
(2002) 12 J&K CK 0002
In the Jammu And Kashmir High Court
Case No : CIA No. 22 Of 2002

State of J & K

APPELLANT

Vs

Zarina Begum & Ors.

RESPONDENT

Date of Decision : 31-12-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Constitution of India, 1950 — Article 311

Citation : (2010) 4 JKJ 286

Hon'ble Judges : T.S.Doabia, J

Bench : Single Bench

Advocate : S.H.Thakur, Advocates appearing for the Parties

Judgement

1. One Mohd. Bashir was electrocuted on 2nd Aug.1996, He came in touch with a broken live electric wire, when he was proceeding towards the

main road from his house in village Chokian (Kot Dhara). Negligence was attributed to the officials of the electric department and more particularly

to one Siam Shah, Linemen in the Power Development Department. It was pleaded that the deceased was 30 years of age, and was earning Rs.

150 per day. The total income of the deceased was said to be Rs. 4500/ p.m.

2. The defendantState filed its written statement. It denied negligence on the part of the Siam Shah. It was pleaded that as a matter of fact, it was

defendant no.4, Abdul Khaliq who used to commit the theft of electricity from the L.T. Line by using unsafe material, it was pleaded that the

accident had taken place as a result of negligence on the part of defendant No.4 Abdul Khaliq.

3. The issues which came to be framed are as under;

I/Whether the defendant3 laid down an electric connection from the electric pole

to the house of defendant no.4 at a distance of more than one

KM. by using ordinary iron wire while instead of using of protecting wire in connivance with defendant 4: OPP

2/Whether the defendant Mohd. Bashir husband of plaintiff1 and father of plaintiffs 2 to 4 died of electrocution on account of failing on said

ordinary iron wire used for the electric connection from the electric pole of the house of defendant4 while crossing in between pole and the place

where the said wire fell down on the earth: OPP

3/Whether the death of said Mohd. Bashir can be attributed to the negligence of defendant 3 and 4; OPP

4/If issues No.2 and 3 are proved in negative, whether death of Mohd. Bashir occurred due to the negligence of defendant4 who used electric

connection illegally by theft by using the said ordinary iron wire connecting the electric pole to his house during night but said wire fell down on the

earth without knowledge of defendant; OPP

5/Whether the plaintiffs are entitled to the damage, if so how and from whom; OPP

6/Relief.

4. It be seen that so far as defendant No.4 is concerned, he is said to have obtained an illegal connection for obtaining electric energy and he had

not used proper transmission wire. It is not in dispute that the death of Mohd Bashir did take place. Even if it be presumed that defendant no.4 had

obtained illegal connection, the fact will still remain that the officials of the State defendant No.3 were guilty of not checking the illegal connection

and merely because the said illegal connection was taken by defendant no.4 would be of no consequence.

5. The fact that the deceased was electrocuted with a live wire which was used for the supply of electricity to the house of defendant no.4 from a

L.T.Line in village Chokian (Kot Dhara) is an established fact. The defendants No.1 to 3 in their written statement have admitted that the live wire

had fallen down during the night hours and the deceased was electrocuted. So far as the claimants are concerned, they are not concerned as to on

whose part the negligence occurred.

6. The above question was considered by a Division Bench of this Court in LPA 32/2002 and connected Appeal decided on 1.12.2002 what was

observed is being reproduced below:

In *Poonam Verma v. Ashwin Patel*, 1996 CCJ 721, the Supreme Court of India enumerated following 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 former's conduct within the scope of

the duty; ii/Breach of the said duty; and

iii/Consequential damage, Failure to keep the required caution and safeguards would clearly amount to negligence and such a negligence is

actionable under the law of Torts. See *Jay Laxmi Salt Works (P) Ltd v. State of Gujarat*, 1994 ACJ 902. The Supreme Court of India in the

above case quoted the meaning of negligence as defined by Winfield in the following words:

Negligence as a tort is the breach of a legal duty to take care which result in damage, undesired by the defendant to plaintiff.

Thus negligence is the breach of a duty caused by the omission to do something which, a reasonable man, guided by those considerations which

ordinarily regulated the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do.

The courts do recognise that there are many activities which are hazardous that they constitute constant danger to the person or property of others.

Such activities can be

prohibited altogether by law or can be allowed to be carried on for the sake of their social utility but in accordance with their statutory provision

laying down safety measures and providing for sanctions of noncompliance. The basis of this liability is foreseeable risk inherent in the very nature

of the activities. This is founded on the principle of strict liability where negligence based on foreseeable harm is presumed. The doctrine of strict

liability has its origin in English common law when it was propounded in the celebrated case of *Rylands v. Fletcher*, 1868 LR 3 HL 330. Blackburn

J, the author of the said rule had observed in the said decision as under: ""The rule of law is that the person who for his own purpose, brings on his

land and collects and keeps there anything likely to do mischief if it escapes, must keep it at his peril, and if he does so he is prima facie answerable

for all the damages which is the natural consequences of its escape."" Thus 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. As indicated above, the basis of such liability is the foreseeable risk inherent in the very nature of

such activity. Thus, in such cases, the negligence comprehends that the foreseeable risk could be avoided by taking reasonable precautions.

The Privy Council in the case of Quebec Railway, Light Heat and Power Company Ltd. v. Vandry and Others, 1920 Law Reports Appeal Cases,

662, observed that the company supplying the electricity is liable for the damages without proof that it had been negligent. Even the defence that

the cables were disrupted on account of a violent, wind and high tension current found its way through the low tension cable into the premises of

the respondents was held to be not a justifiable defence. In W.B. State Electricity Board adopted a defence that the electric lines were illegally

hooked for pilferage purposes. The Supreme Court of India observed that the Board can not be held to be negligent on the said fact situation but

the question of strict liability in the above case was not taken up.

The rule of strict liability has been approved and followed in many subsequent decision in England. The decision given by House of Lords in

Cambridge Water Co. Ltd. v. Eastern Counties Leather, 1994(1) All England Law Reports (HL) 53 can be cited with advantage. This principle

gained approval in India also. A Constitution Bench of the Supreme Court of India in the case reported as Charan Lai Sahu v. Union of India,

1990(1) SCC 613 and a two Judge Bench in the case of Kaushnuma Begum v. New India Assurance Co.Ltd.,2001(2) SCC 9, adopted this

principle. As a matter of fact, in an earlier decision reported as M.C. Mehta v. Union of India, 1987 (1) SCC 395, the Supreme court of India has

gone even beyond the rule of strict liability. In the above case, the Supreme court of India observed that "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 the operation of such activity, the

enterprises is strictly and absolutely liable to compensate those who are affected by the accident.

In Alka v. Union of India, 1995 ACJ 1254, the Delhi High Court imputed negligence on the authorities where the accident was caused by running

motor of water pump and the victim was a girl of tender age of six years. The doctrine of *res ipsa loquitur* was applied brushing aside the

explanation of the respondents that the children used to trespass into the premises and the authorities were not liable. It was observed that a

trespassing child of a tender age of six years would not be knowing the implication and gravity of putting her hand in a running motor and it was for

the authorities concerned to give ample protection in this regard.

It is thus concluded that there is an absolute liability of the State to keep the electric installations in safe bounds so that these are not easily

accessible to general public and are not able to cause any injury to a person passing near by these electric installations. While ascertaining this duty

to take care, one has to keep in mind the difference between an adult visitor and a child visitor. The child will meddle whereas an adult will not and

what is safe for an adult may not be safe for a child. Thus in the case of *Glasgow Corporation v. Taylor* (1922) 1 AC 44, a garden was being

maintained by the Corporation. There were poisonous shrubs in front of the gate which were easily accessible and could be opened by young

children. A child entered the garden and ate some berries of the poisonous shrubs which presented a tempting appearance to the children and died.

The Corporation had known of the fact of existence of poisonous shrubs. It had taken no steps to warn the children or to prevent them in reaching

that part of the garden. The father of the deceased child filed a suit. The Corporation was held liable for want of due care to the children. It was

observed that so far as children are concerned, there is a duty, "not merely not to dig pitfalls for them, but not to lead them into temptation".

7. In view of the above legal position, it can be said that the State can be made liable to pay damages on account of the negligence on the part of its officials.

8. So far as grant of compensation is concerned, this has to be determined on the same basis as is done in the case of an incidence arising under

the Motor Vehicles Act. The income of the deceased has been taken as Rs. 150 per day. This has been done by taking note of the statement of

plaintiffs. PW Mohd Yousuf, another witness stated that the deceased was working as a Mason and used to earn Rs. 150 per day. This fact was

rightly taken note of. Thereafter, unit system was applied and ultimately

multiplier of 12 came to be applied. The deceased was 30 years of age.

The loss of dependency has been rightly calculated. Accordingly the compensation has been allowed under following heads:

Loss of dependency Rs. 4,80,000

Loss of consortium Rs. 15,000

Loss of estate Rs. 13,000

Total Rs. 5,08,000/

9.1 am of the opinion that the view expressed by the trial court can not be faulted. This appeal as such is found to be without merit and is

dismissed. Let the decretal amount be deposited with the Registrar (Judl.) of this court within a period of three months from today, failing which the

rate of interest would be 3% over and above as allowed by the Claims Tribunal. Fixed Deposit Receipt would be prepared for six months for 20

percent of the amount and the remaining 80% amount would be kept in Fixed Deposit for a period of three months. The amount would be kept in

a nationalized bank. Separate FDRs would be prepared for widow and minor children, So far as minors are concerned, they would be entitled to

withdraw of amount on attaining the age of 21 years. The widow would be entitled to interest on all the FDRs payable after every three months.

The FDRs so prepared would be handed over to the plaintiffs.

10. Disposed to accordingly.