

(2010) 07 GAU CK 0040
In the Gauhati High Court
Case No : Writ Appeal No. 96 of 2007

State of Manipur & Ors.	Vs	APPELLANT
S.K.Shangring Lamkang & Anr.		RESPONDENT

Date of Decision : 15-07-2010

Acts Referred:

Constitution of India, 1950 — Article 226, 226

Citation : (2010) 5 GLT 588

Hon'ble Judges : K.Meruno, J and T.Nanda Kumar Singh, J

Bench : Division Bench

Advocate : Advocate appeared for the Appellants: Mr.Th.Ibohal, Advocate appeared for the Respondents: Ms.Inaocha, Advocates appearing for Parties

Judgement

T. Nandakumar Singh, J.—This intra Court appeal is directed against the judgment and order dated 07.11.2007 of learned Single Bench passed in WP (C) No. 1109 of 2002 directing the appellants (respondents in the writ petition) "to pay a sum of Rs.2 lakhs to each of the writ petitioners (respondent Nos. 1 and 2 in the present appeal) in respect of the death of their respective husbands due to electrocution. The said payment is to be made within a period of three months from today."

2. Heard Mr. Th. Ibohal, learned senior GA appearing for the appellants and also Miss Inaocha, learned counsel appearing for the respondents/writ petitioners.

3. The short fact, leading to filing of WP (C) No. 1109/02 is noted.

Respondent/writ petitioner No. 1, Smt. S. K. Shangring Lamkang is the wife of late Shri S. K. Thamwor Lamkang of Kotalkhunthak Village, P.O. Chandel, Manipur and respondent/writ petitioner No. 2, Smt. S. K. Shangtong Lamkang is also the wife of late S. K. Thamnok Lamkang of Charlong Village, P. S. Chandel, Manipur. Both the husbands of respondents/writ petitioners Nos. 1 and 2, on 22.4.2002 at about 1.15 p.m. were proceeding towards Chandel Headquarters for marketing after attending paddy field at Charlong Village. While they were

approaching near Khongjam Village about 14 Km from Charlong Village or about 28 Km southeast from Chandel Police Station, they were electrocuted due to fall of H/T electric line, which attracted the scooter forcefully due to high tension. The said live wire (HT wire) fell down from its pole and contacted all over the bodies of both the husbands of the writ petitioners, thereby causing death on the spot then and there. Mrs. Shangnani and her husband Kumar of Larong Village first came to see the dead bodies with electrocution. Thereafter they informed the matter to the villagers of Khongjom, which is the nearest village and also informed the Chandel Police Station and, accordingly, a case being UD Case No. 1/2002 CDL P.S. under Section 174 Cr.P.C was registered. The dead bodies were brought to the RIMS mortuary for conducting post mortem examination by their relatives. Post Mortem examination was conducted at the mortuary of the RIMS Hospital.

4. After post mortem examination, the dead bodies were brought to their respective villages and buried in accordance with the Chonghai ritual on the next day. The deceased, S. K Thamwor Lamkang and S. K. Thamnok Lamkang are the only bread earners of their families. The cause of snap of H/T wire which resulted to instantaneous electrocution of the said two deceased were that the H/T wires were snapped and detached from the poles as the poles were not repaired for many years and also the negligent act of the respondents in maintaining the H/T wires and also the failure on the part of the respondents to provide guard for the H/T wires and also to take reasonable precaution to prevent the snapping of the old H/T wire stringing between the old poles. The bad condition of the electric poles and also the dangerous position of the H/T wire were timely reported to the Executive Engineer, Electricity Department, Chandel District (appellantNo. 3) and requested for repairing by one R.D. Kowar Anal, Chairman, Chief Area Association of Sulam, Chandel on 18.4.2002. But the respondent/appellant No. 3 had failed to repair the same. The chief of the village along with villagers of Vongku Village made a complaint on 22.03.2002 before the appellant No. 3 stating that the electric wire/pole between Khongo and Vongku village is deteriorating and likely to fall down at any moment. But, the authority replied that repairing work shall be done after Yaoshang festival (Holi festival). After Yaoshang festival the Khongjom villagers orally reported the matter but before repairing the electric poles the said incident, in which both the husbands of the writ petitioners were electrocuted, was occurred on 2.4.2002.

5. The respondent/writ petitioners also had submitted representation to the authorities including Hon''ble Minister, Power, for payment of compensation for the death of respondents/writ petitioners'' husbands due to electrocution. The appellant/respondent No. 1 had received the representation dated 27.05,2002 under RR No. 1062/07 and the appellant No. 2 also received the said representation dated 27.05.2002 under RR No. 2169 27.5.2002. But they failed to take any tangible action, accordingly, the writ petitioners filed writ petition being WP (C) No. 1109/02 seeking public law remedy by invoking the writ jurisdiction of this Court under Article 226 of the Constitution of India. The public

law remedy sought for in the writ petition is for a direction to the appellants/respondents in the writ petition, to pay compensation amounting to Rs.8 lakhs each in favour of the respondents/writ petitioners.

6. The appellants/respondents in the writ petition, filed affidavit in opposition, in which the appellants are not denying that both the husbands of the writ petitioners were electrocuted on 22.04.2002 because of snapping of HA" wire near Khongjom Village at about 28 Kms southeast from Chandel Police Station. In other words, the appellants, in their affidavit in opposition had admitted that both the husbands of the writ petitioners died instantaneously due to electrocution because of snapping of H/T wire from the poles on 22.04.2002. In their affidavit in opposition it is stated that on the day of

occurrence i.e. 22.04.2002 heavy storm with thunder frequently occurred during day time, as such, the power supply line between Chandel and Khongyang Village was kept isolated/uncharged just from 3.2.5 p.m. The fall of overhead live wire was because of lightening stroke resulting breaking of a tension disc insulator which is absolutely beyond physical power and control of all the staff/workers of the State respondents; and therefore, the appellants/respondents in the writ petition, cannot be blamed for negligence of their duty. The respondents/writ petitioners filed their rejoinder. they categorically denied that there was rain at the time of occurrence/ incident, i.e. in the month of April and stated that there was no lightening stroke causing breakage of one of the disc insulators and also that Month of April 2002 is not rainy season, in support of which, the respondents/writ petitioners also annexed certificate issued by the Secretary, Information & Publicity, Lamkang Students Union. In nowhere of the affidavit in opposition, appellant/respondents in the writ petition stated that the requirements mentioned in Rules 74,78,80,85 and 88 of the Indian Electricity Rules, 1956 had been duly complied with in laying/stringing H/T wire through the electric poles. In the affidavit in opposition, the appellants had never stated that in compliance with Rule 88 of the Electricity Rules, 1958 guard wire having the prescribed strength had been provided for the naked H/T wire stringing through the poles and also reasonable precautionary measures had been taken for preventing snapping of naked H/T live wire. Over and above, the appellants/respondents in the writ petition, in their affidavit in opposition did not annex any sort of documents issued by the competent authority that all the requirements mentioned in the said Rules of the Indian Electricity Rules, 1958 had been duly complied with for the said overhead line i.e. HAT wire and also that conductors have prescribed strength and also the prescribed distance between two electric poles are maintained.

7. The only defence of the appellants/ respondents in the writ petition, after admitting the fact that both the husbands of the writ petitioners died due to electrocution on 22.04.2002, in their affidavit is that snapping of H/T wire was because of the act of God, which is required to be substantiated by material facts. For such defence, the appellants/respondents in the writ petition, in their

affidavit in opposition, had failed to plead material facts and also failed to prove such case. It is clearly settled law that there is distinction between pleadings under the CPC and writ petitions or/counter affidavits. While in a pleading, that is, a plaint or a written statement, the facts and not evidence are required to be pleaded; in a writ petition or in a counter affidavit, not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it. Ref: Decision of the Apex Court in Bharat Singh & Ors. Vs. State of Haryana & Ors.: AIR 1988 SC 2181. Para 13 of the AIR in Bharat Singh's case (supra) read as follows:

"13. As has been already noticed, although the point as to profiteering by the State was pleaded in the writ petitions before the High Court as an abstract point of law, there was no reference to any material in support thereof nor was the point argued at the hearing of the writ petitions. Before us also, no particulars and no facts have been given in the special leave petitions or in the writ petitions or in any affidavit, but the point has been sought to be substantiated at the time of hearing by referring to certain facts stated in the said application by HSIDC. In our opinion, when a point which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove such facts by evidence which must appear from the writ petition and if he is the respondent, from the counteraffidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or to the counter affidavit as the case may be. the Court will not entertain the point. In this context, it will not be out of place to point out that in this regard there is a distinction between a pleading under the Code of Civil Procedure and a writ petition or a counter affidavit. While in a pleading, that is. a plaint or a written statement, the facts and not evidence are required to be pleaded, in a writ petition or in the counter affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it. So, the point that has been raised before us by the appellants is not entertainable. But, in spite of that, we have entertained it to show that it is devoid of any merit."

8. The Apex Court (Constitution Bench) in Katra Education Society, Allahabad Vs. State of Uttar Pradesh & Ors.: AIR 1966 SC 1307 observed that a plea of a party cannot be taken into consideration unless the petition contains a full averment of the grounds on which the plea is taken. The Apex Court in Narendra Bahadur Singh & Anr. Vs. State of U. P. & Ors.: AIR 1977 SC 660 held that the party seeking to challenge the validity of a notification on a ground involving question of facts should make necessary averments of the facts which can assail the notification on that ground. The Apex Court further held that in the absence of necessary material facts having bearing on the point, it will be difficult to sustain that point. This Court is also of considered view that in the absence of necessary material facts supported by affidavit in opposition and documents for proving a particular point or plea which required to be substantiated by facts, it would be difficult to sustain that fact or point. In the present case, it is difficult to sustain the defence of the appellants/respondents in the writ petition, in their counter

affidavit that the snapping of H/ T wire which resulted to instantaneous death of both husbands of the writ petitioners due to electrocution, was because of act of God.

9. Mr. Th. Ibohal, learned senior GA, in order to substantiate the case of the appellants/ respondents in the writ petition had placed heavy reliance on the decisions of the Apex Court in (1) Chairman, GRID Corporation of Orissa Ltd. (GRIDCO) & Ors. Vs. Sukamani Das (Smt) &Anr.: (1999) 7 SCC 298, (2) SDO Grid Corporation of Orissa Ltd. & Ors. Vs. Timudu Oram: AIR 2005 SC 3971 and (3) Bharat Petroleum Corpn. Ltd. & Anr. Vs. N. R. Vairamani & Anr.: (2004) 8 SCC 579 and contended that since there was disputed question of fact as to whether the snapping of H/T wire which resulted to electrocution of both the husbands of the writ petitioners was due to the act of God or whether the wire had snapped as a result of any negligence on the part of the appellants (respondents in the writ petition), the writ petition being WP (C) No. 1109/02 is not a proper remedy.

10. It is fairly well settled that ratio of any decision must be understood in the background of that fact. It has been long ago settled that a case is only an authority for what it actually decides and not what logically follows from it. It is also well settled that a little difference in fact or additional fact may make a lot of difference in precedential value of a decision. For this settled law this Court is not required to burden itself by referring to a number of decisions. It would be suffice to refer to only two decisions of the Apex Court in (1) Ambica Quarry Works Vs. State of Gujarat: (1987) 1 SCC 213 and (2) Bhavnagar University Vs. Palitana Sugar Mill (P) Ltd.: (2003) 2 SCC 111. The Apex Court also reiterated in Bharat Petroleum Corpn. Ltd. & Anr's case (supra) that a decision cannot be relied on without discussing the fact situation.

11. Keeping in view of the ratio laid down by the Apex Court in Ambica Quarry Works's case (supra), Bhavnagar University's case (supra) and Bharat Petroleum Corpn. Ltd's case (supra) it is required to see what is the fact of the case in Chairman, GRID Corporation of Orissa's case (supra) heavily relied by the learned senior GA. In that case, the petitioner himself pleaded that on 4.8.1996 Pratap Chandra Das, while he was proceeding from his village to another place for marketing, decided to return to his village as dark clouds gathered in the sky and there were thunderbolts also. While he was returning it had started raining; and when he was walking along the GosipatnaAmara Road he came in contact with an electric wire which was lying across the road after getting snapped from the overhead electric line. Therefore, in that case, it is admitted case of both the parties that there were heavy rain and thunderbolt also. In that particular context the respondents in their counter affidavit stated that because of thunderbolt and lightening one of the conductors of 12W LT line had snapped even though proper guard was provided. In that given case, the Apex Court held that as there was serious disputed question of fact as to the cause of snapping of power line, the writ petition shall not be the proper remedy.

In the present case, as discussed above, the writ petitioners did not admit that there was heavy rain and thunderbolt on 22.04.2002 and also that there was no pleading of the appellants (respondents in the writ petition) in their counter affidavit that proper guard, in compliance with the requirements mentioned in Indian Electricity Rules, 1956, was provided for the said overhead live wire line between Chandel and Khongjom Village and also no material pleading, document in support of that fact that there was heavy rain on or before 22.04.2002.

12. SDO Grid Corporation of Orissa Ltd. & Ors.'s. case (supra) is a case analogous with the Chairman, GRID Corporation of Orissa's case (supra) and was ordered to be listed together but delinked as service have not been completed on the respondents. Later on the Apex Court disposed the SDO Grid Corporation of Orissa Ltd. & Ors.'s case (supra) on 28.7.2005 with the finding that "in the present case, the appellant had disputed the negligence attributed to and no finding has been recorded by the High Court that Grid Co. was in no way negligent in performing its duty. The present case is squarely covered by the decision of this Court in Chairman, GRID Corporation of Orissa's case (supra)".

13. We reiterate that in the absence of material facts supported by affidavit and documents that the said overhead live wire had snapped because of the act of God in the counter affidavit of the appellants (respondents in the writ petition), it will be difficult to sustain the defence of the appellants (respondents in the writ petition) that due to heavy rainfall and lightening the overhead live wire had snapped on 22.04.2002 near Khongjom Village, and as a result, both husbands of the writ petitioners had been electrocuted. Over and above, we are of considered view that there is no material fact necessary for coming to the finding that there is disputed question of fact as to the cause for the snap of overhead live wire on 22.04.2002 which resulted to death of both husbands of petitioners due to electrocution in the present given background fact that the appellants (respondents in the writ petition) had admitted that both husbands of the writ petitioners died due to electrocution because of snap of overhead live wire belonged to and maintained by the appellants (respondents in the writ petition) and also in the absence of necessary material pleadings/documents for providing the guard for the said overhead H/ T live wire.

14. The Apex Court in State of Orissa Vs. Dr. (Miss) Binapani Dei & Ors.: AIR 1967 SC 1269 (V 54 C 264) (AIR para 6, p. 1270) held that:

"...Under Article 226 of the Constitution the High Court is not precluded from entering upon a decision on questions of fact raised by the petition. Where an enquiry into complicated questions of fact arises in a petition under Art 226 of the Constitution before the right of an aggrieved party to obtain relief claimed may be determined, the High Court may in appropriate cases decline to enter upon that enquiry and may refer the party claiming relief to a suit. But the question is one of discretion and not of jurisdiction of the Court. In the present case the question in dispute was about the regularity of the enquiry and the High Court was apparently of the view that the question whether the State acted

arbitrarily did not raise any question of investigation into complicated issues of fact. No interference with the exercise of the discretion of the High Court is, therefore, called for."

15. The Apex Court in *Babubhai Muljibhai Patel Vs. Nandalal Khodidas Barot & Ors.*: (1974) 2 SCC 706 (SCC para 10,p.715) held that:

"....A writ petition under Article 226, it needs to be emphasised, is essentially different from a suit and it would be incorrect to assimilate and incorporate the procedure of a suit into the proceedings of a petition under Article 226. The High Court is not deprived of its jurisdiction to entertain a petition under Article 226 merely because in considering the petitioner's right of relief, questions of fact may fall to be determined. In a petition under Article 226 the High Court has jurisdiction to try issues both of fact and law. Exercise of the jurisdiction is no doubt discretionary, but the discretion must be exercised on sound judicial principles. When the petition arises complex questions of fact, which may for their determination require oral evidence to be taken, and on that account, the High Court may decline to try a petition (see *Gunwant Kaur Vs. Bhatinda Municipality*: AIR 1970 SC 802:(1969) 3 SCC 769. If, however, on consideration of the nature of the controversy, the High Court decides, as in the present case, that it should go into a disputed question of fact and the discretion exercised by the High Court appears to be sound and in conformity with judicial principles, this Court would not interfere in appeal with the order made by the High Court in this respect."

16. The Apex Court in *ABL International Ltd. & Anrs*" case (*supra*) (SCC para 16, p.567) held that a writ petition involving serious disputed questions of facts which requires consideration of evidence which is not on record, will not normally be entertained by a Court in the exercise of its jurisdiction under Article 226 of the Constitution of India. This decision again, in our opinion, does not lay down an absolute rule that in all cases involving disputed questions of fact the parties should be relegated to a civil suit. In this view of ours, we are supported by judgment of this Court in the case of *Gunwant Kaur Vs. Municipal Committee Bhatinda*: (1969) 3 SCC 769 where dealing with such a situation of disputed questions of fact in a writ petition this Court held: (SCC p.774, paras 1416).

"14. The High Court observed that they will not determine disputed question of fact in a writ petition. But what facts were in dispute and what were admitted could only be determined after an affidavit in reply was filed by the State. The High Court, however, proceeded to dismiss the petition in limine. The High Court is not deprived of its jurisdiction to entertain a petition under Article 226 merely because in considering the petitioner's right to relief questions of fact may fall to be determined. In a petition under Article 226 the High Court has jurisdiction to try issues both of fact and law. Exercise of the jurisdiction is, it is true, discretionary but the discretion must be exercised on sound judicial principles. When the petition raises questions of fact of a complex nature, which may for their determination require oral evidence to be taken, and on that account the

High Court is of the view that the dispute may not appropriately be tried in a writ petition, the High Court may decline to try a petition. Rejection of a petition in limine will normally be justified, where the High Court is of the view that the petition is frivolous or because of the nature of the claim made dispute sought to be agitated, or that the petition against the party against whom relief is claimed is not maintainable or that the dispute raised thereby is such that it would be inappropriate to try it in the writ jurisdiction, or for analogous reasons.

15. From the averments made in the petition filed by the appellants it is clear that in proof of a large number of allegations the appellants relied upon documentary evidence and the only matter in respect of which conflict of facts may possibly arise related to the due publication of the notification under Section 4 by the Collector.

16. In the present case, in our judgment, the High Court was not justified in dismissing the petition on the ground that it will not determine disputed question of fact. The High Court has jurisdiction to determine questions of fact, even if they are in dispute and the present, in our judgment, is a case in which in the interest of both the parties the High Court should have entertained the petition and called for an affidavit in reply from the respondents, and should have proceeded to try the petition instead of relegating the appellants to a separate suit."

17. The Apex Court in *D.K. Basu Vs. State of W.B.*: (1997) 1 SCC 416 (SCC p. 439, para 45) held that:

"The old doctrine of only relegating the aggrieved to the remedies available in civil law limits the role of the Courts too much, as the protector and custodian of the indefeasible rights of the citizens. The Courts have the obligation to satisfy the social aspirations of the citizens because the Courts and the law are for the people and expected to respond to their aspirations. A Court of law cannot close its consciousness and aliveness to stark realities. Mere punishment of the offender cannot give much solace to the family of the victim civil action for damages is a long drawn and a cumbersome judicial process. Monetary compensation for redressal by the Court finding the infringement of the indefeasible right to life of the citizen is, therefore, useful and at times perhaps the only effective remedy to apply balm to the wounds of the family members of the deceased victim, who may have been the breadwinner of the family." 18. The Apex Court in *M. P. Electricity Board Vs. Shal Kumari & Ors.*: (2002) 2 SCC 162 had considered and discussed the doctrine of:

"strict liability" and held that a person undertaking an activity involving hazardous or risky exposure to life is liable under the law of torts to compensate the injury suffered by any other person irrespective of any negligence or callousness on the part of the managers of such undertaking, the basis of such liability is foreseeable risk inherent in the very nature of such activity. The liability cast on such person is known, in law, as "strict liability".

The M. P. Electricity Board was ordered to pay compensation for the electrocution of a cyclist because of a live wire got snapped and fell on the public road which was partially inundated with water. Paras 7 and 8 of the SCC in M. P. Electricity Board's case (supra) reads as follows:

"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 lookout 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 mishap.

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." 19. No doubt, the doctrine of "strict liability" has its origin in English Common Law when it was propounded in the celebrated case of *Reylands Vs. Fletcher*: (1868) 3 HL 330 that:

"the true rule of law is that the person who, for his own purposes, brings on his land, and collects and keeps there anything likely to do mischief if it escapes, must keep it at his peril and, if he does not do so, he is prima facie answerable for all the damages which is the natural consequence of its escape". The rule of strict liability" has been proved and followed in subsequent decisions in England. The said doctrine of strict liability" gained approval in India.

20. The Constitution Bench of the Apex Court in the celebrated case of *M C.*

Mehta Am. Vs. Union of India & Ors.: (1987) 1 SCC 395 held that "strict liability is not subject to any of the exception which operate visavis the purpose of law of strict liability under the Rules in *Reylands Vs. Fletcher*'s case (supra) in a case where the enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas owes an absolute and nondelegable duty to the community to ensure that no harm results to anyone; and also that the enterprise must be held to be not an obligation to provide that hazardous and inherently dangerous activities in which it is engaged must be conducted with the highest standard of safety and if any harm results to anyone on account of an accident in the operation of such activity resulting, for example, in escape of toxic gas the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident. In the present case, the appellants (respondents in the writ petition) are engaged in inherently dangerous act of stretching/lying overhead H/ T live wire through the electric poles and also there is foreseeable risk inherent in the very nature of such activities and strict liability is cast on them. Therefore, the snap of H/T live wire is a foreseeable inherent risk and as stated above there is no material pleading regarding taking up of reasonable precaution such as providing guards/disc insulator of the wire of prescribed quality, maintaining of electric poles, installing electric poles within the prescribed distance etc etc as provided for such safety measures in the Indian Electricity Rules, 1956 and Indian Electricity Act 2003 in the counter affidavit of the appellant (respondents in the writ petition). Accordingly, in the given case, we are unable to persuade ourselves to accept the defence of the appellants (respondents in the writ petition) that as the snap of the overhead live wire was because of the act of God, the appellants (respondents in the writ petition) are not liable for the death of both husbands of the writ petitioners due to electrocution.

21. The ratio laid down in *M. C. Mehta*'s case (supra) was also followed by the Apex Court in *Kaushnuma Begum (Smt.) & Ors. Vs. New India Assurance Co. Ltd. & Ors.*: (2001) 2 SCC 9. (Paras 15, 16 and 17 of the SCC in *Kaushnuma Begum*'s case (supra) reads as follows:

"15. The Rule is *Reylands Vs. Fletcher*: (1861 73) All ER Rep I has been referred to by this Court in a number of decisions. While dealing with the liability of industries engaged in hazardous or dangerous activities *P.N. Bhagwati, C. J.*, speaking for the Constitution Bench in *M.C. Mehta Vs. Union of India*: (1987) 1 SCC 395 expressed the view that there is no necessity to bank on the rule in *Reylands Vs. Fletcher*. What the learned Judge observed is this: (SCC p.420, para 31).

"We have to evolve new principles and lay down new norms which would adequately deal with the new problems which arise in a highly industrialised economy. We cannot allow our judicial thinking to be constricted by reference to the law as it prevails in England or for the matter of that in any other foreign

country. We no longer need the crutches of a foreign legal order."

16. It is pertinent to point out that the Constitution Bench did not disapprove the rule. On the contrary, learned Judges further said that,

"we are certainly prepared to receive light from whatever source it comes". It means that the Constitution Bench did not foreclose the application of the rule as a legal proposition.

17. In Charan Lal Sahu Vs. Union of India: (1990) 1 SCC 613 another Constitution Bench of this Court while dealing with Bhopal gas leak disaster cases, made a reference to the earlier decisions in M.C. Mehta but did not take the same view. The rule of strict liability was found favour with. Yet another Constitution Bench in Union Carbide Corpn. Vs. Union of India: (1991)4 SCC 584 referred to M. C. Mehta decision but did not detract from the rule in Reylands Vs. Fletcher."

22. The Apex Court, in view of the doctrine of strict liability, in Parvati Devi & Ors. Vs. Commissioner of Police, Delhi & Ors.: (2000) 3 SCC 754 held that once the fact of death by electrocution while walking on road established, the authority concerned, New Delhi Municipal Corporation (NDMC) must be held to be negligent and responsible for the death. Relevant portion of the judgment reads as follows:

".....Once it is established that the death occurred on account of electrocution while walking on the road, necessarily the authorities concerned must be held to be negligent, and therefore, in the case in hand, it would be NDMC who would be responsible for the death in question. It is found from the records that the appellant was serving as a machineman in The Statesman and was aged 54 years on the date of death, and the age of retirement is 60 years. Taking these factors into consideration, we direct that the appellants, who are the legal heirs of the deceased, be awarded compensation to the tune of Rs. 1,00,000 and NDMC should pay the same within 3 months from today failing which it will carry interest at the rate of 12%. This should be in total satisfaction of the compensation for the legal heirs of the deceased."

23. For the foregoing discussion, we are of considered view that strict liability is cast on the appellant (respondents in the writ petition) in undertaking an activity involving hazardous and risky exposures to human life.

Over and above, in the given case, there is no material to show that the appellants (respondents in the writ petition) had taken up reasonable precaution for avoiding the said foreseeable risk inherent because of the snap of overhead live wire.

24. For the foregoing discussions, we are not accepting the plea of the learned senior GA that because of disputed question of fact, present writ petition was not proper remedy and also of the considered view that there is no material for interfering with the judgment and order of the learned Single Judge dated

16.11.2007 wherein and whereunder the learned Single Judge had directed the appellants (respondents in the writ petition) to pay a sum of Rs. 2 lakhs each to the writ petitioners in respect of death of their husbands due to electrocution. Accordingly, the writ appeal is devoid of merit and hereby dismissed and in the result the appellants (respondents in the writ petition) shall pay a sum of Rs. 2 lakhs each to the writ petitioners within 3 months from the date of receipt of this judgment and order.