proof which was on her, and, therefore, she was entitled to damages against the defendants.

Per DENNING and ROMER, L. JJ. When leaving the house in the dark, the plaintiff was entitled to assume that the steps were suitable for the purpose for which they were provided, and, therefore, the fact that the accident occurred during the hours of darkness was irrelevant.

Per DENNING, L.J: The defendants, being an urban district council, were, of course, not the householder and could not be on the spot to warn visitors of the danger, but that does not rid them of their responsibility. It only means that, being unable to warn, they ought to have mended the step. They cannot shift their responsibility on to the occupants of the house for the simple reason that they retained the possession and control and are responsible in law. They cannot get rid of their responsibility by the plea that they are only a requisitioning authority. They ought to do whatever a reasonable man in their position would do, and that is, mend the step."

23. In the case of *Hughes v. Lord Advocate*, reported in 1963 A.C. 837, the House of Lords have held that the workmen were in breach of duty of care to safeguard the boy against this type of occurrence which, arising from a known source of danger, the lamp, was reasonably foreseeable, although that source of danger acted in an unpredictable way. It was held as follows:

"The open tent and manhole and the lighted lamps were an allurement and a source of danger to children whose presence could reasonably have been foreseen, as it could have been foreseen that they might interfere with the lamp or fall down the manhole and that, if the lamp was damaged, the child might be severely burned in the confined space. It is not necessary to show that the Post Office employees could have foreseen the exact circumstances constituting the accident or the exact extent of the injuries sustained, so long as it is shown that the accident which in fact occurred was of the same type as any accident which could reasonably have been foreseen. The accident which occurred was caused by the same agencies (the open manhole and the lighted lamps) and would have

been prevented by the same precautions as a wide range of accidents which should reasonably have been foreseen. The injuries sustained were of the same kind and the same order of severity as those which might have been anticipated as a result of a paraffin fire in a confined space. The injuries were largely caused by fire in the manhole after the explosion had subsided. The fact that the foreseeable combustion of the paraffin was unforeseeably rapid and violent does not change the character of the accident of which the chief features were foreseeable. The accident was within the risk created by the Post Office employees." 24. In the instant case, the respondents could always foresee that if the wire is loose and near the ground, it would result in electrocution.

25. In the case of *Gough v. Throne*, reported in (1966) 3 All. E.R. 398, it was held that an ordinary child of 13 1/2 years (unlike an adult) could not reasonably be expected to pause to see for herself whether it was safe to go forward when the lorry driver had beckoned her on, and so the plaintiff had not been negligent in relying entirely on the lorry driver's signal to her to cross.

26. In the case of *Croke (a minor) and another v. Wiseman and others*, reported in (1981) 3 All. E.R. 852, the Hon'ble Judges Shaw and Griffiths, have held that the child would be entitled to be compensated for loss of future earnings by applying the appropriate multiplier. It has been held as follows:

"I do not read those passages in the speeches of their Lordships in *Pickett's* case and in *Gammell v. Wilson* (1981) 1 All ER 578, (1981) 2 WLR 248 in which they stress the difficulty of assessing an award of damages for the lost years in the case of a child as having general application to the claims of all children whose earning capacity has been diminished. In attempting to assess the value of a claim for the lost years, the court is faced with a peculiar difficulty. Not only does it have to assess what sum the plaintiff might have been earning, but it also has to make an assessment of the sum that would not have been spent on the plaintiff's own living expenses and would have therefore been available to spend on his dependants. In the case of a living plaintiff of mature years whose life expectation has been shortened and who has dependants, there are compelling social reasons for awarding a sum of money that he knows will be available for the support of his dependants after his death. It was this consideration that led to the result in *Pickett's* case. As a consequence of the decision in *Pickett's* case, the House of Lords in *Gammell's* case felt compelled to apply the same principle to a claim brought on behalf of the estate of the deceased person. If it could be shown that part of the deceased's income was available to be spent on his dependants, then a claim for that part of the income was available to cover the lost years of working life. In the case of a child, however, there are no dependants, and if a child is dead there can never be any dependants and, if the injuries are catastrophic, equally there will never be any dependants. It is the child that will be dependant. In such circumstances, it seems to me entirely right that the court should refuse to speculate whether in the future there might have been dependants for the purpose of providing a fund of money for persons who

will in fact never exist. It was this consideration that led me in *Kandalla v. British Airways Board* (1980) 1 All ER 341 : (1981) QB 158 to refuse to assess a sum for the lost years in respect of two unmarried doctors by speculating whether or not in the future they would have married and set aside some part of their income for husbands or children. I refused to enter into the realm of speculation about an impossible and hypothetical situation.

However, when one is considering the case of a gravely injured child who is going to live for many years into adult life, very different considerations apply. There are compelling social reasons why a sum of money should be awarded for his future loss of earnings. The money will be required to care for him. Take the present case: the cost of future nursing care has been assessed on the basis of nurses coming in to care for him for part of the day and night. It is not a case where damages have been awarded which will provide a sufficient sum for him to go into a residential home and be cared for at all times. Damages awarded for his future loss of earnings will in the future be available to provide a home for him and to feed him and provide for such extra comforts as he can appreciate. It cannot be assumed that his parents will remain able to house, feed and care for him throughout the rest of his life. If of course damages have been awarded on the basis of the full cost of residential care so that they include the cost of roof and board, any award for future loss of earnings will be small because there will be a very large overlap between the two heads of damage. The plaintiff must not be awarded his future living expenses twice over; this would be unfair to the defendants.

I would therefore award this child a sum to compensate him for his loss of earnings during the period that he will live but I would not award any additional sum to compensate him for the lost years.

The judge assessed the future loss of earnings at ? 5,000 per annum. He arrived at this figure by taking the national average wage for a young man. In my view, he was justified in doing so. This child came from an excellent home, the father is an enterprising man starting his own business and the mother is a qualified teacher; they have shown the quality of their characters by the care they have given their child and their courage by the fact they have continued with their family even after this disaster befell them. The defendants cannot complain that they are unfairly treated if against this background the judge assumes the child will grow up to lead a useful working life and be capable of at least earning the national average wage.

Assuming the child was able to start work at 18 and lived to the age of 40, his maximum working life would be 22 years. According to the actuarial tables put in at the trial, the appropriate multiplier to apply for such a period was 8.8.76. But that is a mathematical figure based on the certainty that earnings would have continued over that period. It makes no allowance for the large discount that must be given for the immediate receipt of the capital sum at least 11 years before earnings would commence; nor does it allow a discount for the possibility

that the child might never have become an earner. Taking these factors into account, I think there should be a substantial further discount on the multiplier which I would reduce to five years. Accordingly, I would reduce the judge's award under this head from ? 45,000 to ? 25,000.

.....

Starting from this position, which has not really been disputed by counsel for the defendant authority, the next question that arises is whether any different principle applies in relation to loss of future earnings where the victim is a very young child as in this case. For my part, I fail to see why there should be any difference in the principles which determine what are the bases for the recovery of damages whatever the age of the victim. The assessment of the measure of damages may be more or less difficult but the right of the plaintiff to an assessment of damages for that element of damage cannot be brushed aside. The obligation of the court to make the best assessment it can is not to be avoided by treating compensation for loss of future earnings in the case of a young child as being so speculative as not to deserve to be considered at all. On an actuarial basis a healthy child of two in a caring and comfortable home has a life expectation of some seventy years. I can see no valid reason for assuming that such a child is unlikely to reach adulthood or to achieve the capacity to earn a livelihood. I would adopt the approach of the judge. He assumed a life expectancy of 40, which was founded on the evidence of Professor Holt. Some criticism has been directed towards the acceptance of that evidence inasmuch as two expert witnesses spoke to a considerably shorter period as the probable expectation. Having read the respective testimonies of the witnesses on both sides, I see no reason for differing from Michael Davies J in this regard. I would support also the figure of ? 5,000 as representing the average annual earning the plaintiff would have achieved if he had not been rendered incapable. Where I part from the judge is in regard to the adoption of a multiplier of nine. With a life expectancy of 40, the plaintiff's conjectural working life would be about twenty years at the most. The judge's multiplier virtually divided that by two. This would have been appropriate if, at the time of the trial, the plaintiff was at the threshold of his working career; but he was then not eight years old and many years away from it.

In his meticulous judgment, to which I pay respectful tribute, Michael Davies J said that he had "considered this particular aspect of the case very carefully". In my view, however, he had not given due weight to this factor of doubly accelerated payment. Taking it into account I would adopt a multiplier of five so that the figure for loss of future earnings would become ? 25,000."

27. In the instant case also, the child was 8 years at the time of electrocution. His life expectancy, as noticed above, would be 70 years. He would have started earning at the time of 20 years. His working life would be 50 years and his loss of future earning has to be assessed by taking into consideration the law laid down in the English Law as well as by the Hon"ble Supreme Court and the

various High Courts.

28. Their lordships of the Hon''ble Supreme Court in Civil Appeal No. 11466 of 2014, titled as Raman v. Uttar Haryana Bijli Vitran Nigam Ltd. and ors., decided on 17th December, 2014, which would be discussed by as at the later stage, has also upheld the judgment of the learned Single Judge of the Punjab and Haryana High Court, awarding compensation to the tune of Rs. 60,00,000/- to a child of the age of 4 years who died due to electrocution. Their lordships of the Hon''ble Supreme Court have taken into consideration the principles laid down under the English Law as well as by the Hon''ble Supreme Court and the various High Courts, for determining compensation under the Motor Vehicles Act for the purpose of applying multiplier and various heads for awarding damages, both pecuniary and non-pecuniary. Their lordships of the Hon''ble Supreme Court have observed that the amount of compensation awarded was less and not reasonable and having regard to the nature of 100 % permanent disability suffered by the appellant, it should have been much higher as the appellant requires permanent assistance of an attendant and treatment charges etc.

29. In the case of Manoharlal Gupta and Others Vs. The Madhya Pradesh Electricity Board, , the Division Bench has held that the Electricity Board is a statutory Authority and as such the standard of care required is high one owing to the dangerous nature of electricity. It has been held as under:

"[4] The defendant has a statutory authority under the Electricity Act, 1910, read with the Electricity Supply Act, 1948 to transmit electric energy. The defendant, therefore, cannot be made liable for nuisance for the escape of electrical energy on the principle accepted in the case of Rylands v. Fletcher, (1866) LR 1 Ex 265. The defendant, however, is still liable for negligence. It is negligence to omit to use all reasonable known means to keep the electricity harmless; (see Clerk and Lindsell on Torts, 13th Edition, paragraph 1536), The burden of proving that there was no negligence is on the defendant and there is no obligation on he plaintiff to prove negligence. Further, the standard of care required is a high one owing to the dangerous nature of electricity; (see Charlesworth on Negligence, 5th Edition, p. 531). If the defendant produces no material and offers no evidence to negative negligence, negligence will be presumed. This result will also follow on the principle of *res ipsa loquitur*. Live broken electric wires carrying, high tension energy are generally not found in a public place, street or road and, therefore, if such a thing happens a *prima facie* inference can be drawn that there has been some carelessness on the part of the defendant in transmitting electric energy or in properly maintaining the transmission lines. This inference is further supported by Rule 91 of the Indian Electricity Rules, 1956. This rule provides that every over head line which is not covered with insulating material and which is erected over any part of a street or other public place or any factory or mine or on any consumer's premises shall be protected with a device approved by the Inspector for rendering the line electrically harmless in ease it breaks. If the precaution under this rule is taken the line in

case it breaks would become dead and harmless. The fact that the line after it broke did not become harmless shows that necessary precaution was not taken. As the defendant has not produced any evidence whatsoever to place the facts showing that all necessary precautions were taken and there was no negligence on its part, it must be held that the accident happened because of the negligence of the defendant." 30. In the case of Amul Ramchandra Gandhi Vs. Abhasbhai Kasambhai Diwan and Others, , the Division Bench has laid down the principles when the contributory negligence can be attributed to a child. It has been held as under:

"11. The principles which emerge on a review of the authorities may be thus summarized: A distinction must be necessarily drawn between children and adults when the question of contributory negligence arises for, a child cannot be expected to be as careful for his own safety as an adult. Where a child is of such an age as to be unable to fend for himself or to be naturally ignorant of danger, or where in doing an act which contributed to the accident, he was only following the instincts natural to his age and the circumstances, he is not guilty of contributory negligence. A child should be found guilty of contributory negligence only if it is established as a matter of fact on the evidence on record that he is of such an age and understanding as reasonably to be expected to take precautions for his own safety and the blame for the accident could be necessarily attached to him. In cases of road accidents, it must be borne in mind that a child is not possessed of the road sense or the experience of elders. Even if it transpires that he was taught road discipline either at home or at school and that, therefore, if he had bestowed some thought, he would have realized that it was his duty to take reasonable care for his own safety, still a normal child would not be held culpable in view, of his propensity to forget altogether what has been taught to him if something else is uppermost in his mind. A normal child is always momentarily forgetful of the perils of crossing and walking on a road, regretfully though, and under such circumstances, if he failed to notice even an on coming vehicle and got hurt by it, he cannot be held guilty of contributory negligence. In such a case, the question of the duty of the driver of the vehicle must be examined with greatest precision and unless the driver is in a position to show on establishment of, primary facts that he was driving the vehicle in such a manner that he could have brought it to standstill in case of emergency and that the accident was inevitable or unavoidable, the inference of his negligence and his alone must be raised almost as a matter of course." 31. In the case of The Kerala State Electricity Board, Trivandrum Vs. Suresh Kumar, , the Division Bench has held that where the evidence in the case clearly show that the sagging was the consequence of sabotaging committed by the employees of the Board itself, the fact that sabotage was committed by the employees during the period of their strike cannot exonerate the Board from statutory duty cast upon it by provisions of the Act and Rules. It has been held as under:

"6. According to the plaintiff the 11 K.V. electric line which passes across the paddy field was sagging to a height of about 1 metre from the ground from 6th

May 1978. PW 4, a resident of the locality swears to this fact. The Assistant Executive Engineer examined as D.W. 1 swears that the employees of the Board or their supporters have caused the sabotage. The defendant's case is that the employees had gone on strike from 4-5-1978, that they were engaged in sabotaging the electric lines and that the sagging of the electric line which caused the accident was the result of these activities of the employees and their supporters and so the Board is not liable to pay any damages to the plaintiff. We find it very difficult to accept this argument. The Electricity Rules, 1956 casts a duty on the Electricity Board to properly maintain the electrical installations and lines carrying the electrical energy. Rule 77(3) specifically imposes a duty on the Board to see that 11 K. V. overhead lines are held at a height not less than 4.572 metres (15 feet) above the ground. If the line is shown to be sagging to a height of up to 3 feet above the ground, prima facie negligence on the part of the Board can be inferred. The evidence in the case clearly goes to show that the sagging was the consequence of sabotaging committed by the employees of the Board itself. Whether the sabotage was committed by the employees during the period of their strike or not, the Electricity Board cannot get itself exonerated from the statutory duties cast upon it by the provisions of Electricity Supply Act and the Electricity Rules, 1956. In this view of the matter we have no hesitation to hold that the sagging of the 11 K. V. line was the result of the negligence on the part of the Kerala State Electricity Board." 32. In the case of Angoori Devi and Others Vs. Municipal Corporation of Delhi, , the learned Single Judge has held that where a temporary electric connection by means of loose and naked wires had been taken in a wooden shack installed on the road side and as a result of such loose connections, the rain water which was collected around the shack and also the area around the shack got electrified and as a result thereof the boy died by way of electrocution, while crossing such area, the death of the boy was due to the gross negligence of the Board and its servants. It has been held as under:

"(5) I have heard the learned counsel for the parties and have perused the record of the case. My findings on the issues are as under:--

Issue No. 1:

The plaintiff No. 1 while appearing as Public Witness 2 has deposed that she is the widow of the deceased and plaintiffs No. 2 to 5 are his daughters and plaintiffs No. 6 to 9 are his sons. Not only her statement has remained unchallenged but there is no evidence in rebuttal. I have, therefore, no hesitation in holding that the plaintiffs are the legal representatives of deceased Gopi Ram. The issue is accordingly decided in favor of the plaintiffs and against the defendant. Issues No. 2 and 3:

Both these issues are inter-connected and being disposed of together. Public Witness I Kailash Chand and Public Witness 3 Ram Charan are the witnesses of the occurrence and both of them have their shops at the Madras Road near the scene of occurrence.

PW-1 Kailash Chand has deposed that near the Khokha in question there was a shop of fodder seller and the owner of the said shop had affixed a balance with the help of a nail in the wall of the khokha and that on 18th August, 1976 at about 8.15 A.M. while he was taking tea at his shop, he had noticed that the deceased and one chhote were stuck to the balance whereupon he picked a wooden stool and threw it on the scale which got moved with the result that the deceased and Chhote were released there from and Chhote fell on the left hand side and the deceased fell on the left hand side i.e. towards the khokha and died due to the electric shock. He further deposed that at that that there was current even in the water and he has lodged a report with the police: He proved the copy of the F.I.R. as Ex. P-1, He further deposed that after some time a linesman of the Desu came and cut off the electric connection from the khokha, with the result the current in the khokha as well as in the water disappeared. Ram Charan Public Witness 3 has corroborated the statement of Public Witness 1. D.W. 1 S.P. Chopra is the Executive Engineer of the Desu, who had joined the area office of the Desu in September 1976 and who is stated to have made enquiries from the members of the staff and prepared his report. He proved his report as Ex. D.W.-1/1 D.W.-2 is Raj Kumar, the Inspector of the DESU. This witness deposed that on receiving a complaint in his office on 19th August, 1976 about the leakage "at the spot, he had gone there Along with the Gang mistress and had got the electric connection tested but did not find any leakage at the spot. D.W/3 is Hari Ram, linesman who after going to the spot had disconnected the electric connection of the khokha on 18th August, 1976 after the occurrence. He deposed that there was no leakage either in the khokha or in the water but he had disconnected the electric connection as people were complaining about the current in the water and khokha. D.W. 4 is Kameshwar, Head Mistry of the defendant who also went to the spot on 19th August, 1976 after learning about the electrocution of the deceased. He has deposed that with the help of all-time or he had tested the lines but found no leakage therein.

It may be noticed that the statement of Public Witness 1 that the deceased died due to electrocution firstly after getting stuck with the scale and thereafter by the side of khokha had remained unchallenged. The statement of Public Witness 3 Ram Charan in this regard has also not been challenged, in cross-examination and no evidence has been produced in rebuttal. Although Raj Kumar, Inspector appearing as D.W. 2 and Kameshwar, Head Mistry as D.W. 3 had deposed that test work were conducted at the spot no test report has been produced on record. Admittedly they reached the spot a day after the day of occurrence, when the electric connection had already been disconnected. Mr. S.P. Chopra, D.W. 1 came to the scene after about a month of the date of occurrence and the witnesses, whose statements he recorded during the course of the enquiry, have not been produced. Ex. D.W.-1/1 is the copy of the letter dated 30th November, 1976 written by Mr. S.P. Chopra, D.W.-1 to the S.H.O. Kashmere Gate, Delhi slating that according to the enquiry conducted by him, the death did not occur due to the negligence but it is possible that the deceased died from an electric

shock either from the water or from the scale hanging on the shack. It has been admitted by D.W. 2 Raj Kumar and D.W. 4 Kameshwar that there was no other structure near the khokha in question where the electricity connection was available and Hari Ram, D.W. 3 in cross-examination deposed that he had not noticed any other structure near the khokha where electricity might have been provided. If there was no other structure near the khokha in question having electric connection and as noted above, if the deceased had died after receiving shock either from the current coming out of the balance or from the current in the water near the khokha, it is not explained as to how the current could be found either in the scale or in the water unless there had been leakage from the electric connection in the khokha. As noted above, the test report has also not been placed on record. The fact that the electric current leaked at the spot is itself a proof of negligence on the part of Desu and its employees, I have, therefore, no hesitation in holding that the deceased died because of electrocution and as a result of negligence of the defendant and its employees. Both these issues are accordingly decided in favor of the plaintiffs and against the defendant "

Issue No. 4:

The first thing to be seen is : as to what was the age of the deceased. It is of course true that the plaintiffs No. 1's statement that the deceased was 35 "years of age at the time of his death, has remained un-challenged in the cross-examination but in view of the fact that it has been pleaded in the plaint that he was 40 years old at the time of death, the age of the deceased cannot be taken to be 35 years at-that time. There being no evidence in rebuttal, I hold that the deceased was 40 years of age at the time of his death.

It has next to be seen as to what was the income, of the deceased at the time of his death. The statement of the plaintiff No. 1 that the deceased used to ply a bullock cart and carry goods on hire has also remained unchallenged and un-rebutted. It is correct that the statement of the plaintiff No. 1 that he used to give to her a sum of Rs. 25.00 to Rs. 301-every day for household expenses has remained un-challenged but in view of the fact that it has been pleaded in the plaint that the deceased used to make a net earning of Rs. 600.00 per month i.e. Rs. 20.00 per day after meeting all the expenses and the said amount was being spent entirely on the plaintiffs it cannot be taken that the amount being spent paid by the deceased to the plaintiff No. 1 for house-hold expenses was more than Rs. 600/per month, in these circumstances, I hold that the plaintiff No. 1 was getting from the deceased a sum of Rs. 600.00 per month by way of house-hold expenses. There were 10. members of the family including the deceased and even if the deceased share was 1/10th. i.e. Rs. 60.00 towards the-expenses, the remaining amount that was being spent on the plaintiffs, out of the earnings of deceased comes Rs. 540.00 per month. The family thus got Rs. 6480.00 per year the expenses and maintenance of the plaintiffs. Considering the life expectancy in these days it can easily be said that the deceased would

have lived and worked till the age of 60 years. The plaintiffs who are the legal representatives of the deceased have thus lost his earnings for a period of 20 years. The amount thus lost would come to about Rs. 1,29,600/-. Although on account of rise in price the benefit of lump sum payment become negligible, even if the amount on account of such payment is deducted @ 15 per cent the amount payable to the plaintiffs would be more than Rs. 1 lakh. The plaintiffs have however, claimed only a sum of Rs. 1 lakh way of damages from the defendant and consequently I hold that they are entitled to receive a sum of Rs. 1 lakh only (Rupees one lakh only) by way of damages from the defendant. The issue is decided accordingly."

33. In the case of Sagar Chand and Another Vs. State of J. and K. and Another, , the learned Single Judge has held that when conductor of line which was just 3 feet above ground level remained unattended for 5 days, the negligence was on the part of lineman and the children were granted compensation. It has been held as under:

"[4] Now the question involved is, whether illness of the lineman could be a ground to leave the repair work unattended for about five days without ensuring that no person other than the line-man of the area or a duly authorised persons of the Department could switch on the line which could prove fatal as it did?

On the admitted facts of the case, there is no escape from the conclusion that both, the children were electrocuted because of the criminal negligence of the Line-man of the area. In case the lineman was sick it was for the Department concerned to make alternative arrangement. So the failure of the Department to make alternative arrangement is further prove of the fact that the immediate officers to whom the line-man was subordinate did not act with promptitude and failed to take care and caution as expected of a reasonable person in the similar circumstances. No reasonable person could be expected to leave a sub-station manned by a Line-man unattended so as to allow anybody to switch on the power when part of the line was not only damaged but left in such a manner that its conductor was almost touching the ground. Assuming that the line was commissioned by an unauthorised person, as pleaded, it could lead to casualties, both human as well as live-stock because the line passes through open paddy fields of the village and any unsuspecting person may come in contact with the overhanging conductor. Infant children cannot be attributed the knowledge that coming into contact with such an object is not only dangerous, but fatal. Thus, the failure of the Lineman and the Department not to complete the repair work which admittedly had already commenced and leaving it unattended for so many days, is a case of gross negligence. Why in the absence of Line-man the work was not completed for so many days is not explained. It appears, the authorities ignored the danger of leaving an over-hanging conductor without ensuring that in the absence of line-man no one should switch on the line. The officials concerned, it appears, took every thing for granted because of which two budding children lost their lives leaving behind the grieving parents. Such gross

negligence on the part of the officials concerned cannot be justified on any ground whatsoever. It is a case where the Line-man of the area and his immediate officers intended the consequence by their negligence. Negligence is defined as a breach of the duty caused by the omission to do something which a reasonable man, guided by those considerations which regulate the conduct of human affairs would do, or doing something which a prudent and a reasonable man would do. Actionable negligence consists in the neglect of the use of the ordinary care or skill towards a person to whom the defendant owes duty of observing ordinary care by which neglect the plaintiff has suffered injury to his person or property. In the instant case, the petitioners have suffered injuries because of the negligence of the line-man of the area who failed to take ordinary care by ensuring that the line under repairs did not remain unattended. According to Winfield." negligence as a tort is the breach of a duty to take care which results in damage, undesired by the defendant to the plaintiff. This definition involves three constituents of negligence:

(i) A legal duty to exercise due care on the part of the party complained of towards the party complaining the formers conduct within the scope of the duty; (ii) breach of the said duty; and (iii) consequential damage. All these constituents are present in the present case because it was the duty of the Line-man to maintain the electric supply. It was also his duty that in case of any damage to the line, the same should be repaired. Consequently, it follows that when the conductor was so loose as only three feet above the ground, he should have ensured that electric supply is not put on till the conductor is restored to its proper position. Since he left the station unattended, it was the breach of a duty he owes to the people of the locality of the unsuspecting passers-by through the open field where the conductor was hanging. This carelessness on the part of the Line-man to take care has caused the death of two innocent children of the petitioners. It is thus a case where maxim *res-ipsa-loquitur* applies because the circumstances constituting the accident proclaim the negligence of the Department. The electrocution of the two children is an accident of a kind which does not happen in the ordinary course of things. In such a case once the accident is admitted, as in this case, the respondent cannot escape the liability, as observed in *Padma Behari Lal Vs. Orissa State Electricity Board and Another*, , which reads as under:--

"..... The rule of evidence accepted by all courts of law put the onus on the respondent to prove that the accident was not on account of negligence on its part where the circumstance leading to an accident is such that it is improbable that it would have occurred without the negligence of the respondent. The aforesaid rule of evidence is commonly known as "*res ipsa loquitur*". The said maxim applies in action for negligence in which the accident speaks for itself. In such cases, the claimant is not required to allege and prove any specific act or omission on the part of the respondent. If he proves the accident and the attending circumstances so as to make the aforesaid maxim applicable, it would be then for the respondent to establish that the accident

happened due to some cause other than his/its negligence. The petitioner's son in this case was moving on a bicycle on the public road. His movement on the road on a bicycle was not the cause of his death. His death was due to electrocution having come in contact with the live electric wire. The electric wires have been carried supported by the electric poles, the maintenance of which is admittedly the duty of the Electricity Board. Any live wire getting detached from the pole is likely to cause loss of life. The responsibility of the Electricity Board is, therefore, all the more greater for its maintenance by replacement of wire, checking of the points where the wire has been joined or fixed to the pole and to take all precautions to use materials which would stand a stormy weather..... " In view of this, it is clear that the Line-man was negligent and since the conclusion as inescapable that since he was an employee of the respondent, the State is vicariously liable for his negligence. [5] Now the question is what should be the quantum of compensation payable towards the petitioner. The determination of the quantum of compensation would evidently depend upon various factors including the age of the deceased at the time of accident, the earning capacity and the contribution he was making to the family of his income, if any. These facts can be established only in a civil suit which in fact is the only remedy available under law, except where the facts are admitted. However, the age of both the victims in this case being only 7 and 11, the question of income or contribution to the family does not arise. Still the question remains, what should be the amount of compensation? The minimum amount of compensation on account of no fault liability under Section 140 of the Motor Vehicles Act, 1988 in case of death irrespective of the age is Rs. fifty thousand. This should provide enough guide to determine the amount which is reasonable. Considering the age of the children who lost their lives, the petitioners are held to be entitled to an amount of Rs. 75,000/- and Rs. 60,000/- for the untimely death of Jatinder Singh and Puja respectively. This amount shall be paid with 12% annual interest from the date of this order. No costs."

34. In the case of Padma Behari Lal Vs. Orissa State Electricity Board and Another, , the learned Single Judge has held that where cyclist came in contact with a live hanging wire detached from the electric pole, the Electricity Board was found negligent. It has been held as under:

"6. In the given circumstances of this case, the question for determination is as to whether the petitioner is entitled to compensation from the opposite parties without proving as to how the accident took place. It is well established in law that in an action for damage in tort, the general rule is that onus to prove negligence on the part of the respondent rests on the claimant. But there are cases in which the claimant is not in a position to produce evidence as to the negligence of the respondent which caused the accident. In those cases it may be that the claimant would not be in a position to know the true cause of the unfortunate action. In some of the such cases the cause of accident, though not known to the claimant might be within the special knowledge of the respondent. The rule of evidence accepted by all courts of law put the onus on the respondent

to prove that the accident was not on account of negligence on its part where the circumstance leading to an accident is such that it is improbable that it would have occurred without the negligence of the respondent. The aforesaid rule of evidence is commonly known as "res ipsa loquitur". The said maxim applies in action for negligence in which the accident speaks for itself. In such cases the claimant is not required to allege and prove any specific act or omission on the part of the respondent. If he proves the accident and the attending circumstances so as to make the aforesaid maxim applicable, it would be then for the respondent to establish that the accident happened due to some cause other than his/its negligence. The petitioner's son in this case was moving on a bicycle on the public road. His movement on the road on a bicycle was not the cause of his death. His death was due to electrocution having come in contact with the live electric Wire. The electric wires have been carried supported by the electric poles, the maintenance of which is admittedly the duty of the Electricity Board. Any live wire getting detached from the pole is likely to cause loss of life. The responsibility of the Electricity Board is, therefore, all the more greater for its maintenance by replacement of wire, checking of the points where the wire has been joined or fixed to the pole and to take all precautions to use materials which would stand a stormy weather. The very fact that live wire in a stormy weather which caused the death of the son of the petitioner was detached from the pole and was hanging over the road makes the maxim "res ipsa loquitur" applicable and in such event, it is not for the petitioner to prove any specific act or omission amounting to negligence of the Electricity Board. In these circumstances, the burden lies on the opp. parties to establish that the Electricity Board was not negligent. The opp. parties have failed to establish that the accident occurred due to some cause other than the negligence of the Electricity Board. The petitioner is thus entitled to compensation from the opp. parties on account of the death of his son which in the circumstances must be held to be due to negligence of the Electricity Board in maintaining the electric wire running over the poles *Thressia Vs. K.S.E.B.,* ." 35. In the case of *Asa Ram and another Vs. M.C.D. and others,* , the learned Single Judge has held that the principle of "res ipsa loquitur" would be attracted where un-insulated loose overhead electric wire caused death. In this case the multiplier of 30 was applied. It has been held as under:

"10. From the oral and documentary evidence discussed above one thing clearly emerges and that is that Karan Singh died due to coming in contact with the electric current. The point for consideration is whether there was any naked wire hanging on the staircase of plaintiff's house or whether deceased fiddled with the electric wire illegally and unauthorisedly. The defense set up by the defendants in their written statement was that the deceased fiddled with the electric main. But this defense was not put to plaintiff when he appeared as PW-1. Only a half-hearted suggestion was given about fiddling with the wire which of course was denied. PW-1 and PW-2 were not confronted with any material which could prove that deceased fiddled with electric mains in order to

get illegal electricity. Even the fact that the transformer was defective and there was no electricity in the pole has not been established nor any suggestion in this regard was put to PW-1 and PW-3. Rather from the evidence it clearly emerges that the deceased came in contact with the loose wire hanging on his staircase which caused his death. Defendants have not been able to prove that there was no naked and un insulated wire hanging on the house of the plaintiff. On the contrary photograph Ex. PW-1/9 taken on the date of the accident show a loose wire separated from the main and hanging on the staircase of the house of the plaintiffs. According to plaintiffs' witnesses current was passing through this loose wire. Defendants have not been able to controvert the documentary and oral evidence led by plaintiff. PW-1/2 testimony that he lodged complaint on 6-7-85 regarding loose naked wire hanging and the current passing from the same crossing over his house, has remained unrebutted on the record. In fact defendant's own witness, D.W.-3 admitted that DESU maintained separate complaint register regarding the complaint of a naked hanging wire. But neither the said register was produced nor copy of the plaintiff's complaint was produced. For the non-production of these material documents an adverse inference can be drawn against the defendants. Had these material documents namely complaint register of hanging wire and the original complaint lodged by plaintiffs, been produced it would have gone against the defendants and would have falsified defendant's defense. Statement of PW-1 that he lodged complaint on 6th July, 1985 regarding a loose wire hanging on his staircase and current passing through it thus stand fully proved. Lodging of the report on 6th July, 1985 vide Entry No. 490687/490688 has not been denied by D.W.-2, rather Sh. A.K. Gupta admitted in no uncertain words that he did receive the complaint in the month of July, 1985 from the plaintiff. He also admitted that a separate complaint register was maintained in this regard. Hence, it does not lie in the mouth of the defendant now to contend that a loose wire was not hanging or that Karan Singh died because he was fiddling with electrical main. Heavy reliance has been placed by the counsel for defendant on Ex. D.W.-1/1 i.e. submission of detail by the Executive Engineer D-9 regarding the incident. Reading of Ex. D.W.-1/1 shows that this report was based on the information fed by Sh. Guru Adhar break down Superintendent of the DESU, He on receiving the information of Karan Singh's death switched off the supply and went to the site to enquire. The said Guru Adhar has not been examined nor his report has been proved on record. Perusal of Ex. D.W.-1/1 shows that it is in fact Guru Adhar who gathered the information about the death of Karan Singh. Since, neither Guru Adhar has been examined nor his report in original has been produced, therefore, no reliance can be placed on Ex. D.W.-1/1. It is not known as to from whom Sh. Guru Adhar enquired that Karan Singh with the help of a bamboo stick was trying to restore the electricity supply. In the absence of such details and more so Ex. D.W.-1/1 being based on hear say the same cannot be relied upon. Similarly Ex. D.W.-1/2 is an incident report given by Executive Engineer-D again based on the alleged information given by Guru Adhar, Break-down Superintendent. Hence it cannot be relied upon. Any information which is based on an information given

by someone else has no value unless the informer who gathered the information is produced and opposite party given an opportunity to cross-examine him. Ex. D W-1/1 and D.W.-1/2 show that copy of the same was addressed to Electrical Inspector, Delhi Administration for information. It had all along been the case of the plaintiffs that Electrical Inspector, after inspection found wire hanging and current passing through it. The said report has not been placed on record. A very feeble defense was given for the non-production of the said report. According to defendant, the Electrical Inspector being not an employee of the DESU, hence his report was irrelevant. Secondly the said Electrical Inspector inspected the site on 5th August, 1985 but submitted his report in November, 1985. In these circumstances counsel contended that such a report of the electrical inspector is not worth reliance. It was only a waste paper. The said Electrical Inspector being not an employee of DESU hence his report has no value. To my mind, this submission has no merits. The Electrical Inspector being an independent Government official functionary, his report carried authenticity and, to my mind, more valuable piece of evidence than the oral testimony of defendants. His report would have thrown light on the actual position at site. In fact the whole controversy would have been solved. The contention of the defendants that the Electrical Inspector, Delhi Administration, has not the authority or that he was not competent to inspect and report is belied from defendants own conduct. If he had no authority then why the copy of exhibit D.W.-1/1 and D.W.-1/2 were sent to him. The Electrical Inspector being a person in authority, his report carries more authenticity. For the non-production of the said report it can be said that defendants are concealing true facts. To my mind, the non-production of that report is deliberate. Had that report been produced, it would have gone against the defendants. That is the reason it has not been produced. Contention of Mr. Jayant Nath that exhibit D.W.-2/1 was the only complaint received from plaintiffs in July 1985 and the reading of the same would show that plaintiff complained only about the non-supply of electricity and not of hanging wire. This argument has no force because as per D W-3 there were three kinds of complaint registers maintained by DESU namely (i) Meter Replacement Register, (ii) Service Line Replacement Register, and (iii) Complaint Register regarding naked wire known as service line register. The complaints regarding naked wire were registered in the Service Line Register. The said register was not produced nor Ex. D.W.-2/1 pertained to the said Line Register. Ex. D.W.-2/1 is only a copy of another Register. Hence the entries in Ex. D.W.-2/1 cannot be relied upon. The remarks made in Ex. D.W.-2/1 cannot be relied upon in the absence of original complaint lodged by plaintiff and the Service Line Register. The person who made these remarks has also not been produced to explain as to from where and on what basis he recorded the remarks in that register, copy of which is Ex. D.W.-2/1. Hence, plaintiffs claim and version cannot be nullified because of these remarks on Ex. D.W.-2/1. Even otherwise complaint regarding naked wire were registered in Service Line Register which Mr. Gupta, D.W.-2 did not produce. For this reason also D.W.-2/1 cannot be relied upon. In fact, the DESU/defendant has miserably failed to prove that the deceased was fiddling with the electric main and,

therefore, got electrocuted. From the evidence discussed above one can safely conclude that defendants have not been able to establish that deceased illegally fiddled with the electric main in order to have electricity supply available at his house. Nor have the DESU been able to prove that on 4th August, 1985 there was no electricity in the house of the plaintiff or in the village. If this suggestion be accepted, then the defense of the defendant that deceased was fiddling with the electricity main falls to the ground. This is contradictory to the defense set up in the written statement. It shows defendants are not sure of their stand. Defendants have failed even remotely to establish that there was any negligence on the part of the deceased in coming into contact with the electric wire which caused his death.

11. It is not disputed that the electric wire was crossing from the house of the plaintiffs. This fact find support from Ex. PW-1/9 a photograph taken on the date of the accident. It shows a small loose wire hanging on the staircase of the plaintiffs. It is the statutory duty of the -DESU to ensure that every overhead line is covered with insulating material. Any overhead line erected over any part of the house, street, or public place should be protected with a device by which the line crossing that house should become harmless, in case it breaks. But that care has not been taken in the case in hand. The uncontroverted evidence of the plaintiff coupled with the document Ex. PW-1/9 taken on the first available opportunity and the complaint lodged by the plaintiff with the DESU would show that loose live wire was hanging on the house of the plaintiff and while climbing the stairs, deceased came in contact with the same. In fact the defendants have not been able to prove the case as set up by them. Therefore, it can safely be said that this is a case where principle of *res ipsa loquitur* would apply. It can be said that deceased Karan Singh died because of the negligence and carelessness of the defendants. The burden was on the DESU to show that the deceased fiddled with the electric main illegally, but it failed to prove the same. On the other hand, plaintiffs by their testimony and from the testimony of the neighbour have been able to prove that DESU had been negligent and careless in maintaining the overhead lines crossing the house of the plaintiffs. Defendants have failed to prove that any necessary precaution against the danger of live wire hanging on the staircase of the plaintiffs was taken. DESU has not been able to prove that the accident in the instant case was due to the factors beyond their control. Deceased Karan Singh died having come in contact with the live wire hanging on the staircase of his house. This fact is also supported by the post-mortem report Ex. PW-2/1 in which cause of death has been stated to be electric current. His death has been proved on record by Ex. P-4. DD Report lodged to the police immediately upon the happening of the accident is proved as Ex. P-2."

36. In the case of *M.P. State Road Transport Corporation and Others Vs. Abdul Rahman and Others*, , the Division Bench has held that the concept of contributory negligence cannot be made applicable to a child. A child functions according to his own reasoning and his intelligence. It has been held as under:

"11. From the aforesaid discussion relating to contributory negligence on the part of a child of tender age there is no doubt that the concept of contributory negligence cannot be made applicable to a child. A child functions according to his own reasoning and his intelligence. Logicality and rationality are not expected from a child as a child of tender age has no continuous thinking process and is governed by his impulse, instinct and innocence. Can one ever conceive that a child, if would have been aware of the peril, would ever commit an act which is dangerous or hazardous for him? The answer has to be a categorical "No", because a child's action is childlike and really innocent. Possibly for that reason, it has been said:--

"The Maker of the Stars and Sea, become a Child earth for me?" A child remains a child in spite of all training and directions and if anything sparkles it is the glory of his innocence which makes him indifferent to the risks which an adult apprehends and pays attention.

In view of our aforesaid analysis, we conclude and hold that Riyaz, the child of four, was not liable for contributory negligence."

37. In the case of R.S.E.B. and Another Vs. Jai Singh and Others, , the learned Single Judge has held that all wires resulting in electrocution would attract the maxim "res ipsa loquitur". The learned Single Judge has held as under:

"12. Khuman Singh, Helper, who is none but the employee of the Board itself, has clearly stated that on 15-2-1992 itself, after his duty was over he went to Charbhujaji arm he was told by Girija Shankar that the earth wire of 11 K.V. line was snapped at Tadawara and that an insulator pin was also detached and, therefore, after shutting down electricity supply, repairs are required to be carried out. However, he went to his village and learnt at about 11 p.m. in the same night through Phool Singh and Lehri Lal that because of damage to the live electric wires resulting in electrocution of the three deceased persons such an incident had taken place. Besides, the petitioner-defendants heaver pleaded that the sparks resulted from the live electricity passing wires resulted in setting grass lying on the terrace of the house of one Rafique Mohd, on fire as a result of which the wires melted and got snapped and its end fell on the ground which resulted in electrocution of the deceased. Assuming so, the sparks must have resulted due to fluctuation and trimming in the supply of electricity and besides, as per the pleadings of the petitioners themselves the grass was lying on the terrace of the house which was quite nearer to the overhead passing electric wires and, therefore, it was also negligent act by way of an omission from the side of the defendants in not having raised the height of the passing wires or to have removed the same from their present position. Besides, the plaintiffs have consistently maintained that such electric wires got snapped and broken on three or four occasions earlier since the same were old and damaged, it was incumbent on the defendants to have replaced the same and they must have taken every precaution as a result of which they could neither got snapped nor sparks could be released from there due to any disorder in supply of the electric wires. The

defendants apparently failed to do so. Therefore, for the present, the defendants cannot dispute that they were, operating and maintaining supply of electricity through the electric poles located on both sides of the place of incident and electricity wires joints with both the poles were passing above the field of the deceased persons. Thus, the field whereon the residential house of the deceased was also situated, were agricultural fields the area was inhabited and, therefore, it was the duty of the officials/agents of the R.S.E.B. that the electric lines passing over bead were perfectly in order and there was no visible possibility and apprehension of their being snapped and sparks being released from them resulting in electrocution and fire to the property. However, R.S.E.B. positively failed to do so which is an apparent omission on their part.

13. That being so, when the deceased I persons were not at the fault at all and on the contrary, the R.S.E.B. through its officials/agents were negligent and at its faulting end, as held in the decision of Padma Behari Lal Vs. Orissa State Electricity Board and Another, by the Orissa High Court, since it was the positive duty of the R.S.E.B. to maintain the electric wire lines free from such incident. It is having failed to do so, the maxim *res ipsa loquitur*, it was not for the plaintiffs but, when admittedly parents of the petitioners along with his son Kishan Singh were electrocuted immediately and they were burnt on the spot, in such event it is not for the plaintiffs to prove any such specific act or omission amounting to negligence of the R.S.E.B. but the burden shifts on the defendants to establish that the unfortunate incident was not a result of negligence on the part of the R.S.E.B."

38. In the case of T. Gajayalakshmi Thayumanavar and another Vs. Secretary, Public Works Department, Govt. of Tamil Nadu, Madras and others, , the Division Bench has held that when the wire snapped and fell on cycle rider and the cycle rider was electrocuted, the incident occurred due to negligence of Board as it has not maintained the electric system properly. It was further held that snapping of electric wire was not an act of God. It has been held as under:

"20. On an appraisal of the evidence of P.Ws. 1 to 3 and R. W. 1, it is manifest that the Electricity Board had not maintained the fuse mechanism properly and had it been maintained properly, the death of Suryaprakash could have been avoided as the fuse would have been blown off automatically on the snapped electric overhead conductor falling on him and getting earthed through his body when he was lying on the ground. We are unable to accept the contention of the learned counsel for the Electricity Board that respondents 2 and 3 had taken the necessary precautions and that the death of Suryaprakash by electrocution could not have occurred due to the snapping wire falling on him. R.W. 1 had not witnessed the occurrence nor the respondents examined members of the public to show as to how the occurrence had taken place if it was not as categorically spoken to by P.W. 3. The snapping of the electric line is not disputed by respondents 2 and 3 in the counter affidavit filled before the Arbitrator. The fact that the conductor/live wire had snapped shows its negligent maintenance by the

Tamil Nadu Electricity Board. We are also unable to accept the contention of the learned counsel for the Electricity Board that it was an unexpected incident due to rain and wind and that the snapping of the electric line was an Act of God. We are further unable to appreciate the contention of the learned counsel for the Electricity Board that the death of Suryaprakash took place only due to the negligence of Suryaprakash in his leaving the home that day in the rain and wind. We are of the view that the death of Suryaprakash had occurred due to the overhead electric line having snapped and falling on him in the circumstances narrated by P.W. 3 and it was due to the negligence on the part of the Electricity Board as it has not maintained the electric system properly. Therefore, we hold that respondents 2 and 3 are responsible for the death of Suryaprakash and that they are liable to pay compensation." 39. Their lordships of the Hon"ble Supreme Court in the case of Madhya Pradesh Electricity Board Vs. Shail Kumari and Others, , have held that the responsibility to supply electric energy in the particular locality was statutorily conferred on the Board. If the energy so transmitted causes injury or death of a human being, who gets unknowingly trapped into it, the primary liability to compensate the sufferer, is that of the supplier of the electric energy. Their lordships have further held that the Board is also liable under the strict liability rule and the basis of such liability is the forceable risk inherent in the very nature of such activity. Their lordships have held as under:

"7. It is an admitted fact that the responsibility to supply electric energy in the particular locality was statutorily conferred on the Board. If the energy so transmitted causes injury or death of a human being, who gets unknowingly trapped into it the primary liability to compensate the sufferer is that of the supplier of the electric energy. So long as the voltage of electricity transmitted through the wires is potentially of dangerous dimension the managers of its supply have the added duty to take all safety measures to prevent escape of such energy or to see that the wire snapped would not remain live on the road as users of such road would be under peril. It is no defence on the part of the management of the Board that somebody committed mischief by siphoning such energy to his private property and that the electrocution was from such diverted line. It is the look out of the managers of the supply system to prevent such pilferage by installing necessary devices. At any rate, if any live wire got snapped and fell on the public road the electric current thereon should automatically have been disrupted. Authorities manning such dangerous commodities have extra duty to chalk out measures to prevent such mishaps.

8. Even assuming that all such measures have been adopted, a person undertaking an activity involving hazardous or risky exposure to human life, is liable under law of torts to compensate for the injury suffered by any other person, irrespective of any negligence or carelessness on the part of the managers of such undertakings. The basis of such liability is the foreseeable risk inherent in the very nature of such activity. The liability cast on such person is known, in law, as "strict liability". It differs from the liability which arises on

account of the negligence or fault in this way i.e. the concept of negligence comprehends that the foreseeable harm could be avoided by taking reasonable precautions. If the defendant did all that which could be done for avoiding the harm he cannot be held liable when the action is based on any negligence attributed. But such consideration is not relevant in cases of strict liability where the defendant is held liable irrespective of whether he could have avoided the particular harm by taking precautions.

10. There are seven exceptions formulated by means of case law to the doctrine of strict liability. It is unnecessary to enumerate those exceptions barring one which is this. "Act of stranger i.e. if the escape was caused by the unforeseeable act of a stranger, the rule does not apply". (vide Page 535 Winfield on Tort, 15th Edn.)

13. In the present case, the Board made an endeavour to rely on the exception to the rule of strict liability (Rylands v. Fletcher) being "an act of stranger". The said exception is not available to the Board as the act attributed to the third respondent should reasonably have been anticipated or at any rate its consequences should have been prevented by the appellant-Board. In *Northwestern Utilities, Limited v. London Guarantee and Accident Company, Limited* {1936 Appeal Cases 108}, the Privy Council repelled the contention of the defendant based on the aforesaid exception. In that case a hotel belonging to the plaintiffs was destroyed in a fire caused by the escape and ignition of natural gas. The gas had percolated into the hotel basement from a fractured welded joint in an intermediate pressure main situated below the street level and belonging to the defendants which was a public utility company. The fracture was caused during the construction involving underground work by a third party. The Privy Council held that the risk involved in the operation undertaken by the defendant was so great that a high degree care was expected of him since the defendant ought to have appreciated the possibility of such a leakage."

40. In the case of *H.S.E.B. and Others Vs. Ram Nath and Others*, , their lordships of the Hon"ble Supreme Court have held that it was the appellants' duty to ensure that the electricity wires were at a safe distance from the building. Their lordships have further held that where there was no denial in the written statement that the wires were loose and drooping and that the respondent had asked the appellants to tighten the wires, the writ was maintainable. It has been held as follows:

"4. In the written statement there is no denial to these averments. All that is claimed is that the entire colony was an unauthorised colony and that unauthorisedly the height of the houses had been raised. It is claimed that the wires were at the prescribed height of 20 feet from the ground level and that the height of the wire was as per the standard prescribed under the Rules.

5. It is submitted that these averments would show that there was a disputed question of fact as to whether or not the wires were touching the roof. We are

unable to accept this submission. To the categoric averments set out hereinabove that the wires had become loose and were drooping and touching the roof of the houses, there is no denial. To the categoric averments that complaints had been made, both in writing and orally, requesting that the wires had to be tightened, there is no denial. A mere vague statement to the effect that the height was as per the prescribed limit does not detract from the fact that there is a deemed admission that the wires were drooping and touching the roofs.

6. The appellants are carrying on a business which is inherently dangerous. If a person were to come into contact with a high-tension wire, he is bound to receive serious injury and/or die. As they are carrying on business which is inherently dangerous, the appellants would have to ensure that no injury results from their activities. If they find that unauthorised constructions have been put up close to their wires it is their duty to ensure that that construction is got demolished by moving the appropriate authorities and if necessary, by moving a court of law. Otherwise, they would take consequences of their inaction. If there are complaints that these wires were drooping and almost touching houses, they have to ensure that the required distance is kept between the houses and the wires, even though the houses be unauthorised. In this case we do not find any disputed question of fact."

41. The learned Single Judge in the case of Ramesh Singh Pawar Vs. M.P. Electricity Board and Others, , has found the Electricity Board liable to pay compensation to the petitioner not only on the ground of negligence but on the principle of strict liability also. The learned Single Judge has held that the Writ petition was maintainable. It has been held as follows:

"16. Considering the totality of the facts and circumstances of the case, in the backdrop of discussion made hereinabove and keeping in view the specific findings recorded by the Supreme Court in the case of Shail Kumari and the observations made in Paras 8, 9, 11 and 13 reproduced hereinabove. There is no doubt that not only on the ground of negligence but on the principle of strict liability, the Board is liable to pay compensation to the petitioner.

18. Having heard, the petition is maintainable and the Board is liable to pay compensation in the present case. The next question that requires determination is as to what should be the compensation that should be awarded in such cases."

42. Their lordships of the Hon"ble Supreme Court in the case of Smt. Nilabati Behera alieas Lalita Behera Vs. State of Orissa and others, , have held that 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 is based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right. It has been held as follows:

"17. It follows that "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. This is what was indicated in *Rudul Sah* and is the basis of the subsequent decisions in which compensation was awarded under Articles 32 and 226 of the Constitution, for contravention of fundamental rights.

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 molds 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 wrong doer 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 persecute the offender under the penal law."

43. In the case of *Sube Singh Vs. State of Haryana and Others*, , their lordships of the Hon'ble Supreme Court have held that it is well settled that award of compensation against the State is an appropriate and effective remedy for redress of an established infringement of a fundamental right under Article

21, by a public servant. It has been held as follows:

"38. It is thus now well settled that award of compensation against the State is an appropriate and effective remedy for redress of an established infringement of a fundamental right under Article 21, by a public servant. The quantum of compensation will, however, depend upon the facts and circumstances of each case. Award of such compensation (by way of public law remedy) will not come in the way of the aggrieved person claiming additional compensation in a civil court, in enforcement of the private law remedy in tort, nor come in the way of the criminal court ordering compensation under section 357 of Code of Civil Procedure." 44. In the present case, the boy had a right to life under Article 21 of the Constitution of India. Healthy and happy life has been curtailed by the criminal neglect of the respondents causing him serious and painful burn injuries. He has to live with a trauma and shall remain handicap throughout the life. The petitioner has to go through inconvenience, hardship, discomfort, disappointment, frustration and mental stress throughout his life.

45. Their lordships of the Hon"ble Supreme Court in the case of R.D. Hattangadi Vs. M/s. Pest Control (India) Pvt. Ltd. and Others, , have laid down the following principles to determine compensation for disability:

"9. Broadly speaking while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far non- pecuniary damages are concerned, they may include (i) damages for mental and physical shock, pain and suffering, already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters i.e. on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e., on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life." 46. Their lordships of the Hon"ble Supreme Court in the case of Rekha Jain Vs. National Insurance Company Ltd. and Others, , have reiterated the following principles for granting compensation for personal injury:

"40. It is well-settled principle that in granting compensation for personal injury, the injured has to be compensated (1) for pain and suffering; (2) for loss of amenities; (3) shortened expectation of life, if any; (4) loss of earnings or loss of earning capacity or in some cases for both; and (5) medical treatment and other special damages. In personal injury cases the two main elements are the personal loss and pecuniary loss. Chief Justice Cockburn in Fair's case, supra,

distinguished the above two aspects thus:

"In assessing the compensation the jury should take into account two things, first, the pecuniary loss the plaintiff sustains by the accident : secondly, the injury he sustains in his person, or his physical capacity of enjoying life. When they come to the consideration of the pecuniary loss they have to take into account not only his present loss, but his incapacity to earn a future improved income". 41. McGregor on Damages (14th Edition) at paragraph No. 1157, referring to the heads of damages in personal injury actions, states as under:

"The person physically injured may recover both for his pecuniary losses and his non-pecuniary losses. Of these the pecuniary losses themselves comprise two separate items, viz., the loss of earnings and other gains which the plaintiff would have made had he not been injured and the medical and other expenses to which he is put as a result of the injury, and the Courts have sub-divided the non-pecuniary losses into three categories, viz., pain and suffering, loss of amenities of life and loss of expectation of life". Besides, the Court is well-advised to remember that the measures of damages in all these cases "should be such as to enable even a tortfeasor to say that he had amply atoned for his misadventure". The observation of Lord Devlin that the proper approach to the problem or to adopt a test as to what contemporary society would deem to be a fair sum, such as would allow the wrongdoer to "hold up his head among his neighbours and say with their approval that he has done the fair thing", is quite apposite to be kept in mind by the Court in assessing compensation in personal injury cases.

42. In *R. Venkatesh v. P. Saravanan and Ors.*, the High Court of Karnataka while dealing with a personal injury case wherein the claimant sustained certain crushing injuries due to which his left lower limb was amputated, held that in terms of functional disability, the disability sustained by the claimant is total and 100% though only the claimant's left lower limb was amputated. In paragraph 9 of the judgment, the Court held as under:

"9. As a result of the amputation, the claimant had been rendered a cripple. He requires the help of crutches even for walking. He has become unfit for any kind of manual work. As he was earlier a loader doing manual work, the amputation of his left leg below knee, has rendered him unfit for any kind of manual work. He has no education. In such cases, it is well-settled that the economic and functional disability will have to be treated as total, even though the physical disability is not 100 per cent". 43. Lord Reid in *Baker v. Willoughby*, has said:

"A man is not compensated for the physical injury; he is compensated for the loss which he suffers as a result of that injury. His loss is not in having a stiff leg; it is in his inability to lead a full life, his inability to enjoy those amenities which depend on freedom of movement and his inability to earn as much as he used to earn or could have earned." 44. The aforesaid principles laid down by this Court, Appeal Cases, House of Lords and leading authors and experts referred to supra,

whose opinions have been extracted above, with all fours, are applicable to the fact situation for awarding just and reasonable compensation in favour of the appellant as she had sustained grievous injuries on her face and other parts of the body which is assessed at 30% permanent disablement by competent doctors."

47. In the instant case, the petitioner has been crippled off throughout his life. His both arms have been amputated. He won't be able to lead and enjoy those comforts and amenities of life which depend on freedom of movement. Recently in Civil Appeal No. 11466 of 2014, titled as Raman v. Uttar Haryana Bijli Vitran Nigam Ltd. and ors., decided on 17th December, 2014, their lordships of the Hon'ble Supreme Court have upheld the compensation of Rs. 60 lacs awarded by the learned Single Judge of Punjab and Haryana High Court, in the case of electrocution. Their lordships have held as under:

"19. In view of the law laid down by this Court in the above referred cases which are extensively considered and granted just and reasonable compensation, in our considered view, the compensation awarded at Rs. 60 lakhs in the judgment of the learned Single Judge of the High Court, out of which 30 lakhs were to be deposited jointly in the name of the appellant represented by his parents as natural guardian and the Chief Engineer or his nominee representing the respondent-Nigam in a nationalised Bank in a fixed deposit till he attains the age of majority, is just and proper but we have to set aside that portion of the judgment of the learned Single Judge directing that if he survives, he is permitted to withdraw the amount, otherwise the deposit amount shall be reverted back to the respondents as the same is not legal and valid for the reason that once compensation amount is awarded by the court, it should go to the claimant/appellant. Therefore, the victims/claimants are legally entitled for compensation to be awarded in their favour as per the principles/guiding factors laid down by this Court in catena of cases, particularly, in Kunal Saha's case referred to supra. Therefore, the compensation awarded by the Motor Vehicle Tribunals/Consumer Forums/State Consumer Disputes Redressal Commissions/National Consumer Disputes Redressal Commission or the High Courts would absolutely belong to such victims/claimants. If the claimants die, then the Succession Act of their respective religion would apply to succeed to such estate by the legal heirs of victims/claimants or legal representatives as per the testamentary document if they choose to execute the will indicating their desire as to whom such estate shall go after their death. For the aforesaid reasons, we hold that portion of the direction of the learned Single Judge contained in sub-para (v), to the effect of Rs. 30 lakhs compensation to be awarded in favour of the appellant, if he is not alive at the time he attains majority, the same shall revert back to the respondent-Nigam after paying Rs. 5 lakhs to the parents of the appellant, is wholly unsustainable and is liable to be set aside. Accordingly, we set aside the same and modify the same as indicated in the operative portion of the order.

20. The remaining compensation amount of Rs. 30 lakhs to be deposited in a fixed deposit account in the name of the petitioner (minor) under joint guardianship of the parents of Raman and the Engineer-in-Chief or his nominee representing the respondent-Nigam, in the Nationalised Bank as corpus fund, out of which an interest of Rs. 20,000/- p.m. towards the expenses as indicated in sub-para (vi) of the order passed by the learned Single Judge, cannot be said to be on the higher side, but in our view, the said amount of compensation awarded is less and not reasonable and having regard to the nature of 100% permanent disability suffered by the appellant, it should have been much higher as the appellant requires permanent assistance of an attendant, treatment charges as he is suffering from agony and loss of marital life, which cannot be compensated by the amount of compensation awarded by the learned Single Judge of the High Court. Hence, having regard to the facts and circumstances of the case, it would be just and proper for this Court to restore the judgment of the learned Single Judge on this count and we hold that the directions contained in the said judgment are justifiable to the extent indicated above. The Division Bench while exercising its appellate jurisdiction should not have accepted the alleged requisite instructions received by the counsel on behalf of the appellant and treated as *ad idem* and modified the amount as provided under sub-para (vi) of the order of the learned Single Judge and substituted the para 4 in its judgment as indicated in the aforesaid portion of the judgment which is wholly unreasonable and therefore, it is unsustainable in law as it would affect the right of the appellant for getting his legal entitlement of just and reasonable compensation for the negligence on the part of the respondents.

21. In view of the foregoing reasons, after considering rival legal contentions and noticing the 100% permanent disability suffered by the appellant in the electrocution accident on account of which he lost all the amenities and become a deadwood throughout his life, and after adverting the law laid down by this Court in catena of cases in relation to the guiding principles to be followed to award just and reasonable compensation in favour of the appellant, we pass the following order:--

(I) The appeal is allowed after setting aside the substituted paragraph No. 4 of the impugned judgment and order of the Division Bench of the High Court particularly, in place of sub para (vi) of the judgment and order of the learned Single Judge with modifications made by us in this judgment in the following terms.

(II) We restore the compensation awarded at sub-paras (v) and (vi) of the order of the learned single Judge:

(a) in the modified form that the compensation is awarded with direction to the respondents to keep Rs. 30 lakhs in the Nationalised Bank in the name of the appellant represented by his father as a natural guardian till the age of attaining majority of the appellant.

(b) The further direction contained in the judgment of the learned Single Judge that if the appellant is not alive at the time of attaining the age of majority, the deposit amount shall be reverted to the respondents, is set aside.

(c) We further declare that the said amount of compensation of Rs. 30 lakhs exclusively belongs to the appellant and after his demise it must go to the legal heirs or representatives as it is the exclusive estate of the appellant as the it is the compensation awarded to him for the 100% permanent disability suffered by him due to electrocution on account of the negligence of the respondents. The monthly interest that would be earned during the period of his minority shall be withdrawn by the appellant's guardian and spend the same towards his monthly expenses and after he attains the majority, it is open for him either to continue the deposit or withdraw the same and appropriate for himself or his legal heirs or legal representative, if he does not survive.

(d) The deposit of Rs. 30 lakhs as corpus amount as directed at sub- para(vi) of the judgment of the learned Single Judge shall be in the name of the appellant exclusively represented by his natural guardians/parents till he attains majority, the income that would be earned on such deposit amount can be drawn by the parents every month to be spent for personal expenses. The Bank in which the deposit is made in the name of Chief Engineer shall be deleted and the name of the appellant shall be entered as directed above. After attaining the age of majority, the appellant is at liberty to withdraw the above said amount also. If for any reason the appellant does not stay alive, his heirs/legal representatives can withdraw the said amount.

(e) The other directions in the judgment of the learned Single Judge to the respondents for compliance shall remain intact, the same shall be complied with and the report shall be submitted before the learned Single Judge."

48. Mr. B.S. Ranjan, Advocate, has also vehemently argued that the petitioner has only claimed a sum of Rs. 50,00,000/- towards compensation and he cannot be awarded compensation more than this amount. However, this issue is no more res-integra in view of the definitive law laid down by the Hon'ble Supreme Court in the case of Dr. Balram Prasad Vs. Dr. Kunal Saha and Others, , wherein it has been held as follows:

"97. The claim for enhancement of compensation by the claimant in his appeal is justified for the following reasons.

98. The National Commission has rejected the claim of the claimant for "inflation" made by him without assigning any reason whatsoever. It is an undisputed fact that the claim of the complainant has been pending before the National Commission and this Court for the last 15 years. The value of money that was claimed in 1998 has been devalued to a great extent. This Court in various following cases has repeatedly affirmed that inflation of money should be considered while deciding the quantum of compensation:- In Reshma Kumari and Ors. v. Madan Mohan and Anr. (supra), this Court at para 47 has dealt with this

aspect as under:

"47. One of the incidental issues which has also to be taken into consideration is inflation. Is the practice of taking inflation into consideration wholly incorrect? Unfortunately, unlike other developed countries in India there has been no scientific study. It is expected that with the rising inflation the rate of interest would go up. In India it does not happen. It, therefore, may be a relevant factor which may be taken into consideration for determining the actual ground reality. No hard-and-fast rule, however, can be laid down therefor." 99. In *Govind Yadav v. New India Insurance Company Ltd.* (supra), this court at para 15 observed as under which got reiterated at paragraph 13 of *Ibrahim v. Raju and Ors.* (supra):--

15. In *Reshma Kumari v. Madan Mohan* this Court reiterated that the compensation awarded under the Act should be just and also identified the factors which should be kept in mind while determining the amount of compensation. The relevant portions of the judgment are extracted below: (SCC pp. 431-32 and 440-41, paras 26-27 and 46-47)

26. The compensation which is required to be determined must be just. While the claimants are required to be compensated for the loss of their dependency, the same should not be considered to be a windfall. Unjust enrichment should be discouraged. This Court cannot also lose sight of the fact that in given cases, as for example death of the only son to a mother, she can never be compensated in monetary terms.

27. The question as to the methodology required to be applied for determination of compensation as regards prospective loss of future earnings, however, as far as possible should be based on certain principles. A person may have a bright future prospect; he might have become eligible to promotion immediately; there might have been chances of an immediate pay revision, whereas in another (sic situation) the nature of employment was such that he might not have continued in service; his chance of promotion, having regard to the nature of employment may be distant or remote. It is, therefore, difficult for any court to lay down rigid tests which should be applied in all situations. There are divergent views. In some cases it has been suggested that some sort of hypotheses or guesswork may be inevitable. That may be so.

46. In the Indian context several other factors should be taken into consideration including education of the dependants and the nature of job. In the wake of changed societal conditions and global scenario, future prospects may have to be taken into consideration not only having regard to the status of the employee, his educational qualification; his past performance but also other relevant factors, namely, the higher salaries and perks which are being offered by the private companies these days. In fact while determining the multiplicand this Court in *Oriental Insurance Co. Ltd. V. Jashuben* held that even dearness allowance and perks with regard thereto from which the family would have derived monthly benefit, must be taken into consideration.

47. One of the incidental issues which has also to be taken into consideration is inflation. Is the practice of taking inflation into consideration wholly incorrect? Unfortunately, unlike other developed countries in India there has been no scientific study. It is expected that with the rising inflation the rate of interest would go up. In India it does not happen. It, therefore, may be a relevant factor which may be taken into consideration for determining the actual ground reality. No hard-and-fast rule, however, can be laid down therefor."

100. The C.I.I. is determined by the Finance Ministry of Union of India every year in order to appreciate the level of devaluation of money each year. Using the C.I.I. as published by the Government of India, the original claim of Rs. 77.7 crores preferred by the claimant in 1998 would be equivalent to Rs. 188.6 crores as of 2013 and, therefore the enhanced claim preferred by the claimant before the National Commission and before this Court is legally justifiable as this Court is required to determine the just, fair and reasonable compensation. Therefore, the contention urged by the appellant-doctors and the AMRI Hospital that in the absence of pleadings in the claim petition before the National Commission and also in the light of the incident that the subsequent application filed by the claimant seeking for amendment to the claim in the prayer of the complainant being rejected, the additional claim made by the claimant cannot be examined for grant of compensation under different heads is wholly unsustainable in law in view of the decisions rendered by this Court in the aforesaid cases. Therefore, this Court is required to consider the relevant aspect of the matter namely, that there has been steady inflation which should have been considered over period of 15 years and that money has been devalued greatly. Therefore, the decision of the National Commission in confining the grant of compensation to the original claim of Rs. 77.7 crores preferred by the claimant under different heads and awarding meager compensation under the different heads in the impugned judgment, is wholly unsustainable in law as the same is contrary to the legal principles laid down by this Court in catena of cases referred to supra. We, therefore, allow the claim of the claimant on enhancement of compensation to the extent to be directed by this Court in the following paragraphs.

101. Besides enhancement of compensation, the claimant has sought for additional compensation of about Rs. 20 crores in addition to his initial claim made in 2011 to include the economic loss that he had suffered due to loss of his employment, home foreclosure and bankruptcy in U.S.A. which would have never happened but for the wrongful death of his wife. The claimant has placed reliance on the fundamental principle to be followed by the Tribunals, District Consumer Forum, State Consumer Forum, and the National Commission and the courts for awarding "just compensation". In support of this contention, he has also strongly placed reliance upon the observations made at para 170 in the Malay Kumar Ganguly case referred to supra wherein this Court has made observations as thus:

"170. Indisputably, grant of compensation involving an accident is within the

realm of law of torts. It is based on the principle of "recognized" in integrum. The said principle provides that a person entitled to damages should, as nearly as possible, get that sum of money which would put him in the same position as he would have been if he had not sustained the wrong. (See *Livingstone v. Rawyards Coal Co.*)" 102. The claimant made a claim under specific heads in great detail in justification for each one of the claim made by him. The National Commission, despite taking judicial notice of the claim made by the claimant in its judgment, has rejected the entire claim solely on the ground that the additional claim was not pleaded earlier, therefore, none of the claims made by him can be considered. The rejection of the additional claims by the National Commission without consideration on the assumption that the claims made by the claimant before the National Commission cannot be changed or modified without pleadings under any condition is contrary to the decisions of this Court rendered in catena of cases.

103. In support of his additional claim, the claimant places reliance upon such decisions as mentioned hereunder:

103.1. In *Ningamma case* (supra), this Court has observed at para 34 which reads thus:

"34. Undoubtedly, Section 166 of the MVA deals with "just compensation" and even if in the pleadings no specific claim was made under Section 166 of the MVA, in our considered opinion a party should not be deprived from getting "just compensation" in case the claimant is able to make out a case under any provision of law. Needless to say, the MVA is beneficial and welfare legislation. In fact, the court is duty-bound and entitled to award "just compensation" irrespective of the fact whether any plea in that behalf was raised by the claimant or not." 103.2. In *Malay Kumar Ganguly case*, this Court by placing reliance on the decision of this Court in *R.D. Hattangadi v. Pest Control (India) (P) Ltd.*, (supra) made observation while remanding back the matter to National Commission solely for the determination of quantum of compensation, that compensation should include "loss of earning of profit up to the date of trial" and that it may also include any loss "already suffered or is likely to be suffered in future". Rightly, the claimant has contended that when original complaint was filed soon after the death of his wife in 1998, it would be impossible for him to file a claim for "just compensation" for the pain that the claimant suffered in the course of the 15 years long trial.

103.3. In *Nizam Institute case* supra, the complainant had sought a compensation of Rs. 4.61 crores before the National Commission but he enhanced his claim to Rs. 7.50 crores when the matter came up before this Court. In response to the claim, this Court held as under:

82. The complainant, who has argued his own case, has submitted written submissions now claiming about Rs. 7.50 crores as compensation under various heads. He has, in addition sought a direction that a further sum of Rs. 2 crores

be set aside to be used by him should some developments beneficial to him in the medical field take place. Some of the claims are untenable and we have no hesitation in rejecting them. We, however, find that the claim with respect to some of the other items need to be allowed or enhanced in view of the peculiar facts of the case." 103.4. In *Oriental Insurance Company Ltd. v. Jashuben and Ors.* (supra), the initial claim was for Rs. 12 lakhs which was subsequently raised to Rs. 25 lakhs. The claim was partly allowed by this Court.

103.5. In *R.D. Hattangadi v. Pest Control (India)* (supra) the appellant made an initial compensation claim of Rs. 4 lakhs but later on enhanced the claim to Rs. 35 lakhs by this Court.

103.6. In *Raj Rani and Ors. v. Oriental Insurance Company Ltd. and Ors.*, (supra) this Court has observed that there is no restriction that compensation could be awarded only up to the amount claimed by the claimant. The relevant paragraph reads as under:

"14. In *Nagappa v. Gurudayal Singh* this Court has held as under: (SCC p. 279, para 7)

"7. Firstly, under the provisions of the Motor Vehicles Act, 1988, (hereinafter referred to as "the MV Act") there is no restriction that compensation could be awarded only up to the amount claimed by the claimant. In an appropriate case, where from the evidence brought on record if the Tribunal/court considers that the claimant is entitled to get more compensation than claimed, the Tribunal may pass such award. The only embargo is- it should be "just" compensation, that is to say, it should be neither arbitrary, fanciful nor unjustifiable from the evidence. This would be clear by reference to the relevant provisions of the MV Act."

103.7. In *Laxman @ Laxaman Mourya v. Divisional Manager, Oriental Insurance Co. Ltd. and Anr.*, (supra) this Court awarded more compensation than what was claimed by the claimant after making the following categorical observations:--

"24.in the absence of any bar in the Act, the Tribunal and for that reason, any competent court, is entitled to award higher compensation to the victim of an accident." 103.8. In *Ibrahim v. Raju and Ors.*, (supra) this Court awarded double the compensation sought for by the complainant after discussion of host of previous judgments.

104. In view of the aforesaid decisions of this Court referred to supra, wherein this Court has awarded "just compensation" more than what was claimed by the claimants initially and therefore, the contention urged by learned senior counsel and other counsel on behalf of the appellant-doctors and the AMRI Hospital that the additional claim made by the claimant was rightly not considered by the National Commission for the reason that the same is not supported by pleadings by filing an application to amend the same regarding the quantum of compensation and the same could not have been amended as it is barred by the limitation provided under Section 23 of the Consumer Protection Act, 1986 and the claimant is also not entitled to seek enhanced compensation in view of Order

II Rule 2 of the CPC as he had restricted his claim at Rs. 77,07,45,000/-, is not sustainable in law. The claimant has appropriately placed reliance upon the decisions of this Court in justification of his additional claim and the finding of fact on the basis of which the National Commission rejected the claim is based on untenable reasons. We have to reject the contention urged by the learned senior counsel and other counsel on behalf of the appellant-doctors and the AMRI Hospital as it is wholly untenable in law and is contrary to the aforesaid decisions of this Court referred to supra. We have to accept the claim of the claimant as it is supported by the decisions of this Court and the same is well founded in law. It is the duty of the Tribunals, Commissions and the Courts to consider relevant facts and evidence in respect of facts and circumstances of each and every case for awarding just and reasonable compensation. Therefore, we are of the view that the claimant is entitled for enhanced compensation under certain items made by the claimant in additional claim preferred by him before the National Commission.

105. We have to keep in view the fact that this Court while remanding the case back to the National Commission only for the purpose of determination of quantum of compensation also made categorical observation that:

"172. Loss of wife to a husband may always be truly compensated by way of mandatory compensation. How one would do it has been baffling the court for a long time. For compensating a husband for loss of his wife, therefore, the courts consider the loss of income to the family. It may not be difficult to do when she had been earning. Even otherwise a wife's contribution to the family in terms of money can always be worked out. Every housewife makes a contribution to his family. It is capable of being measured on monetary terms although emotional aspect of it cannot be. It depends upon her educational qualification, her own upbringing, status, husband's income, etc." In this regard, this Court has also expressed similar view that status, future prospects and educational qualification of the deceased must be judged for deciding adequate, just and fair compensation as in the case of R.K. Malik and Anr. (supra).

106. Further, it is an undisputed fact that the victim was a graduate in psychology from a highly prestigious Ivy League school in New York. She had a brilliant future ahead of her. However, the National Commission has calculated the entire compensation and prospective loss of income solely based on a pay receipt showing a paltry income of only \$30,000 per year which she was earning as a graduate student. Therefore, the National Commission has committed grave error in taking that figure to determine compensation under the head of loss of dependency and the same is contrary to the observations made by this Court in the case of Arvind Kumar Mishra v. New India Assurance which reads as under:

"14. On completion of Bachelor of Engineering (Mechanical) from the prestigious institute like BIT, it can be reasonably assumed that he would have got a good job. The appellant has stated in his evidence that in the campus interview he was selected by Tata as well as Reliance Industries and was offered pay package of

Rs. 3,50,000 per annum. Even if that is not accepted for want of any evidence in support thereof, there would not have been any difficulty for him in getting some decent job in the private sector. Had he decided to join government service and got selected, he would have been put in the pay scale for Assistant Engineer and would have at least earned Rs. 60,000 per annum. Wherever he joined, he had a fair chance of some promotion and remote chance of some high position. But uncertainties of life cannot be ignored taking relevant factors into consideration. In our opinion, it is fair and reasonable to assess his future earnings at Rs. 60,000 per annum taking the salary and allowances payable to an Assistant Engineer in public employment as the basis." 107. The claimant further placed reliance upon the decisions of this Court in *Govind Yadav v. New India Insurance Co. Ltd.* (supra), *Sri Ramachandrappa v. Manager, Royal Sundaram Alliance Insurance* (supra), *Ibrahim v. Raju and Ors.*, *Laxman @ Laxman Mourya v. Divisional Manager, Oriental Insurance Co. Ltd.* (supra) and *Kavita v. Dipak and Ors* (supra) in support of his additional claim on loss of future prospect of income. However, these decisions do not have any relevance to the facts and circumstances of the present case. Moreover, these cases mention about "future loss of income" and not "future prospects of income" in terms of the potential of the victim and we are inclined to distinguish between the two.

108. We place reliance upon the decisions of this Court in *Arvind Kumar Mishra's* case (supra) and also in *Susamma Thomas* (supra), wherein this Court held thus:

"24. In *Susamma Thomas*, this Court increased the income by nearly 100%, in *Sarla Dixit* the income was increased only by 50% and in *Abati Bezbaruah* the income was increased by a mere 7%. In view of the imponderables and uncertainties, we are in favour of adopting as a rule of thumb, an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years. (Where the annual income is in the taxable range, the words "actual salary" should be read as "actual salary less tax"). The addition should be only 30% if the age of the deceased was 40 to 50 years. There should be no addition, where the age of the deceased is more than 50 years. Though the evidence may indicate a different percentage of increase, it is necessary to "recognized" the addition to avoid different yardsticks being applied or different methods of calculation being adopted. Where the deceased was self-employed or was on a fixed salary (without provision for annual increments, etc.), the courts will usually take only the actual income at the time of death. A departure therefrom should be made only in rare and exceptional cases involving special circumstances." 109. Further, to hold that the claimant is entitled to enhanced compensation under the heading of loss of future prospects of income of the victim, this Court in *Santosh Devi v. National Insurance Company and Ors.* (supra), held as under:

"18. Therefore, we do not think that while making the observations in the last three lines of para 24 of *Sarla Verma* judgment, the Court had intended to lay

down an absolute rule that there will be no addition in the income of a person who is self-employed or who is paid fixed wages. Rather, it would be reasonable to say that a person who is self-employed or is engaged on fixed wages will also get 30% increase in his total income over a period of time and if he/she becomes the victim of an accident then the same formula deserves to be applied for calculating the amount of compensation." 110. In view of the aforesaid observations and law laid down by this Court with regard to the approach by the Commission in awarding just and reasonable compensation taking into consideration the future prospects of the deceased even in the absence of any expert's opinion must have been reasonably judged based on the income of the deceased and her future potential in U.S.A. However, in the present case the calculation of the future prospect of income of the deceased has also been scientifically done by economic expert Prof. John F. Burke. In this regard, the learned counsel for the other appellant-doctors and the Hospital have contended that without amending the claim petition the enhanced claim filed before the National Commission or an application filed in the appeal by the claimant cannot be accepted by this Court. In support of this contention, they have placed reliance upon the various provisions of the Consumer Protection Act and also decisions of this Court which have been adverted to in their submissions recorded in this judgment. The claimant strongly contended by placing reliance upon the additional claim by way of affidavit filed before the National Commission which was sought to be justified with reference to the liberty given by this Court in the earlier proceedings which arose when the application filed by the claimant was rejected and this Court has permitted him to file an affidavit before the National Commission and the same has been done. The ground urged by the claimant is that the National Commission has not considered the entire claim including the additional claim made before it.

111. The claimant has placed strong reliance upon V.P. Shantha's case (supra) in support of his contention wherein it was held as under:

"53. Dealing with the present state of medical negligence cases in the United Kingdom it has been observed:

The legal system, then, is faced with the classic problem of doing justice to both parties. The fears of the medical profession must be taken into account while the legitimate claims of the patient cannot be ignored.

Medical negligence apart, in practice, the courts are increasingly reluctant to interfere in clinical matters. What was once perceived as a legal threat to medicine has disappeared a decade later. While the court will accept the absolute right of a patient to refuse treatment, they will, at the same time, refuse to dictate to doctors what treatment they should give. Indeed, the fear could be that, if anything, the pendulum has swung too far in favour of therapeutic immunity. (p. 16)

It would be a mistake to think of doctors and hospitals as easy targets for the

dissatisfied patient. It is still very difficult to raise an action of medical negligence in Britain; some, such as the Association of the Victims of Medical Accidents, would say that it is unacceptably difficult. Not only are there practical difficulties in linking the plaintiff's injury to medical treatment, but the standard of care in medical negligence cases is still effectively defined by the profession itself. All these factors, together with the sheer expense of bringing legal action and the denial of legal aid to all but the poorest, operate to inhibit medical litigation in a way in which the American system, with its contingency fees and its sympathetic juries, does not.

A patient who has been injured by an act of medical negligence has suffered in a way which is "recognized" by the law a?" and by the public at large a?" as deserving compensation. This loss may be continuing and what may seem like an unduly large award may be little more than that sum which is required to compensate him for such matters as loss of future earnings and the future cost of medical or nursing care. To deny a legitimate claim or to restrict arbitrarily the size of an award would amount to substantial injustice. After all, there is no difference in legal theory between the plaintiff injured through medical negligence and the plaintiff injured in an industrial or motor accident. (pp. 192-93)

(Mason's Law and Medical Ethics, 4th Edn.)"

112. The claimant has also placed reliance upon the Nizam Institute of Medical Sciences case referred to supra in support of his submission that if a case is made out, then the Court must not be chary of awarding adequate compensation. The relevant paragraph reads as under:

"88. We must emphasise that the court has to strike a balance between the inflated and unreasonable demands of a victim and the equally untenable claim of the opposite party saying that nothing is payable. Sympathy for the victim does not, and should not, come in the way of making a correct assessment, but if a case is made out, the court must not be chary of awarding adequate compensation. The "adequate compensation" that we speak of, must to some extent, be a rule of thumb measure, and as a balance has to be struck, it would be difficult to satisfy all the parties concerned." 113. The claimant has further rightly contended that with respect to the fundamental principle for awarding just and reasonable compensation, this Court in Malay Kumar Ganguly's case (supra) has categorically stated while remanding this case back to the National Commission that the principle for just and reasonable compensation is based on "restitutio in integrum" that is, the claimant must receive sum of money which would put him in the same position as he would have been if he had not sustained the wrong.

114. Further, the claimant has placed reliance upon the judgment of this Court in the case of Ningamma's case (supra) in support of the proposition of law that the Court is duty-bound and entitled to award "just compensation" irrespective of

the fact whether any plea in that behalf was raised by the claimant or not. The relevant paragraph reads as under:

"34. Undoubtedly, Section 166 of the MVA deals with "just compensation" and even if in the pleadings no specific claim was made under Section 166 of the MVA, in our considered opinion a party should not be deprived from getting "just compensation" in case the claimant is able to make out a case under any provision of law. Needless to say, the MVA is beneficial and welfare legislation. In fact, the court is duty-bound and entitled to award "just compensation" irrespective of the fact whether any plea in that behalf was raised by the claimant or not." 115. He has also rightly placed reliance upon observations made in Malay Kumar Ganguly's case referred to supra wherein this Court has held the appellant doctors guilty of causing death of claimant's wife while remanding the matter back to the National Commission only for determination of quantum of compensation for medical negligence. This Court has further observed that compensation should include "loss of earning of profit up to the date of trial" and that it may also include any loss "already suffered or likely to be suffered in future". The claimant has also rightly submitted that when the original complaint was filed soon after the death of his wife in 1998, it would be impossible to file a claim for "just compensation". The claimant has suffered in the course of the 15 years long trial. In support of his contention he placed reliance on some other cases also where more compensation was awarded than what was claimed, such as Oriental Insurance Company Ltd. v. Jashuben and Ors., R.D. Hattangadi, Raj Rani and Ors, Laxman @ Laxaman Mourya all cases referred to supra. Therefore, the relevant paragraphs from the said judgments in-seriatim extracted above show that this Court has got the power under Article 136 of the Constitution and the duty to award just and reasonable compensation to do complete justice to the affected claimant.

116. In view of the aforesaid reasons stated by us, it is wholly untenable in law with regard to the legal contentions urged on behalf of the AMRI Hospital and the doctors that without there being an amendment to the claim petition, the claimant is not entitled to seek the additional claims by way of affidavit, the claim is barred by limitation and the same has not been rightly accepted by the National Commission."

49. Now, we have to award the just and fair compensation as per the principles laid down in the judgments cited hereinabove, taking into consideration the 100% disability of 8 years old boy at the time of electrocution. According to the averments made in the petition, he was a brilliant student. The petitioner would normally had started earning at least Rs. 30,000/- per month after attaining the age of 20 years. His life expectancy can safely be taken as per the prevailing trends to 70 years. He would have safely worked for 38 years. The appropriate multiplier, in the present case, would be 25. There is no possibility of marriage of the petitioner, therefore, no standard deductions can be made from the income. The income in entirety has to be taken into consideration. The annual income of

the petitioner would be Rs. 3,64,000/-, which is required to be multiplied by 25. The total future loss of the income of the petitioner comes to $(30,000 \times 12 \times 25 = 90,00,000/-)$ i.e. rupees ninety lacs. The petitioner is also entitled to standard damages of Rs. 10,00,000/- towards loss of companionship, life amenities/pleasures and loss of happiness. The petitioner is entitled to Rs. 10,00,000/- for pain and suffering, including mental distress, trauma and discomfort and inconvenience. He is entitled to Rs. 10,00,000/- towards attendant/nursing expenses for his life. He is also entitled to a sum of Rs. 5,00,000/- for securing artificial/robotic limbs and future medical expenses.

50. The writ petition is allowed and in order to secure financial amenities for future of the petitioner, the respondents No. 2 and 3 would pay compensation of Rs. 1,25,00,000/- (Rupees one crore twenty five lacs) to the petitioner. The amount will be deposited in a Fixed Deposit in the name of the petitioner under joint guardianship of his mother at Nationalized Bank, Chowari, Distt. Chamba, H.P., within a period of 60 days of the receipt of certified copy of this judgment, failing which, the amount shall carry interest @ 9% p.a. till deposited in the bank. The interest so accrued will be transferred in a separate Savings Account to be opened in the same Branch in the name of the petitioner, to be operated jointly by the parents, payable to the petitioner on regular monthly basis. The Manager, Nationalized Bank, Chowari, where the compensation amount shall be deposited, would release a sum of Rs. 10,000/- per month to the petitioner, through his guardian, to meet his daily expenses. This amount would take care of the petitioner's educational expenses, nutritious food and cost of attendant. A sum of Rs. 5,00,000/- deposited in this Court shall be adjusted towards the amount to be paid to the petitioner as ordered hereinabove. The respondents No. 2 and 3 are directed to take all remedial measures to raise the height of the "Lahru-Chowari Line" to make it safe and render the inhabitants electrically harmless and to make it beyond the reach of children and local residents of the inhabited localities.