

(2008) 12 J&K CK 0022

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 464 of 2005

Reshma Singh

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 04-12-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A

Citation : (2010) 2 JKJ 12

Hon'ble Judges : J.P. Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

J.P. Singh, J.—Smt. Tillo Devi aged 22 years was on her way to village Chassana of Tehsil Mahor District Udhampur on June 30, 2002

when at about 10, in the morning, she got electrocuted on coming in contact with an Electric Line which, after getting snapped, had remained

suspended alongside an electric pole, and no steps had been taken by the Electric Maintenance and Rural Electrification Wing of Power

Development Department to discontinue the Electric energy flowing therein.

2. Her husband Resham Singh, the Petitioner, has filed this writ petition seeking issuance of a command to the State-Respondents to pay him Rs.

10 lacs as compensation for his wife's death.

3. Admitting the electrocution of Smt. Tillo Devi on June 30, 2002, the Respondents have stated that Tillo Devi had died because of coming in

contact with the electrically charged electric pole on which 11 KV Line of 25 KVAS/Stn Bangankote had been laid. Short-circuit is stated to be

the cause of electrocution of Tillo Devi.

4. Denying their liability to pay compensation to the Petitioner, it is stated by the Respondents in their objections that the lineman posted in the area

for looking after the Service Station had not noticed the pole to have gone electrically charged and thus there was no negligence on the part of the

Respondents.

5. Mrs. Shista Hakim, learned Deputy Advocate General contests the maintainability of Petitioner's writ petition on the ground that disputed

question of fact as to whether or not the Respondents were negligent in maintaining the electric lines and the electric pole, cannot be gone into by

this Court in exercise of its ordinary writ jurisdiction.

6. Having considered the submissions of Sh. S.S. Lehar, learned Senior Counsel, appearing for the Petitioner and Smt. Hakim appearing for the

Respondents, I am of the view that the State Counsel's objection that the writ petition may not be maintainable to seek issuance of a command

against the responded to pay compensation for the electrocution of Tillo Devi, is-unsustainable. This is so because maintenance of electric supply

line' in the area where Tillo Devi had died was that of the State and its functionaries and they were thus under an obligation to maintain these

electric lines, conductors and all other apparatus and equipments employed by them for conveying, transmitting or distributing such energy, in such

a manner so that the energy transmitted by them does not cause any injury or loss to anyone who gets unknowingly trapped into it. Maintenance of

electric pole ensuring that it does not get electrically charged too was thus the responsibility of the State functionaries. 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, and to see that the wires and all other apparatus employed as such for carrying the energy, including

the electric poles, functioned well and did not permit escape of energy either by snapping, short circuiting or otherwise.

7. A person or an authority undertaking activity involving hazardous or risky exposure to human life, is liable under Law of Torts to compensate for

the injury suffered by any person irrespective of any negligence or carelessness on the part of those responsible for supply of electrical energy. 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 a Defendant had done all that could be done for avoiding the harm he may not be held liable when the action is based on any negligence attributed; but such consideration may be irrelevant in cases of strict liability where the Defendant is liable irrespective of whether he could have avoided the particular harm by taking precautions. Owing its origin to the English common law this doctrine has come to be accepted in Courts in India and Hon'ble Supreme Court of India had, while dealing with this doctrine observed as follows:

Where an enterprise is engaged in a hazardous or inherently dangerous activity and harm is caused on any one on account of the accident in this operation of such activity, the enterprise is strictly and absolutely liable to compensate those who are affected by the accident; such liability is not subject to any of the exceptions to the principle of strict liability under the rule in *Rylands v. Fletcher* M.C. Mehta and another Vs. Union of India and others, .

8. In view of the above legal position, no question of fact arises for determination in the case because the liability of the Respondents to compensate the Petitioner for the death of Tillo Devi who had been electrocuted while coming in contact with an electric pole, is based on the doctrine of strict liability. The Respondents having failed to take steps to ensure that the electric energy did not pass through the electric pole which had resulted in the electrocution of Petitioner's wife are thus liable to compensate the Petitioner.

9. The next question which arises for consideration in this petition is as to who much amount of compensation the Petitioner would be entitled to for the death of his wife when the exact amount of compensation to which he may be entitled to may not be determinable by this Court because such determination may be permissible only if the parties had been provided opportunity to lead evidence so as to demonstrate their respective case on facts for determination of exact amount of compensation, which course may not, however, be permissible in exercise of this Court's extra ordinary

civil writ jurisdiction.

10. The Petitioner's case for grant of compensation needs to be looked at from a different angle as to whether or not any minimum amount of

compensation can still be awarded to the Petitioner without going through the exercise of determining the exact amount of compensation to which

the Petitioner may be entitled to, on the basis of the evidence of the parties suggesting about the exact amount of compensation for the death of

Tillo Devi. This aspect of the case is examined as follows.

11. Had the Petitioner's wife died in a motor vehicular accident, her dependents, would be entitled to compensation on the basis of the structured

formula flowing from Section 163-A of the Motor Vehicles Act read with Schedule 11 issued there under, without proving negligence of the

person who may have been responsible for the accident.

12. As Petitioner's wife has died because of the negligence and fault of the Respondents so the method of determination of compensation as

provided u/s 163-A of the Motor Vehicles Act needs to be adopted to assess the minimum amount of compensation payable for the death of

Petitioner's wife taking into consideration the law laid down by Hon'ble Supreme Court of India where an amount ranging from Rs. 15,000/- to Rs.

25,000/- has been accepted as just compensation for the loss of Consortium if the beneficiary is the spouse, in addition to the one provided for in

the IIInd Schedule appended to Section 163-A of the Motor Vehicles Act. This course is being adopted with the aid of Article 141 of the

Constitution of India which provides that the law declared by the Supra Court shall be binding on all Courts within the territory of India.

13. Tillo Devi was a house wife whose age has been noticed in the post-mortem report accompanying the petition as 25 years. Compensation for

her death is thus required to be assessed by taking her notional income at Rs. 3000/- being the contribution of a house wife to the family in view

of the law laid down by Hon'ble Supreme Court of India in Lata Wadhwa and Others Vs. State of Bihar and Others, , because no proof has been

placed on records by the Petitioner in support of his plea that his wife had been earning an amount of Rs. 5000/- per month by cleaning utensils.

14. Petitioner has been deprived of the love, affection and company of his wife, besides the contribution she had been making to the family, He is

thus required to be suitably compensated. Applying the Multiplier method, which has come to be accepted as a fair method of determining just

compensation u/s 168 of the Motor Vehicles Act, multiplier of 12 is selected as the appropriate multiplier to assess the compensation for the death

of Tillo Devi, keeping in view the standard of living of the Petitioner and his wife.

15. Deducting one third out of the aforementioned income of Rs. 3000/- which Tillo Devi would have spent on herself had she remained alive, an

amount of Rs. 2000/- is taken as monthly loss to the Petitioner because of the death of his wife. The annual income would thus come to Rs.

24,000/-. The compensation to which the Petitioner may, therefore, be entitled to would come to Rs. 3,18,000/- which includes an amount of Rs.

15,000/- for loss of Consortium and Rs. 15,000/- for loss of Estate.

For all what has been said above, this writ petition, therefore, succeeds and is accordingly allowed. A direction is issued to the Respondents to pay

the Petitioner an amount of Rs. 3,18,000/- along with interest @ 6% per annum from the date of filing of the writ petition.