

(2003) 02 J&K CK 0002
In the Jammu And Kashmir High Court
Case No : CIA No. 26/01

State of Jammu & Kashmir	Vs	APPELLANT
Zarda Begum and Others		RESPONDENT

Date of Decision : 10-02-2003

Acts Referred:

Citation : (2003) 1 JKJ 706

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

Bench : Single Bench

Advocate : S. Hakim, GA, for the Appellant; Vishal Goel, for the Respondent

Final Decision : Dismissed

Judgement

1. The Rural Electric Maintenance Division, Rajouri (here-in-after referred to as the department) had installed a High Tension electric wire. This was fixed to the wall of the house of Ghulam Mohd. This was also touching over-hanging branches of a tree. These branches were also touching the roof of the house of the aforementioned Ghulam Mohd. The further fact is that on the night Intervening 25th and 26th July '83, there was a heavy rain-fall. In the morning when the aforementioned Ghulam Mohd went to roof to attend the call of nature, he Suffered a severe electric shock from the High Tension electric wire. The electric shock resulted in his death. Postmortem was conducted. An opinion was expressed that the death was due to the electric shock suffered by the deceased Ghulam Mohd. A suit for damages was filed. This was filed by the widow and the minor children of the deceased Gh. Mohd. Damages were sought to the extent of Section 21, 75, 218. It was pleaded that it was on account of the negligence of appellant Electric department, the electric current passed

through the building and the resultant death of

Gh. Mohd took place. Notice u/s 80 of the CPC was served. Thereafter trial was conducted. The issues which were framed are as under:

1/ Whether the suit is not maintainable as notice u/s 80 CPC is not in accordance with law? OPD.

2/ Whether Ghulam Mohd died as a result of electrocution caused due to electric shock on 26-7-83 ? OPP.

3/ If Issue No. 2 is proved in the affirmative the death has occurred due to the negligence of the electric department of the State? OPP.

4/ If Issue No. 3 is proved whether plaintiffs are. entitled to Rs. 21,75,218/- from the defendant? OPP.

5/ Relief.

2. Plaintiff Mst Zarda Begum appeared in the witness box. It was stated that Gh. Mohd. was serving as an Assistant Sub Inspector in the Police

Department on 25th July '83, the deceased, it was stated had come to Rajouri in connection with some official duty and had stayed at his house. It

was stated that during the night intervening 25th and 26th July' 83, there was heavy rainfall. On 26th July'83, in the morning when Gh. Mohd went

to the top of his house to answer a call of nature, he was electrocuted. It was also stated that when he went on the roof, there was no electricity.

However, In the meanwhile, the electric lines were energised and on account of the electric shock, he fell unconscious. Some neighbours reached

on the spot; electric supply was disconnected, but in the meanwhile, the electric shock was responsible for the death of Gh. Mohd. It was further

pleaded that the house was constructed after obtaining permission from the Notified Area Committee. It was also pleaded that two years prior to

the occurrence, the Electric department had installed electric wires near the house of Gh. Mohd. The fact that an Assistant Engineer in the Electric

Department had checked the location and had stated that construction can be made was adverted to. It was also stated that a No Objection

certificate was obtained from the Electric department. It was further pleaded that the electric wires were touching the roof top of the house of the

plaintiff and also some branches of a tree and in this manner, the electric current passed through roof of the house of the plaintiff and was

responsible for causing death of Gh. Mohd. To the same effect was the statement

of PW2 Mohd Azam and one Haji Abdul Rashid, PW.3.

3. So far as the income of the deceased is concerned, it was brought on the record that at the time of his death, the deceased was drawing a monthly salary of Rs. 1148/- It was also brought on the record that in the normal circumstances, the deceased would have earned promotion to the post of Deputy Superintendent of Police. It was stated that there was pay revision in the year 1987, 1992 and 1998. It was stated that had the deceased retired under normal circumstances, he would have been getting a higher, amount of pay and pension. It was thus pleaded that there would have been a quantitative change not only in the salary but in the pensionary benefits also.

4. The factors which were taken note of by the trial court for granting compensation are:

i/ That the deceased was 44 years of age at the time of his death. He was drawing a monthly salary of Rs. 1148/-

ii/ That he would have earned promotions in the course of time and his salary and even the pension component would have gone up.

5. It was on this basis, the annual dependency was counted. It was fixed at Rs. 3000 per month. A multiplier of 14 was applied. A sum of Rs.

5,04,000 has been allowed as compensation.

6. It be seen that the plaintiffs had filed an amended plaint also. As to how much would have been the increase in the salary on account of revision

of pay from time to time stands specified in paragraphs (i) to (vi) of the amended plaint at page 5. For facility of reference, these paragraphs are

being reproduced below :-

(i) Loss of earning till the attainment of age of Superannuation: 1050×3 as the amount of earning for the month of August, to October, 1983 as

ASI equal to Rs. 3150/-

(ii) Loss of income from the period, the deceased would have served as SI in the previous pay grade from Nov. 83 to March 87 (41 months,

during this period, the pay of SI ranged between Rs. 1200 to 1700 i.e. an average of Rs. 1500 $\times$ 41 equal to Rs. 61500/

(iii) Loss of earning of deceased as he would have served as SI in the revised pay grade of Rs. 4400 per month from 01-04-1987 to 12/90 (44

months). During this period the pay of SI ranged between Rs. 1744 to Rs. 3250

i.e. an average of Rs. 2500 per month x 44 equal to Rs.

1,10,600/-

(iv) Loss of earning from 1/91 to 10/97 (date of superannuation the period, the deceased would have served as Inspector in the pay range

between 3338 to 9314 i.e. an average of Rs. 5865/- per month from 82 months equal to Rs. 4,80,968.

(v) Rs. 500 x 25 x 12 equal to Rs. 15,00,000 (minus 1,80,000 on account of pension which is being received on the schedule of earlier rates i.e.

Rs. 15,00,000 minus Rs. 1,80,000 equal to 13,20,000/-

(vi) On account of loss of love, affection and guidance equal to Rs. 2,00,000.

Total Rs. 21,75,218/-..

7. If these factors are taken note of, then, it cannot be said that the compensation which has been allowed is on the higher side. Merely because the pensionary benefits have been given to the widow would not disentitle her to claim compensation from the State. The position of law in this regard

is as under

In the case of Madhya Pradesh State Road Trans. Corpn. and Another Vs. Priyank, the said Transport Corporation raised a plea that it should

not be burdened with the amount of medical treatment claim which liability has been met by the Insurance Company under a medi-claim Insurance

policy. In the above case a sum of Rs. 65,000 was received by the claimant from the Insurance Company for medical treatment and disability. It

was pleaded that this much amount should adjusted. The above plea of the Corporation was rejected. It was observed that the Corporation was

liable to pay the aforesaid amount to the claimant even though the payment regarding this head was made by the Insurance Company also.

In the case reported as Grand Trunk Railway Company of Canada v. Jennings (1888) 13 A.C. 800 their Lordships of the Privy Council, while

considering the provision of Lord Campbell's Act (Fatal Accidents act, 1846) made the following observations;;

Where the widow of deceased is the plaintiff, and her husband had made provision for her by a policy on his own life in her favour, the amount of

such policy is not to be deducted from the amount of damages previously assessed irrespective of such consideration. She is benefitted only by the

accelerated receipt of the amount of the policy...

In another decision reported as *Sushila Devi v. Ibrahim* 1974 ACJ 150 the view expressed was that sums payable on death under any contract of

social assurance or insurance are not to be taken into consideration when compensation is awarded under the Motor Vehicles Act. Again in the

case of *Perry v. Cleaver* 1969 ACJ 363 the claimant received injuries in a motor accident. He was discharged from service. He was awarded

disablement pension. The question which arose for determination was as to whether the pension received by him should be deducted while

assessing the liabilities. The claimant in the above case urged that pension, like life insurance was the product of the employee's past services or

thrift and it was neither equitable nor just that the tortfeasor should take over the benefit of the same. This argument was accepted. The

observations which are relevant are being quoted below:

As regards moneys coming to the plaintiff under a contract of Insurance, I think that the real and substantial reason for disregarding them is that

the plaintiff has bought them and that it would be unjust and unreasonable to hold that the money which he prudently spent on premiums and the

benefit from it should enure to the benefit of the tortfeasor. Here again I think that the explanation that this is too remote is artificial and unreal. Why

should the plaintiff be left worse off than if he had never insured? In that case he would have got the benefit of the premium money; if he had not

spent it he would have had it in his possession at the time of the accident grossed up at compound interest. I need not quote from the well known

case of *Bradburn v. Great Western Ry. Co.* (1874) All E.R. 195 but I may refer an old Scottish case *Forgie v. Henderson* (1818) 1 Murr. 413

where the pursuer was assaulted by the defender. During part of his resulting illness he received an allowance from a friendly society, and Lord

Chief Commissioner Adam in charging the jury;

I do not think you can deduct the allowance from the Society, as that is of the nature of an insurance, and is a return of money paid.

8. In a case reported as *The National Insurance Co. Ltd. Vs. Smt. Sarojini*, an additional cover was provided in the Insurance Policy. Two claims

were to be paid under different clauses. It was observed that the Insurance Company is supposed to meet the liability under both the clauses. The

argument that law prohibits duplication of compensation was held to be not applicable as the contract of insurance made a provision for covering two eventualities. It was accordingly held that the concept of duplication of compensation would not be attracted.

9. In view of the above legal position, it can be held that grant of pensionary benefits to the widow in the present case would not disentitle her to claim compensation from the State.

10. The question as to whether negligence can be attributed to the State and whether the State has a responsibility to maintain electric installations be also examined.

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 I
- ii/. Consequential damage.

11. Failure to observe 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. Vs. State of Gujarat*, . In the above case, the meaning of negligence as defined by Winfield was quoted

In the following words:-

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

12. An activity which constitutes a constant danger to the person or property of others 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 provisions laying down safety measures and providing for

sanctions of non-compliance. 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 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 it is

escapes, must keep it at his peri 1, and if, he does so he is prima facie answerable for all the damage which is the natural consequence of its

escape.

13. 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.

14. The Privy Council In the case of Quebec Railway, Light Heat and Power Company Ltd. v. Vandry and Ors. 1920 LR A 662 observed that

the company supplying the electricity is liable for the damages without proof that it had been negligent. In 2002 ACJ 337 (SC) , the Electricity

Board adopted a defence that the electric lines were illegally hooked for pilferage purposes. The Supreme Court of India observed that the Board

cannot be held to be negligent on the said fact situation but the question liability in the above case was not taken up.

In the case reported as M.C. Mehta and another Vs. Union of India and others, , 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 enterprise is strictly and absolutely liable to compensate those who are affected by the accident.

In Kumari Alka Vs. Union of India and others, negligence was imputed on the authorities where the accident was caused by running a 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. The Delhi High Court 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.

15. In view of the above, it is concluded that an absolute liability is cast on the State to keep the electric installations in a manner that these are not

accessible to the general public and are not able to cause any injury to a person. This duty, as indicated above, is cast on the State and its agencies

and in case there is a failure on the part of the State to perform such a duty, then negligence can be attributed to it and damages can be claimed by

a person who gets harmed or sustains injuries due to non-maintenance and improper electric installations. I am accordingly of the view that the

view expressed by the trial Court in awarding the compensation is a view to which no exception can be taken to. The compensation has been

determined by taking into consideration correct parameters. This appeal as such is found to be without merit and dismissed.