

Before Rajiv Narain Raina, J.

RAMAN—Petitioner

versus

STATE OF HARYANA AND OTHERS—Respondents

CWP No. 14046 of 2012

July 2, 2013

A. Constitution of India, 1950 - Art. 226 - Compensation - Tortuous liability - Negligence - Vicarious liability - Whether compensation should be granted in extraordinary original civil writ jurisdiction - Held - Whether victim whose fundamental rights under Article 21 of the Constitution of India are infringed, State can be called to repair the damage done notwithstanding right of citizen to remedy by way of civil suit or criminal proceedings - Monetary relief can be awarded in writ jurisdiction.

Held, that I think that on failure to use all reasonable means to prevent escape of an inherently dangerous thing, which by nature electricity is, the standard of care will be very high and the onus would be on the supplier to show that there was no negligence. In this case, the respondent-Nigam has not successfully discharged the onus to the satisfaction of this Court.

(Para 24)

Further held, that though Nilabati Behera (supra) dealt with a case of custodial death, but the principles of award of compensation in cases of contravention of the fundamental right to life and liberty based on "strict liability" laid down are of universal application in other fact situations demanding intervention. In cases where there is a factual controversy of the kind which cannot be addressed in writ jurisdiction, should a petitioner be relegated to the ordinary remedy of civil suit if his claim to compensation is actually controversial in nature which requires admitting evidence to establish such rights. The distinction between rights based on "strict liability" remediable in writ proceedings where there is public law element involved

and tortious liability would have to be kept in mind. Sovereign immunity does not apply to "strict liability" and can be used as defence in private law in an action based on tort.

(Para 25)

Further held, that on a reading of the above case law the real question in this case which arises to my mind is whether the supplier of electricity can excuse himself by showing that the escape was owing to the petitioner's default. There is, however, little doubt on the other issues arising out of strict liability; burden of proof of escape of potentially dangerous thing causing injury wittingly or by surprise; standard of care required from Licensee which is circumspect statutorily under the Act and rules to do certain acts and things in the manner specified; jurisdiction of this court to award compensation in appropriate cases in writ jurisdiction and the connected issue of quantification of compensation so that it is neither under-compensation nor overcompensation etc.; that in the present case such factors tilt in favour of the injured and need not detain us. The claim made in the petition is an actionable claim and the case is an eminently fit one for grant of compensation in exercise of powers under Article 226 of the Constitution.

(Para 34)

Further held, that I am inclined to think that principles of strict liability go to Article 21 of the Constitution of India and invade the battle ground in fighting for the protection of life and liberty of our people. There is an element of criminal negligence as well on the part of the Nigam when viewed from the standpoint of Section 68 of the Indian Electricity Act, 2003 read with Rules 29, 44, 45, 46 and 91 of the Electricity Rules 1956 which I dare say require periodic or constant vigil by the agents and servants of the Nigam. The Nigam having drawn active transmission lines 30 years ago cannot sit complacently and claim no fault because construction activity has spilled beyond the lal lakir or phirmi of the village. It is also not the case of the Nigam that it has not given lawful domestic electricity connections through meters to the residents of the area falling under the sag of the 11 KV transmission line or to the parents of the petitioner. If they have given connections and meters have been installed and they charge tariff through bills then they cannot complain of unauthorized constructions. Furthermore, even assuming arguendo that the father of the petitioner had a hand in placing

the angle iron to keep at bay a potentially offending live wire he should be understood as doing so as an act of self preservation, an instinct as primitive as man and his innate desire to stay alive. This may be seen also as akin to the right of private defence in criminal law. In absence of help forthcoming from the Nigam and to protect himself and his family from harm any reasonable man may have acted accordingly. This by itself should not be allowed to defeat a just claim for compensation.

(Para 39)

B. Constitution of India, 1950 - Art. 226 - Electricity Act, 2003 - Ss.68 - Electricity Rules, 1956 - Rls.29, 44, 45, 46 & 91 - Uttar Haryana Bijli Vitran Nigam Limited - To maintain every headlines for carrying live electricity energy in accordance with provisions of the Act, safety and protective devices enumerated in Rl.91 of Electricity Rules, 1956 are statutory in nature and require electricity authorities to conduct periodic inspection of lines/wires maintained by them in such manner that life and property of the general public is protected - Board/Nigam is duty bound to carry out activities in such a manner to ensure safety and security.

Held, that the first issue which arises for consideration is as to the duty of care cast on the respondent Nigam-Licencee of the State in maintaining transmission lines which is owner and the supplier of electricity under the Electricity Act, 2003 (for short "the Act"). Section 68 of the Act contains provisions relating to overhead lines that carry live electrical energy. The provision stipulates that an overhead line shall, with the approval of the appropriate Government, be installed or kept installed above ground, in accordance with the provisions of Section 68(2) of the Act. Section 68 gives authority to a District Magistrate to remove trees, structures or objects near an overhead line. The Electricity Board/Nigam should be thus vigilant for maintenance of live electrical lines at all times.

(Para 18)

Further held, that Rule 91 of the Electricity Rules 1956 (for short "the Rules") lays down the procedure of Safety and Protective Devices of overhead electric lines erected over any part of a street or other public place

or any consumer's premises and mandates that those shall be protected with a device approved by the Inspector for rendering the line electrically harmless in case it breaks.

(Para 19)

Further held, that Rules 29, 44, 45 and 46 of the Electricity Rules 1956 are statutory in nature and require the electricity authorities to conduct periodical inspection of lines maintained by them and are required to take all such safety measures to prevent accident and maintain the lines in such a manner that life and property of the general public is protected. The Board/Nigam is duty bound to carry out activities in such a manner that safety and security provisions are enforced in accordance with the statutory rules.

(Para 20)

Further held, that in the 11th Edition of Winfield and Jolowicz on Tort by Sweet and Maxwell, it has been observed by the learned authors at page 352 and at page 889 as under:-

"Electricity, is a dangerous thing and consequently the duty of those who own or control it is that laid down in *Rylands v. Fletcher* ((1868) LR 3 HL 330). The liability for electricity is precisely the same as for gas. "Liability for electricity is the same as for gas. It has been decided that the principle of *Rylands v. Fletcher* ((1868) LR 3 HL 330) applies to electricity, and consequently the owners of wires or cables through which an electric current is passing must keep them innocuous at their peril."

(Para 32)

C. Constitution of India, 1950 - Art. 226 - Compensation in writ jurisdiction - Assessment of quantum of compensation - Compensation sought on account of electrocution of minor child by live overhead lines/wires - Minor child aged 4 years suffered permanent disability - Quantification of compensation in special peculiar facts cannot be subjected to any straight jacket formula - Formula based on multiplier system cannot be the basis for deciding compensation.

Held, that the legal issues done, the only remaining concern of the Court is as to what extent relief is to be granted in this case. What guiding principles are to be followed in a case of a minor whose future itself is left dark and dreary filled with uncertainty? The principles of loss of income, loss to the estate, chances of employability in the future etc. remain intangible in the case of a minor child.

(Para 35)

Further held, that since the present is not a motor accident case, the quantification of compensation in the special and peculiar facts of this case cannot be subjected to any straight jacket formula. The formulas based on multiplicands/multiplier system would not guide the Court in this case. But the broad and underlying principles of compensation evolved by Courts in motor accidents would remain guidance for the Court. In cases of electrocution, the Court may grant compensation depending on the facts and circumstances of each case. However, the different heads under which compensation can be granted have been largely determined by judicial precedents in cases involving award of compensation in mishaps caused either on account of death or injury in a motor accident or in a case of electrocution caused by contact with live electrical wires and overhead transmission lines.

(Para 38)

Further held, that I agree with Mr. Malhotra that this is an eminently fit case for award of special compensation and damages as a freak and an unparalleled case in the magnitude of injury caused by electrocution.

(Para 39)

Further held, that I feel only a substantial monetary head start alone can best serve the enormity of the physical handicap in the present and the future. If the petitioner is not taken care of by the intervention of this Court at present he may never actually be justly compensated. In case the petitioner is relegated to his civil remedy of a suit as suggested by the learned counsel for the Nigam he would be doomed by delay alone.

(Para 40)

Rahul Jaswal, Advocate for Vivek K. Thakur, Advocate, *for the petitioner*

Tanisha Peshawaria, DAG Haryana

K.S. Malik, Advocate for respondents no.2 to 4

Anil Malhotra, *Amicus Curiae*

RAJIV NARAIN RAINA, J.

(1) In a tragic and heart rending accident caused by electrocution, a four year old child Raman on coming into contact with a naked 11 KV transmission line passing over the roof of his father's house built in village Sanoli Khurd, District Panipat has suffered as a consequence triple amputation of the limbs, a rare condition, leading to something even worse than 100% permanent disability.

(2) The injured Raman has filed this petition under Article 226 of the Constitution through his father, Manoj Kumar claiming compensation from the respondents-Uttar Haryana Bijli Vitran Nigam Limited (for short "the Nigam") and the State of Haryana for loss of both arms and the left leg severed leaving stumps at a tender age with almost all avenues open to earn and support himself in the future shut and so also to be denied the small pleasures of growing up to manhood and to do ordinary things that children do, and left to face life completely dependent on others till he lives. He may never find a bride or start a family. He may never be able to feed himself both literally and metaphorically until the magic world of modern science intervenes through prosthetic limbs, robotics and futuristic stem cell technology at unforeseeable cost. The old proverb goes -God helps those who help themselves- but that may not be apt in this case, since this Court exists and exists to bring succour to the helpless, the downtrodden, the disabled and the invalid who are forsaken by destiny. To visualize and understand the magnitude of the plight of the petitioner his photographs are the best testimony of what is left of him and which are made part of the order as Appendix 1.

(3) Notice of motion was issued on the petition by this Court on 26.7.2012. The Nigam has contested the case by filing a written statement. Injury by electrocution suffered on 3.11.2011 has not been disputed or that

the child came in contact with an 11KV naked wire passing over the roof of the house built by the petitioner's father in village Sanoli Khurd, District Panipat where he lives with his family. It is explained that the 11KV transmission line was erected and installed three decades ago then passing over agricultural fields. Over a period of time, as is the historical necessity, many constructions have come up outside the *abadi deh* or *lal lakir* of the village where the petitioner's father constructed a house for his family about a decade ago where the unfortunate incident happened.

(4) Of the cluster of electricity transmission lines which pass over the house of the petitioner from one electricity pole to the other, one of them hangs dangerously close to one corner of the roof. It has been transfixed with an insulator installed on an angle iron to hold it up and keep it out of harm's way. To understand the situation nothing would serve better than the photograph of the insulator with the angle iron which is appended with this order as Appendix 2.

(5) The house of the petitioner's father is a shop-cum-residence where he works out from to do his spare part business. The house lies amidst a large number of dwellings which have come up apparently without legal sanction or permission of any competent authority or before informing the electricity department-the Nigam- power corporation respondent, that the passing wires may injure man being drawn much prior in time to the coming of the affected family on the land.

(6) It has been explained in the written statement filed by the SDO (Operations) Sub Division, UHBVNL, Chhajpur, District Panipat that the insulator/angle iron seen in the photograph (P-4 to the petition and Appendix 2 to this order) was not installed by any employce of the electricity department. The father of the petitioner is blamed squarely in installing the insulator himself on the edge of the roof of the house to keep at bay the high tension live wire so as not to touch brick and mortar. Therefore, there is no negligence on the part of the department or its agents and servants in the performance of its duties, and so therefore, neither the Nigam nor its employees can be held responsible or accountable for the mishap, much less for damages or monetary compensation.

(7) When this matter came up for hearing on 10.1.2013, this Court requested Mr. Anil Malhotra, an Advocate of this Court to assist it as *amicus curiae* on the legal and factual issues involved requiring much research of legal principles attached to cases of tortious liability, negligence, vicarious liability, statutory and strict liability arising for consideration in this case where negligence was denied, and its total impact on assessment of quantum of compensation which may or may not be granted in the facts and circumstances of the case in extraordinary original civil writ jurisdiction exercised by this Court. The task was graciously accepted by Mr. Malhotra and he was then requested to assist the court in the light of precedents involving award of compensation in writ proceedings and of the legal principles involved emanating from the statutory provisions found in the Indian Electricity Act, 2003 (for short "the Act"). The young learned counsel Mr. Rahul Jaswal for the petitioner happily accepted this position to help Mr. Malhotra in the preparation of the case.

(8) The learned *amicus curiae* has by the fruit of his labour placed on record a large number of decisions of the Supreme Court and of the various High Courts and has also filed accompanying illuminating written submissions for the consideration of this Court without posturing himself for any side in his oral address. Before adverting to that material, the factual background may be necessary to advert to, to take the matter forward.

(9) The injured boy, Raman was electrocuted on 3.11.2011 resulting in severe electric burns which unfortunately later led to amputation of three limbs, a little beyond the joints. A Daily Diary Entry was recorded at Sr.No.15 on the same day in the *rapat roznamcha* of Police Post Sanauli Khurd, Panipat. The boy was taken for first aid at the local RM Anand Hospital, Panipat which referred the case to PGIMS, Rohtak. The final treatment was given at Safdarganj Hospital, New Delhi where the doctors were left with no option but to carry out the simultaneous triple amputation, leaving Raman a cripple.

(10) The father of the petitioner visited the police post on 9.1.2012 to get his statement recorded before ASI Om Parkash who had earlier visited the spot and narrated before him that his four year old son had accidentally come in contact with the high voltage live wire passing over the roof of his building. It was given that from PGIMS, Rohtak, the victim was treated at Safdarjang Hospital, New Delhi. The police recorded Daily

Diary Entry No.7 on 9.1.2012 at Police Post Sanauli Khurd, Panipat on the statement of Manoj Kumar. On 19.9.2012, the SSP, Panipat directed the DSP, Head Quarters, Panipat to enquire into the matter and submit a report by visiting the place of occurrence and recording the statement of persons etc. vide his Office Memo of even date. The Enquiry Officer, DSP HQ Panipat recorded the statement of Manoj Kumar the father of the victim, Lal Chand, Assistant Foreman, Sahib Singh, Assistant Lineman, Rameshwar, Lineman and Shashi Kumar, Sub Divisional Officer, UHBVN at Chajhpur, Panipat. During enquiry, it has been found by the police that no complaint had been received at the Complaint Centre, Sanauli Khurd, Panipat or in the office of SDM, Chhajhpur from the petitioner's father or any other person regarding 11 KV high tension wires. It was reported that the 11KV high tension electricity lines were installed about 30-32 years ago passing over agricultural fields where a decade ago, Manoj Kumar had constructed his house amidst a sea of other buildings. The police enquiry revealed that the Insulator was not installed by officials of the Electricity Department, and therefore, they were not found negligent in performance of their duties with respect to the accident on 3.11.2011.

(11) The photocopy of the discharge summary issued by the Safdarjang Hospital, New Delhi would reveal that the procedure adopted by the attending doctor was by amputation and stump reduction of both upper limbs. Since the injuries suffered were not curable, triple amputation followed in the presence of gangrene having set in both the upper arms and left leg. Raman remained an indoor patient at Safdarjang Hospital from 28.12.2011 to 31.12.2011 for treatment of electric burn injuries. It is pleaded that Raman was referred to PGIMS, Rohtak by R.M. Anand Hospital, Panipat on 3.11.2011 itself. The child was issued a disability certificate by the Office of the Civil Surgeon, Panipat on 8.2.2012 in which his disability has been medically certified to be one hundred percent.

(12) The question of negligence in tort is hotly disputed by the Licensee inasmuch as it disclaims that it had anything to do with the incident or of any vicarious liability by any act or omission of its agents. To put it bluntly, the learned counsel for the respondent Nigam Mr. K.S. Malik submits that the human hand that put the conductor on an iron angle to keep the potentially dangerous wire from coming into contact with the roof of the house was not theirs.

(13) The father of the petitioner asserts in paragraph 10 of the writ petition that he approached the SDO, Sub Division, Chhajpur, Panipat-respondent no.4 before the accident took place through a representation dated 16.8.2011 requesting him to remove the angle from the roof of the house, but no action was taken. A true translated copy of this representation has been placed on record as Annexure P-3 and photocopy of its original is found in the docket. The same has been signed by Manoj Kumar and some other residents. The contents of paragraph 10 of the writ petition have been rebutted by the Nigam, respondents No.2 to 4 in the common written statement. It is submitted that the petitioner never approached the SDO for removing the angle iron from his house nor was any such representation received at the Complaint Centre of Village Sanoli Khurd. A combined reading of the contents of paragraph 10 of the writ petition and its corresponding paragraph in the written statement shows that there is no specific denial of the existence or submission of the representation dated 16.8.2011. What is said is that such representation was not received at the Complaint Centre of Village Sanouli Khurd. It is not the assertion of the petitioner that he dropped the representation in the Complaint Centre. In fact the assertion is that he approached the 4th respondent before the accident through the representation which assertion of fact remains unrebutted on record. Therefore, it would be necessary to reproduce paragraph 10 of the writ petition and its response in the written statement:-

Paragraph 10 of the writ petition:- "That the petitioner also approached the SDO, Sub Division, Chhajpur, Panipat i.e. respondent no.4 before the accident through representation dated 16.8.2011 to remove the iron angle from the roof of the house but no action has been taken by the respondent no.4. A copy of the representation dated 16.8.2011 is annexed herewith as Annexure P-3."

Paragraph 10 of the written statement of respondents no.2 to 4:- "That the contents of para no.10 of the writ petition are wrong and as such denied. In reply thereto it is submitted that the petitioner never approached the SDO i.e. respondent no.4 or any other official of the Nigam for removing iron angle from his house nor any such representation received at the complaint centre of village Sanoli Khurd. It is further

submitted that as per sale circular of the Nigam, if any person wants to remove electric wire from at any place, he will submit the application alongwith affidavit and he will also deposit the estimate expenses in the office of concerned SDO."

(14) In the additional affidavit filed by Manoj Kumar, the father of the petitioner in response to the order of this Court dated 2.3.2013 he has asserted in paragraph 6 of the affidavit as under:-

"6. The deponent submitted that the iron angle on the roof of the house from which the live 11 KV high power Tension line passes were installed by the employee of the Electricity Department in the year 2006."

(15) This Court passed the following order on 2.3.2013:-

Learned counsel for the petitioner prays for time to file an additional affidavit of the petitioner disclosing the date of birth of the victim, the status of the family, the avocation of the father of the injured; whether the mother of the child is employed; number of siblings and their ages and schools, if any, attended by them. The affidavit should disclose the total family income i.e. the combined income of parents and not of their brothers and sisters etc.; the date of construction of the building where the child was electrocuted; whether parents are owners or tenants; whether the building is within the lal dora of village abadi deh; if outside the lal dora, whether NOC of the Gram Panchayat was obtained; who installed the angle iron on the roof of the house from which the live 11 KV high power tension line passes; when was the angle iron and by whom installed; the density of constructions disclosing as to how many houses in the immediate neighbourhood of the house in question fall below the 11 KV high power tension line; photographs depicting the position obtaining at site be also furnished.

Ms. Peshawaria, on her part would seek instructions with respect to the scheme, if any, framed under Section 357-A of the Code of Criminal Procedure, 1973 promulgated by the Haryana Government with respect to victim compensation. She would also file an affidavit of the SDM/ Executive Magistrate, Panipat of any exercise carried out under Section 68 of the Electricity Act, 2003. The affidavit would also indicate whether the construction on which the child was injured is an authorized colony and whether the construction plans have been sanctioned by any authority including Gram Panchayat village Sanoli Khurd, Panipat. The affidavit would also indicate what steps have been taken by the District administration with respect to safety and protective devices put in operation in compliance of Rule 91 of the Indian Electricity Rules, 1956 or of any counter-part rules operating in Haryana in the said village.

Mr. Malik, appearing for the Corporation prays for time to file a more detailed and comprehensive affidavit outlining the steps taken by the respondent-Corporation in discharge of duties under Section 68 of the Indian Electricity Act, 2003 and the rules framed thereunder and steps taken by its officers/officials in discharge of statutory duty of making safe overhead lines so that they do not endanger life and to speak on justification in the written statement that the lines were laid 30 or 32 years ago, thus shirking responsibility on the ground that habitation has grown outside lal dora and beneath the 11 KV high power tension line passing through the abadi.

Let the above be responded to as requested by the counsel for the respondent within four weeks. List on 02.04.2013. ”

(16) It is in response to this order that the petitioner's father has filed the above mentioned affidavit dated 30.3.2013 in which he has sworn to the following facts:-

“1. That the son of the deponent namely Raman Kumar s/ o Manoj Kumar was born on 10.9.2007 and deponent has two children namely Raman Kumar Boy and Girl Khushi.

2. *That the deponent is sole bread earner of the family as his wife is a housewife and two children, one is injured Raman and second is girl namely Khushi studying in the 4th class in Sarswati Shiksha Mandir, Sanoli Khurd.*

3. *That the deponent is having the spare-part shop in the village and combined income of his family is about 35,000 per year.*

4. *That the building where the child was electrocuted has been constructed in the year 2000 and deponent is the owner of the same as he purchased about 30 yards of land.*

5. *That the building is outside the Lal dora of village Abadi Deh and NOC from Gram Panchayat has not been obtained as the same is not given or obtained in the villages.*

6. *That the deponent submitted that the iron angle on the roof of the house from which the live 11KV high power Tension line passes were installed by the employee of the Electricity Department in the year 2006.*

7. *That the house of the deponent is surrounded by at least 40 to 60 houses and it is densely populated area and all the houses falls below or near the 11KV High Power Tension Line. Photographs showing the actual position of the site are attached."*

(17) There is no rebuttal of this affidavit though paragraph 6 contains material and verifiable particulars. There is no reason to discard the same on any ground much less on the ground of being self serving. When the version of the petitioner is accepted on the ground of non-traverse then the case comes within the fold of negligence and therefore, tortuous liability in addition to strict liability.

(18) The first issue which arises for consideration is as to the duty of care cast on the respondent Nigam-Licensee of the State in maintaining transmission lines which is owner and the supplier of electricity under the Electricity Act, 2003 (for short "the Act"). Section 68 of the Act contains provisions relating to overhead lines that carry live electrical energy. The

provision stipulates that an overhead line shall, with the approval of the appropriate Government, be installed or kept installed above ground, in accordance with the provisions of Section 68(2) of the Act. Section 68 gives authority to a District Magistrate to remove trees, structures or objects near an overhead line. The Electricity Board/Nigam should be thus vigilant for maintenance of live electrical lines at all times. Section 68 of the Act reads as follows:-

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

(19) Rule 91 of the Electricity Rules 1956 (for short "the Rules") lays down the procedure of Safety and Protective Devices of overhead electric lines erected over any part of a street or other public place or any consumer's premises and mandates that those shall be protected with a device approved by the Inspector for rendering the line electrically harmless in case it breaks. These safeguards are required to be provided by Electricity authorities statutorily. Rule 91 reads as under:-

"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]."*

(20) Rules 29, 44, 45 and 46 of the Electricity Rules 1956 are statutory in nature and require the electricity authorities to conduct periodical inspection of lines maintained by them and are required to take all such safety measures to prevent accident and maintain the lines in such a manner that life and property of the general public is protected. The Board/Nigam is duty bound to carry out activities in such a manner that safety and security provisions are enforced in accordance with the statutory rules. The aforesaid Rules are reproduced for rapid reference:-

"29. Construction, installation, protection, operation and maintenance of electric supply lines and apparatus.- (1) 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].

(2) Save as otherwise provided in these rules, 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 shall prevail.

(3) 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."

xxx

xxx

xxx

44. Instructions for restoration of persons suffering from electric shock.- (1) Instructions, in English or Hindi and the local language of the district and where Hindi is the local language, in English and Hindi for the restoration of persons suffering from electric shock, shall be affixed by the owner in a conspicuous place in every generating station, enclosed sub-station, enclosed switch-station and in every factory as defined in clause (m) of Section 2 of the Factories Act, 1948 (63 of 1948) in which electricity is used and in such other premises where electricity is used as the Inspector or any officer appointed to assist the Inspector may, by notice in writing served on the owner, direct.

(2) Copies of the instructions shall be supplied on demand by an officer or officers appointed by the Central or the State Government in this behalf at a price to be fixed by the Central or the State Government.

(3) The owner of every generating station, enclosed substation, enclosed switch-station and every factory or other premises to which this rule applies, shall ensure that all authorised persons employed by him are acquainted with and are competent to apply the instructions referred to in sub-rule (1).

(4) In every manner high voltage or extra-high voltage generating station, sub station or switch station, an artificial respirator shall be provided and kept in good working condition.

45. Precautions to be adopted by consumers, [owners, occupiers], electrical, contractors, electrical workmen and suppliers- (1) No electrical installation work, including additions, alterations, repairs and adjustments to existing

installations, except such replacement of lamps, fans, fuses, switches, low voltage domestic appliances and fittings as in no way alters its capacity or character, shall be carried out upon the premises of or on behalf of any [consumer, supplier, owner or occupier] for the purpose of supply to such [consumer, supplier, owner or occupier] except by an electrical contractor licensed in this behalf by the State Government and under the direct supervision of a person holding a certificate of competency and by a person holding a permit issued or recognised by the State Government:

Provided that in the case of works executed for or on behalf of the Central Government and in the case of installations in mines, oil fields and railways, the Central government and in other cases the State Government may, by notification in the Official Gazette, exempt, on such conditions as it may impose, any such work described therein either generally or in the case of any specific class of [consumers, suppliers, owners or occupiers] from so much of this sub-rule as requires such work to be carried out by an electrical contract licensed by the State Government in this behalf.

(2) No electrical installation work which has been carried out in contravention of sub-rule (1) shall either be energised or connected to the works of any supplier.]

46. Periodical inspection and testing of installation, - (1)(a) Where an installation is already connected to the supply system of the supplier, every such installation shall be periodically inspected and tested at intervals not exceeding five years either by the Inspector (or any officer appointed to assist the Inspector) or by the supplier as may be directed by the State Government in this behalf or (in the case of installation belonging to, or under the control of the Central Government, and in the case of installations in mines, oil fields and railways by the Central Government.

(aa) the periodical inspection and testing of high voltage and extra high voltage installations belonging to supplier, shall also be carried out at intervals not exceeding five years by the inspector or any officer appointed to assist the inspector.]

(b) Where the supplier is directed by the Central or the State Government as the case may be to inspect and test the installation he shall report on the condition of the installation to the consumer concerned in a form approved by the Inspector and shall submit a copy of such report to the Inspector or to any officer appointed to assist the Inspector and authorised under sub-rule (2) of the rule 4A.

(c) Subject to the approval of the Inspector, the forms of inspection report contained in Annexure IXA may, with such variations as the circumstances of each case require, be used for the purposes of this sub-rule.

(2)(a) The fees for such inspection and test shall be determined by the Central or the State Government, as the case may be, in the case of each class of consumers and shall be payable by the consumer in advance.

(b) In the event of the failure of any consumer to pay the fees on or before the date specified in the fee-notice, supply to the installation of such consumer shall be liable to be disconnected under the direction of the Inspector. Such disconnection, however, shall not be made by the supplier without giving to the consumer seven clear days' notice in writing of his intention so to do.

(c) In the event of the failure of the owner of any installation to rectify the defects in his installation pointed out by the Inspector or by any officer appointed to assist him and authorised under sub-rule (2) of Rule 4A in the form set out in Annexure IX and within the time indicated therein, such installation shall be liable to be disconnected [under the directions of the Inspector] after serving the owner of such installation with a notice:

Provided that the installation shall not be disconnected in case an appeal is made under rule 6 and the appellate authority has stayed the orders of disconnection:

Provided further that the time indicated in the notice shall not be less than 48 hours in any case:

Provided also that nothing contained in this clause shall have any effect on the application of rule 49.

(3) Notwithstanding the provisions of this rule, the consumer shall at all times be solely responsible for the maintenance of his installation in such condition as to be free from danger.” (underlining for emphasis)

(21) On the position of law for awarding compensation in writ jurisdiction, Mr. Malhotra in his illuminating written submissions to this Court has the following to say:-

“2. That the position of law for awarding compensation in writ jurisdiction has been recognized by the Apex Court in *Nilabati Behera versus State of Orissa & Ors. (1)* and in *Dr. Mehmood Nayyar Azam versus State of Chhatisgarh (2)*, wherein the principle enunciated is that the Supreme Court and the High Court being the protectors of the civil liberties of the citizen, have not only the power and jurisdiction but also an obligation to grant relief in exercise of its jurisdiction under Articles 32 and 226 of the Constitution. Award of compensation in writ jurisdiction for contravention of human rights and fundamental freedoms is thus recognized by the Supreme Court.

3. That the Apex Court has recognized that where victims whose fundamental rights under Article 21 of the Constitution are flagrantly infringed, the State can be called to repair the damage done by its officers to the fundamental rights of the aggrieved person, notwithstanding the right of the citizen to the remedy by way of civil suit or criminal proceedings. Hence,

(1) 1993 (2) SCC 746

(2) JT 2012 (7) SC 178

monetary relief can be awarded in writ jurisdiction to the aggrieved party for infringement of fundamental rights under Article 21 of the Constitution by awarding compensation and penalizing the wrong doer as also 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/aggrieved person.

4. Thus, following the above dictum of law, this Hon'ble Court can grant compensation by moulding the relief in writ jurisdiction by way of penalizing the wrong doer and fixing the liability for the public wrong on the respondents who have failed to perform their public duties. In the view of the Supreme Court, the payment of compensation is not to be understood as a civil action for damages but of making "*monetary amends*" under Public law for wrong done for breach of public duty. As per the law laid down by the Apex Court, this is independent of the rights of the aggrieved party to claim compensation under private law in an action based on tort through a suit instituted in a court of competent jurisdiction or/and prosecution of the offender under the penal law. Thus, this claim for "*exemplary damages*" is maintainable before this Hon'ble Court under the above settled position of law and monetary compensation can be awarded to the victim."

(22) On the position of law for awarding compensation specifically in electricity matters, Mr. Malhotra's research has resulted in the following submissions and supporting case law:-

"6. That upholding the principle of "*strict liability*" and consequential negligence in awarding compensation for breach of statutory duties/obligations on the part of State Electricity Boards, the Apex Court and the High Courts of Madras, Madhya Pradesh, Orissa, Kerala and Gujarat have awarded compensation to victims in writ/appellate jurisdiction by holding that electricity authorities are duty bound to observe precautions/safeguards under the provisions of the Indian Electricity Act, 2003 (previously the Indian Electricity Act 1910, the Electricity Supply Act, 1948 and the Rules made thereunder). Failure of

such statutory functions/duties tantamounting to negligence cannot be overcome by alleged statutory obligations on the part of the consumer of electricity. Electrocutation by live wires necessitates “*Strict liability*” and differs from liability arising on account of negligence and is not relevant in cases of “*Strict liability*”. Thus, electricity authorities are liable irrespective of whether the harm could have been avoided by the consumer taking precautions. The following judgments granting compensation for injuries/loss of life caused on account of mishaps arising out of electrocution and liability arising under the statutory enactments quoted above, are cited hereunder in support of the above settled principles of law:

a. *Madhya Pradesh Electricity Board versus Shail Kumari* (3).

b. *N.Nizhalkodi Vs The Chairman TNEB./W.P. (MD) No.6634 of 2007 decided on 16.08.2012 – S.B. of Madras High Court*

c. *A.Subramani Vs Tamil Nadu Electricity Board, W.P. (MD) No. 14011 of 2010 decided on 23.02.2012 – S.B. of Madras High Court*

d. *Ramesh Singh Pawar versus M.P. Electricity Board and others* (4).

e. *A.Krishna Patra versus Orissa State Electricity Board* (5).

f. *The Kerala State Electricity Board versus Suresh Kumar* (6).

g. *Patel Maganbhai Bapujibhai versus Patel Ishwarbhai Motibhai* (7).

(3) AIR 2002 SC 551

(4) AIR 2005 MP 2

(5) AIR 1997 Ori 109

(6) AIR 1986 Ker 72

(7) AIR 1984 Guj 69

“That in the aforestated situation, the settled position of law indicates that the rule of strict liability and the theory of foreseeable risk makes the electricity authorities primarily liable to compensate the sufferer. So long as the voltage of electricity transmitted through the wires is potentially of dangerous dimensions, the managers of its supply have the added duty to take all safety measures to prevent escape of such energy which causes electrocution. Thus, it is the statutory obligation, duty and responsibility of the electricity authorities to provide safety and protective devices for rendering safeguards and failure to do so entails award of compensation on account of any mishap which occurs by lack of safeguards.”

(23) On the applicability of the settled position of law to the present case, Mr. Malhotra has the following to say:-

“8. That from a reading of the averments made in the petition, the minor child Raman was electrocuted on 03.11.2011 by the live overhead line/wire on the open roof of his house provided by respondent nos. 1 to 4 by installing an angle iron on the roof of the house of the petitioner. This mode and method of providing electrical energy to the residential premises of the petitioner through a live overhead line/wire by installing it through an angle iron contrary to the provisions of Section 68 of the Electricity Act, 2003, clearly establishes its flagrant violation. No precautions, safeguards, safety measures or other steps were taken to ensure that the live overhead line/wire was at a reasonable and sufficient distance to avoid human contact. Hence, by installing the live overhead line/wire and keeping it exposed clearly establishes that no measures were taken to avoid mishap by contact with the wire transmitting high voltage electrical energy. Hundred percent permanent disabilities have been suffered by the minor 4 year old child on this count.

9. That in the aforestated situation, applying the principles in the judgments quoted above and upon the doctrine of *strict liability* being fully attracted to the present case and keeping in view the negligence of the respondents in not providing any

safeguards, checks, balances, there is a clear statutory obligation upon the respondents to pay compensation for the loss caused to the petitioner. Furthermore, the respondents did not exercise care and caution in doing any periodic checks in ensuring that the live wire installed through an angle iron should have been detected and immediately removed. As suppliers of electrical energy, the respondents are fully liable for not ensuring the removal of the live overhead line/wire which was a potentially dangerous and volatile risk situation. Therefore, even on account of negligence, the respondents are fully liable for compensation.”

(24) I think that on failure to use all reasonable means to prevent escape of an inherently dangerous thing, which by nature electricity is, the standard of care will be very high and the onus would be on the supplier to show that there was no negligence. In this case, the respondent-Nigam has not successfully discharged the onus to the satisfaction of this Court.

(25) Though **Nilabati Behera** (*supra*) dealt with a case of custodial death, but the principles of award of compensation in cases of contravention of the fundamental right to life and liberty based on “strict liability” laid down are of universal application in other fact situations demanding intervention. In cases where there is a factual controversy of the kind which cannot be addressed in writ jurisdiction, should a petitioner be relegated to the ordinary remedy of civil suit if his claim to compensation is actually controversial in nature which requires admitting evidence to establish such rights. The distinction between rights based on “strict liability” remediable in writ proceedings where there is public law element involved and tortious liability would have to be kept in mind. Sovereign immunity does not apply to “strict liability” and can be used as defence in private law in an action based on tort. In paragraph 10 of **Nilabati Behera** the Supreme Court held as under:-

“10. In view of the decisions of this Court in Rudul Sah v. State of Bihar and Another, [1983] 3 S.C.R. 508, Sebastian M. Hongray v. Union of India and Others, [1984] 1 S.C.R. 904 and [1984] 3 S.C.R. 544, Bhim Singh v. State of J&K [1984] Supp. S.C.C. 504 and [1985] 4 S.C.C. 677, Saheli, A Women's Resources Centre and Others v. Commissioner

of Police, Delhi Police Headquarters and Others, [1990] 1 S.C.C. 422 and State of Maharashtra and Others v. Ravikant S.Patil, [1991] 2 S.C.C. 373, the liability of the State of Orissa in the present case to pay the compensation cannot be doubted and was rightly not disputed by the learned Additional Solicitor General. It, would, however, be appropriate to spell out clearly the principle on which the liability of the State arises in such cases for payment of compensation and the distinction between this liability and the liability in private law for payment of compensation in an action on tort. It may be mentioned straightaway that award of compensation in a proceeding under Article 32 by this court or by the High Court under Article 226 of the Constitution is a remedy available in public law, based on strict liability for contravention of fundamental rights to which the principle of sovereign immunity does not apply, even though it may be available as a defence in private law in an action based on tort. This is a distinction between the two remedies to be borne in mind which also indicates the basis on which compensation is awarded in such proceedings. We shall now refer to the earlier decisions of this Court as well as some other decisions before further discussion of this principle."

(26) In paragraphs 17, 18, 19 and 22 of the report there are contained guiding principles for Courts to follow and apply. They read 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.

18. A useful discussion on this topic which brings out the distinction between the remedy in public law based on strict liability for violation of a fundamental right enabling award of compensation, to which the defence of sovereign immunity is inapplicable, and the private law remedy, wherein vicarious liability of the State in tort may arise, is to be found in Ratanlal & Dhirajlal's Law of Torts, 22nd Edition, 1992, by Justice G.P. Singh, at pages 44 to 48.

19. This view finds support from the decisions of this Court in the Bhagalpur blinding cases: Kharti and Others (II) v. State of Bihar and Others, [1981] 1 S.C.C. 627 and Kharti and Other (TV) v. State of Bihar and Others, [1981] 2 S.C.C. 493, wherein it was said that the court is not helpless to grant relief in a case of violation of the right to life and personal liberty, and it should be prepared to forge new tools and devise new remedies' for the purpose of vindicating these precious fundamental rights. It was also indicated that the procedure suitable in the facts of the case must be adopted for conducting the inquiry, needed to ascertain the necessary facts, for granting the relief, as

the available mode of redress, for enforcement of the guaranteed fundamental rights. More recently in Union Carbide Corporation and Others v. Union of India and Others, [1991] 4 S.C.C. 584, Misra, C.J. stated that 'we have to develop our own law and if we find that it is necessary to construct a new principle of liability to deal with an unusual situation which has arisen and which is likely to arise in future..... there is no reason why we should hesitate to evolve such principle of liability' To the same effect are the observations of Venkatachaliah, J. (as he then was), who rendered the leading judgment in the Bhopal gas case, with regard to the court's power to grant relief.

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22. The above discussion indicates the principles on which the Court's power under Articles 32 and 226 of the Constitution is exercised to award monetary compensation for contravention of a fundamental right. This was indicated in Rudul Sah and certain further observations therein adverted to earlier, which may tend to minimize the effect of the principle indicated therein, do not really detract from that principle. This is how the decisions of this Court in Rudul Sah and others in that line have to be understood and Kasturilal distinguished therefrom. We have considered this question at some length in view of the doubt raised, at times, about the propriety of awarding compensation in such proceedings, instead of directing the claimant to resort to the ordinary process of recovery of damages by recourse to an action in tort. In the present case, on the finding reached, it is a clear case for award of compensation to the petitioner for the custodial death of her son." (underlined for emphasis)

(27) In *Dr. Mehmood Nayyar Azam versus State of Chhattisgarh and others* (8), the Supreme Court while dealing with the question of

compensation in a case of torture and harassment in police custody, observed that when the matter is of public law remedy, the compensation can be allowed as it is an independent right available to an aggrieved party under private law. The interfacing appears to be between private law injuries adjudicated through public law remedy.

(28) In *Madhya Pradesh Electricity Board versus Shail Kumari and others (9)*, the factual situation obtaining was that a live electric wire had snapped and was lying on a public road partially inundated with rain water when the deceased unwittingly rode over the wire on a bicycle which then twitched and snuffed his life instantaneously. The Supreme Court held:-

"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.

9. 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 Law Reports (3) HL 330). Blackburn J., the author of the said rule had observed thus in the said decision:

"The rule of law is that the person who, for his own purpose, brings on his lands 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 damage which is the natural consequence of its escape."

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.)

11. The rule of strict liability has been approved and followed in many subsequent decisions in England. A recent

decision in recognition of the said doctrine is rendered by the House of Lords in Cambridge Water Co. Ltd. v. Eastern Counties Leather Plc. {1994(1) All England Law Reports (HL) 53}. The said principle gained approval in India, and decisions of the High Courts are a legion to that effect. A Constitution Bench of this Court in Charan Lal Sahu v. Union of India and a Division Bench in Gujarat State Road Transport Corporation v. Ramanbhai Prabhatbhai had followed with approval the principle in Rylands v. Fletcher. By referring to the above two decisions a two Judge Bench of this Court has reiterated the same principle in Kaushnuma Begum v. New India Assurance Co. Ltd. (2001) 2 SCC 9}.

12. In M.C. Mehta v. Union of India this Court has gone even beyond the rule of strict liability by holding 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; such liability is not subject to any of the exceptions to the principle of strict liability under the rule in Rylands v. Fletcher." (underlining for emphasis)

(29) The defense of the supplier of electricity in the aforesaid case was that the death caused by electrocution was due to the clandestine pilferage committed by a stranger of unauthorized siphoning the electricity energy from the supply line and hence the wrongdoer alone should be mulcted with the burden of damages. The Supreme Court did not accept this defence and upheld compensation awarded by the High Court.

(30) In A. Krishna Patra (*supra*), the Division Bench of the Orissa High Court in a case of death by electrocution observed as follows:-

"8. The question relating to the liability of the Orissa State Electricity Board in case of death by electrocution due to snapping of transmission line or the like reason, came up for consideration before this Court in two recent cases,

*namely, Smt. Rajani Devi v. Chairman, Orissa State Electricity Board, (1996) 81 Cut LT 353, and Uttam Sahu v. Chairman, Orissa, State Electricity Board, (1996) 2 OLR 99. In both these cases, the cause of death was electrocution due to coming in contact with a snapped line which remained charged. While dealing with the question in Rajani Devi's case (*supra*), after referring to Rule 91 of the Indian Electricity Rules which relates to safety and protective devices and paragraphs 35 and 36 contained in Volume 37 of the Halsbury's Laws of England, 4th Edition, it has been held that the law is clear that the O.S.E.B. must take special precautions in the operations connected with the transmission of energy through over-head lines. It was further indicated therein that in such cases, the burden will be heavy on the Board to establish that they could have prevented the escape of electric current as such things do not happen, if those who have the management use proper care. In the case at hand, it is the plea of the O.S.E.B. that neither they were negligent nor was the snapping of the live conductor due to lack of supervision. However, this is belied by the report of the Electrical Inspector which indicates that one of the phased Conductors snapped as it had outlived its utility and had become mechanically weak. This clearly indicates the lack of care, caution and proper supervision on the part of the opposite parties. Nay, it indicates a clear case of object indifference, for it was the bounden duty of the opposite parties to see that a mechanically unsound and weak conductor is replaced, looking to the very serious consequences which are likely to follow, which indeed have happened in this case. Permitting transmission of electrical energy through conductors which have outlived their utility and have become mechanically weak and unsound would itself be an indication of negligence. If such a conductor snaps and the line does not become electrically harmless and thereby results in the death of a person, this would by itself be a ground for imputing negligence to the O.S.E.B. In such a*

case, the burden would, we feel, be on the O.S.E.B. to explain and not on the claimant to establish negligence of the O.S.E.B. The petitioner need show nothing more.

9. The plea of an inevitable accident or an act of God advanced at the stage of hearing, cannot come to the aid of the opposite parties. While considering the question of inevitable accident or an act of God, it will be useful to reproduce a passage from the Law of Torts, 22nd Edition, by Justice G. P. Singh, which reads thus:

“All causes of inevitable accidents may be divided into two classes: (1) those which are occasioned by the elementary forces of nature unconnected with the agency of man or other cause; and (2) those which have their origin either in the whole or in part in the agency of man, whether in acts of commission or omission, non-feasance or mis-feasance, or in any other causes independent of the agency of natural forces. The terms ‘act of God’ is applicable to the former class.”

An inevitable accident is an event which happens not only without the concurrence of the will of the man, but in spite of all efforts on his part to prevent it. It means, an accident physically unavoidable something which cannot be prevented by human skill or foresight. We have already referred to the report of the Electrical Inspector which indicates that the conductors snapped as it had outlived its utility and had become mechanically weak and unsound. Had the Board exercised proper care and supervision, it could have taken proper and prompt steps to replace the mechanically unsound and weak conductor in time, but that was not done. Thus, it cannot be said that the O.S.E.B. could not have prevented the incident by exercise of ordinary care, caution and proper supervision. Thus, it is not a case where the accident took place in spite of all efforts on the part of the O.S.E.B. to prevent it. In other words, it can be said that the accident was solely due to lack of care and caution on the part of the O.S.E.B. and its functionaries.

Thus, it follows that the plea of an inevitable accident is wholly misconceived and cannot come to the aid of the opposite parties for getting out of its liability.

10. An 'act of God' is an inevitable or unavoidable accident without the intervention of the man; some casualty which the human foresight could not discern and from the consequence of which no human protection could be provided. This is not a case where the incident was due to unexpected operation of natural forces free from human intervention which no reasonable human foresight could be presumed to anticipate its occurrence or to prevent it. On the contrary, the material on record clearly indicates that but for indifference and inaction — negligence of the O.S.E.B. in not replacing the mechanically unsound and weak conductor which had outlived its utility, the incident may not have occurred.

11. Thus, though under the Electricity Act 1910 and the Electricity Supply Act, 1948, transmission of electric energy may absolve the O.S.E.B. from liability for nuisance for the escape of electric energy but in a case of negligence or, we may say, due to lack of care, inasmuch as the O.S.E.B. fails to use all reasonable means to prevent such escape, the O.S.E.B. will be liable, for in view of the inherently dangerous nature of electricity, the standard of care will necessarily be very high and it would be for the O.S.E.B. to show that there was no negligence in a case like the one at hand.

12. As a reference was made to the case of Rylands v. Fletcher (186S-LR 3HL 330) (supra), the same may be dealt with briefly. In that case, the defendants had constructed a reservoir upon their land, in order to supply water to their mill. On the site that was chosen for the reservoir, there existed some shafts of a coal mine which was not in use. However, the passages also led to the adjoining mine which was owned by the plaintiff. This, however, was not discovered at the time of construction with the result that when the reservoir was filled, the water went down to the shaft and flooded the plaintiff's mine. Under these facts,

the plaintiff instituted a suit for damages and succeeded. Dismissing the defendants' appeal, it was held by the House of Lords:

"The question of law therefore arises, what is the obligation which the law casts on a person who, like the defendants, lawfully brings his land something which, though harmless while it remains there, will naturally do mischief if it escapes out of his land? It is agreed on all hands that he must take care to keep in that which he has brought on the land and keep there, in order that it may not escape and damage his neighbours; but the question arises whether the duty which the law casts upon him under such circumstances is an absolute duty to keep it at his peril or is, ... merely a duty to take all reasonable and prudent precautions in order to keep it in, but no more ...

We think 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 in at his peril, and if he does not do so is prima facie answerable for all the damage which is the natural consequence of its escape. He can excuse himself by showing that the escape was owing to the plaintiffs default; or, perhaps, that the escape was the consequence of 'vis major' or the act of God; but as nothing of this sort exists here, it is unnecessary to enquire what excuse would be sufficient." (underlining for emphasis)

(31) In **Suresh Kumar** (*supra*), a Division Bench of the Kerala High Court while dealing with a case of compensation for injuries caused to a child on coming in contact with the 11 KV line live electric wire, upheld award of compensation for injuries sustained. The facts of the case were that a stay wire which supported the electric pole holding the 11 KV line had been cut two days prior to the incident by some workers of the defendant- Board. As a result, the pole gradually leaned and the wire sagged

to a height of about one meter above the paddy field, the child came in contact with the wire resulting in severe injuries and burns resulting in amputation of his right arm below the elbow.

(32) In the 11th Edition of Winfield and Jolowicz on Tort by Sweet and Maxwell, it has been observed by the learned authors at page 352 and at page 889 as under:-

“Electricity, is a dangerous thing and consequently the duty of those who own or control it is that laid down in Rylands v. Fletcher ((1868) LR 3 HL 330). The liability for electricity is precisely the same as for gas.

“Liability for electricity is the same as for gas. It has been decided that the principle of Rylands v. Fletcher ((1868) LR 3 HL 330) applies to electricity, and consequently the owners of wires or cables through which an electric current is passing must keep them innocuous at their peril.”

(33) In *U.P. Rajya Vidyut Parishad versus Chandra Pal (10)*, the Allahabad High Court held that failure of Electricity Board to maintain proper height of transmission wires was a per se negligent act and the doctrine of *res ipsa loquitur* was applicable. Merely putting up a notice or danger sign would not absolve the Board from its liability for injuries suffered or death caused. In this strain, see also cases of electrocution; *State of J&K versus Mohd. Iqbal (11)*, *Smt. Aunguri Devi versus Haryana Vidyut Prasaran Nigam Ltd. (P&H) (DB) (12)*, *Mushtaq Ahmed versus State of J. & K. (13)*, *Ramesh Singh Pawar versus M.P.E.B (M.P.) (14)*, *Paramjit Kaur versus State of Punjab (P&H) (DB) (15)*, *Dano Bai versus Punjab State, (P&H) (DB) (16)*, *Maya Rani Banik versus State of Tripura, (Gauhati) (DB) (17)*, and *U.P. Power Corporation versus Bijendra Singh (18)*, etc.

(10) 2002(3) RCR (Civil) 154

(11) AIR 2007 J&K 1

(12) 2002 (2) RCR (Civil) 414

(13) AIR 2009 J&K 29

(14) AIR 2005 M.P. 2

(15) 2008 (4) RCR (Civil) 772

(16) 1997 (1) PLR 414

(17) AIR 2005 Gauhati 64

(18) AIR 2009 All. 56

(34) On a reading of the above case law the real question in this case which arises to my mind is whether the supplier of electricity can excuse himself by showing that the escape was owing to the petitioner's default. There is, however, little doubt on the other issues arising out of strict liability; burden of proof of escape of potentially dangerous thing causing injury wittingly or by surprise; standard of care required from Licensee which is circumspect statutorily under the Act and rules to do certain acts and things in the manner specified; jurisdiction of this court to award compensation in appropriate cases in writ jurisdiction and the connected issue of quantification of compensation so that it is neither undercompensation nor overcompensation etc.; that in the present case such factors tilt in favour of the injured and need not detain us. The claim made in the petition is an actionable claim and the case is an eminently fit one for grant of compensation in exercise of powers under Article 226 of the Constitution.

(35) The legal issues done, the only remaining concern of the Court is as to what extent relief is to be granted in this case. What guiding principles are to be followed in a case of a minor whose future itself is left dark and dreary filled with uncertainty? The principles of loss of income, loss to the estate, chances of employability in the future etc. remain intangible in the case of a minor child.

(36) In cases of motor accidents, the issue of compensation has largely been evolved by case law, before and after introduction of the 2nd Schedule appended to the Motor Vehicles Act, 1988, and under the repealed 1937 Act and compensation granted according to the multiplier specified in the Schedule on a case to case basis. Some of the important cases of the Supreme Court on the subject are *General Manager, Kerala State Road Transport Corporation, Trivandrum* versus *Susamma Thomas (Mrs.) and Ors.* (19), *Sarla Dixit (Smt.) and Anr.* versus *Balwant Yadav and Ors.* (20), *U.P. State Road Transport Corporation and Ors.* versus *Trilok Chandra and Ors.* (21), *Kaushnuma Begum (Smt.) and Ors.* versus *New India Assurance Co. Ltd. and Ors.* (22), *United India Insurance Co. Ltd. & Ors.* versus *Patricia Jean Mahajan & Ors.* (23), *Jyoti Kaul & Ors.* versus *State of M.P. & Anr.* (24),

(19) (1994) 2 SCC 176

(20) (1996) 3 SCC 179

(21) (1996) 4 SCC 362

(22) (2001) 2 SCC 9

(23) (2002) 6 SCC 281

(24) (2002) 6 SCC 306

Abati Bezbaruah versus Dy. Director General, Geological Survey of India & Anr. (25), New India Assurance Co. Ltd. versus Shanti Pathak (Smt.) & Ors. (26).

(37) The Supreme Court has recently considered the issue of compensation in motor accident cases in a comprehensive judgment rendered in **C.A. No.4646 of 2009 (Reshma Kumari and others versus Madan Mohan and another)** on 2.4.2003 by a three Judges Bench. R.M.Lodha, J, speaking for the Bench has summarized the law on the subject in paragraph 40 of the judgment which reads as under:-

“40. In what we have discussed above, we sum up our conclusions as follows:

(i) In the applications for compensation made under Section 166 of the 1988 Act in death cases where the age of the deceased is 15 years and above, the Claims Tribunals shall select the multiplier as indicated in Column (4) of the table prepared in *Sarla Verma* {*Note: Sarla Verma v. DTC, (2009) 6 SCC 121*} read with para 42 of that judgment.

(ii) In cases where the age of the deceased is upto 15 years, irrespective of the Section 166 or Section 163A under which the claim for compensation has been made, multiplier of 15 and the assessment as indicated in the Second Schedule subject to correction as pointed out in Column (6) of the table in *Sarla Verma* should be followed.

(iii) As a result of the above, while considering the claim applications made under Section 166 in death cases where the age of the deceased is above 15 years, there is no necessity for the Claims Tribunals to seek guidance or for placing reliance on the Second Schedule in the 1988 Act.

(iv) The Claims Tribunals shall follow the steps and guidelines stated in para 19 of *Sarla Verma* for determination of compensation in cases of death.

(v) While making addition to income for future prospects, the Tribunals shall follow paragraph 24 of the Judgment in *Sarla Verma*.

(25) (2003) 3 SCC 148

(26) (2007) 1) SCC 1

(vi) Insofar as deduction for personal and living expenses is concerned, it is directed that the Tribunals shall ordinarily follow the standards prescribed in paragraphs 30, 31 and 32 of the judgment in Sarla Verma subject to the observations made by us in para 38 above.

(vii) The above propositions mutatis mutandis shall apply to all pending matters where above aspects are under consideration.

(38) Since the present is not a motor accident case, the quantification of compensation in the special and peculiar facts of this case cannot be subjected to any straight jacket formula. The formulas based on multiplicands/multiplier system would not guide the Court in this case. But the broad and underlying principles of compensation evolved by Courts in motor accidents would remain guidance for the Court. In cases of electrocution, the Court may grant compensation depending on the facts and circumstances of each case. However, the different Heads under which compensation can be granted have been largely determined by judicial precedents in cases involving award of compensation in mishaps caused either on account of death or injury in a motor accident or in a case of electrocution caused by contact with live electrical wires and overhead transmission lines.

(39) I agree with Mr. Malhotra that this is an eminently fit case for award of special compensation and damages as a freak and an unparalleled case in the magnitude of injury caused by electrocution. Though I do not agree to his quantification of compensation under different heads which is rather conservative and does not satisfy the conscience of the Court or the extent of injury, I am inclined to think that principles of strict liability go to Article 21 of the Constitution of India and invade the battle ground in fighting for the protection of life and liberty of our people. There is an element of criminal negligence as well on the part of the Nigam when viewed from the standpoint of Section 68 of the Indian Electricity Act, 2003 read with Rules 29, 44, 45, 46 and 91 of the Electricity Rules 1956 which I dare say require periodic or constant vigil by the agents and servants of the Nigam. The Nigam having drawn active transmission lines 30 years ago cannot sit complacently and claim no fault because construction activity has spilled beyond the *lal lakir* or *phirni* of the village. It is also not the case of the Nigam that it has not given lawful domestic electricity connections through meters to the residents of the area falling under the sag of the 11 KV transmission line or to the parents of the petitioner. If they have given connections and meters have been installed and they charge tariff through bills then they cannot complain of unauthorized constructions. Furthermore,

even assuming *arguendo* that the father of the petitioner had a hand in placing the angle iron to keep at bay a potentially offending live wire he should be understood as doing so as an act of self preservation, an instinct as primitive as man and his innate desire to stay alive. This may be seen also as akin to the right of private defence in criminal law. In absence of help forthcoming from the Nigam and to protect himself and his family from harm any reasonable man may have acted accordingly. This by itself should not be allowed to defeat a just claim for compensation. However, to the contrary there is no specific denial, as discussed above, that the angle iron (P-4) was installed by the agents of the Nigam in 2006. The frontiers of strict liability and negligence in tort thus get clubbed together and run in tandem to the peril of the Nigam.

(40) In this case, the first focus is most certainly on urgent medical treatment of Raman including prosthetic or artificial/robotic limbs so that the child is able as soon as possible to perambulate and carry out his daily chores and perform survival tasks and to make it real for him to attend the nearest school so that his education may not suffer or remain disrupted. The focus would then shift to secure Raman's financial future in the background of 100% permanent disability and to try and make him employable through some avocation which may be consistent and possible with his condition. There is also a huge question mark whether Raman would find employment to secure his own future after he attains majority. With one leg left and the three amputations leaving stumps being just below the three joints prosthetic or artificial limbs may be difficult without robotic technology which may be frightfully expensive which certainly Raman's family would never be able to afford. In the future, Stem Cell Therapy/Technology may become a reality for Raman who is presently little over five years old. Something may happen during his life time which may liberate him, but these are presently imponderables but surely factors for the court to consider for in the present in shaping relief looking to the foreseeable future. The question really is what is to be done to guard his future today. No amount of compensation can undo what has befallen. The petitioner is a total invalid who cannot survive on his own physical exertion. He cannot feed himself. He may become a huge burden on the limited financial and emotional resources of his immediate family. The mother's love may be the only fond hope but that too might wane for the arduous care needed and may not be really sufficient succour to meet the constant help required for sheer living every day. Her special

diversion of labour to one of her two children would need to be compensated in terms of money towards partial expenditure involved in nursing care day in and day out. A twenty four hour vigil from within family resources may not be possible. A plaintive call for help at odd hours by the petitioner may escape attention of the parents and the sibling sister who are also involved in living their own lives. Who would wake and respond to nature's call, call of hunger, food, water etc. forever till it lasts. Hygiene and bathing are also serious and major issues to be addressed. Who would do it day in and day out? No, it may not be effectively possible without outside help on payment to make life as bearable as possible in the circumstances. Desperation of all and sundry is writ large in this case. Most certainly, outside help would have to be enlisted at considerable expense, which may vary currently from Rs 7,000/- wages per month for eight hours a day to about Rs 10,000/- odd for 8 PM to 8 AM stint to tide over the night, of which judicial notice can be taken. Family help would not be available to the petitioner for the whole day, throughout his life. I think at least Rs 15,000/- 17,000/- plus a month would be involved on a permanent basis towards expenditure likely to be spent on paid caregivers to look after the petitioner throughout his life. The mother's labour is also quantifiable in terms of wages for the work involved towards at least one third of the working day. Loss of future employment also deserves to be paid attention too. One day the petitioner would be left alone to fend for himself battling out his life alone trying to do simple chores and things which mean nothing to the physically advantaged. I feel only a substantial monetary head start alone can best serve the enormity of the physical handicap in the present and the future. If the petitioner is not taken care of by the intervention of this Court at present he may never actually be justly compensated. In case the petitioner is relegated to his civil remedy of a suit as suggested by the learned counsel for the Nigam he would be doomed by delay alone.

(41) Keeping the totality of the circumstances in mind and the balance to be struck between under-compensation and overcompensation, this Court issues, in its considered view, the following directions in quantification of monetary compensation, damages and other ancillary and incidental matters involved, as are essentially required in order to secure the ends of justice:-

- (i) The respondent-Nigam being a licensee of the State and the State of Haryana shall remain jointly and severally liable for compensation awarded under this order.

(ii) The Engineer-in-Chief or his nominee representing the respondent Licensee and the Director General of Health Services, Haryana or his nominee representing the State together with the natural parents of Raman will be joint guardians of the minor Raman for the purpose of execution of monetary compensation and administration of this order.

(iii) The Engineer-in-Chief representing the Nigam shall immediately tie up with the Director General of Health Services, Haryana to consider the case for immediate medical treatment of minor Raman to make him mobile through artificial limbs etc. The father of Raman would be associated with the process of finding immediate solutions to make the minor as little dependent on his parents, sibling and others as possible. The Director General of Health Services, Haryana would initiate the process and remain the executor of the medical treatment of the minor and to certify the expenditure involved to be paid by the Nigam whenever due. The PGI, Rohtak, the PGIMER, Chandigarh and the AIIMS, New Delhi and other specialist medical institutes may be consulted for making recommendations on the line of treatment. Those institutions are requested by this order to share their expertise on humanitarian principles free of cost with the Director General of Health Services, Haryana with a view to help minor Raman in all ways possible.

(iv) All expenses incurred in securing artificial/robotic limbs etc. for the minor presently and in the future including stem cell technology/therapy, if a reality during lifetime would be certified by the Director General of Health Services, Haryana in effective consultation with the Director PGI Rohtak or his nominee and paid by the respondent Nigam under the Head of this order to avoid red tape.

(v) In order to secure the financial and monetary future of the minor Raman, it is directed that the respondent-Nigam would pay compensation of Rs.30 lacs to him immediately for loss of enjoyment of life, trauma suffered and to act as a guard against neglect and dependence on others, loss of future employability and the agony of it all, pain and mental shock suffered and continue to be suffered by an irreconcilable event that has

completely changed the life of a family. This amount would when made available with interest on reaching the age of 21 years act as a financial security and building block for the future. The amount will 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 a nationalized bank, preferably in the State Bank of Patiala, Branch at Punjab and Haryana High Court, Chandigarh. The amount is directed to be so deposited within 60 days of receipt of certified copy of this order failing which the amount will carry 8.5% interest till deposit in the Bank where after the principal amount will earn interest at bank rates for fixed deposits fixed from time to time. However, the amount awarded under this head will only be available to the minor Raman on attaining the age of majority i.e. 21 years. In case the minor Raman does not survive till the age of majority, this amount with all interest accrued shall revert to the respondent-Nigam with no claim on it by any third party or the parents or siblings of Raman. This would ensure that the child is valued and cared for till he attains majority.

(vi) Since the above amount of Rs 30 lacs would remain inaccessible to the petitioner for his use he would require running income to meet his daily expenses for paid caregivers/attendants or family help/labour equivalent to such expenses and other bare and sundry expenses which are quantified at about Rs 20,000/- plus per month for life as at present. To earn interest of Rs 20,000/- per month a corpus of Rs 30 lacs is required to be invested in the Bank to earn interest @ 8.5% being current rates on long term fixed deposits. Therefore, in addition to Rs.30 lacs as awarded in direction (v), the respondent-Nigam would pay and deposit compensation of a further amount of Rs.30 lacs to be kept in a separate interest bearing account in the same bank as directed under point no. (v), under the same joint guardianship arrangement. This will be an interest accruing account with interest proceeds available to meet the day-to-day needs of the petitioner. The interest so accrued will be

transferred in a separate savings bank account to be opened in the same branch in minor Raman's name to be operated jointly by the parents payable to the petitioner on regular monthly basis to be applied for the care of the child by the parents, his educational expenses, nutritious food, costs of attendants/care givers to minister to him day after day etc. The above amount of Rs.30 lacs from which interest will be used for the petitioner from month to month will also not be allowed to be withdrawn for any purpose, till the petitioner attains the age of 21, without obtaining orders from this Court, if circumstances so warrant, except the monthly interest as directed. The State Bank of Patiala, Branch at Punjab and Haryana High Court, Chandigarh would open the said Savings Bank Account in the name of the minor under the guardianship of mother and father and transfer the said savings Bank Account to the Branch nearest to the residence of the petitioner and the bank would remit the interest accrued thereon every month to the said savings account at Panipat Branch, to be auto-renewed till the petitioner reaches the age of 21 years. The amount is directed to be so deposited within 60 days of receipt of certified copy this order failing which the amount will carry 8.5% interest till deposit in the Bank where after the principal amount will earn interest at bank rates for fixed deposits from time to time.

(vii) The District Social Welfare Officer, Panipat or his nominee is directed to make periodic visits to the house of the petitioner to know of his care and well being, to offer any support available with the department and report his/her findings periodically to the Nigam and the Director General Health Services, Haryana for their record and action if necessary or required after obtaining acknowledgement of either or both the parents of the petitioner as the case may be, of the visit and if anything further is required to be done to inform the Nigam and the Director General Health Services, Haryana accordingly and, if required, this Court for further orders. In case of death of guardian/s, the parties would have the liberty to move this Court for appropriate orders to make necessary change to give effect to this order.

(viii) Since interest component on the aforesaid amounts would constitute income and therefore exigible to income tax, the Bank where the amounts will sit is directed to take all such steps by itself to remit tax due/deduct TDS on behalf of Minor Raman and furnish details of tax paid to the parents of the petitioner and the respondent-Nigam for their record. The mother/father of the petitioner would apply for and obtain a Permanent Account Number from the Income Tax Department so that the interest income does not suffer 20% deduction. In case the mother/father of the petitioner applies for PAN card then the Income Tax Authorities are directed to expeditiously issue a PAN Card in favour of the mother and the father of the petitioner, in case they do not have one already, to facilitate payment of tax on behalf of the minor as part of his/her/their income. This order is directed to be sent to the Commissioner of Income Tax, Haryana Circle, Haryana for action, if any, required under this order for purposes of PAN card and tax implications.

(ix) The respondent-Nigam would pay compensation of Rs.2 lacs immediately to the mother of the minor Raman for trauma, mental shock, pain and agony caused to her, the minor injured child and the family members.

(x) The petitioner would also be entitled to cost of litigation quantified at Rs.20,000/- payable to the father of the petitioner.

(xi) In case, in the future, when the minor Raman comes of employable age and if the respondent-Nigam finds that Raman is qualified for any post in accordance with the rules, it may offer permanent employment to Raman on compassionate grounds as an exception in terms of this order. In case permanent employment is offered to Raman by the Nigam in the future and up till the age of 21 years, then Rs.30 lacs compensation awarded by this Court under directive (v) supra shall be put in his Provident Fund Account/pension account or by whatever alternate name called as an exception to rules or in any manner found fit by the Nigam either in lump sum or periodically as the case may be and to be ultimately available to him on retirement or in case of death during employment then to his nominee. In

case this last direction is not put in motion, Rs.30 lacs compensation awarded by this Court under the present direction would go to Raman on attaining majority at the age of 21 years but without interest consumed. However, in case the petitioner does not survive till attaining the age of majority then Rs.25 lacs, or any deducted amount as a consequence of any order of this Court, would revert to the Nigam and Rs.5 lacs would become immediately due and payable to both the parents of the petitioner for their grievous loss, pain and suffering, expenses already spent on the child including medical expenses incurred and loss of a future income generator/ bread winner.

(xii) Since this Court has awarded substantial monetary compensation on principles of both strict and vicarious liability and on tortious liability based on negligence it is ordered that no civil suit would lie claiming further compensation in any Court.

(viii) A direction is also issued to the Nigam to immediately raise the height of the offending 11 KV transmission lines above the *abad* to make it safe and render them electrically harmless to habitation and take them beyond the reach of man below or to devise such other alternatives so as to by-pass the colony altogether in village Sanoli Khurd, District Panipat to start with.

(42) For the foregoing reasons, this petition is allowed with the above directions and observations and the same stands disposed of, however, with the liberty to the parties to seek any other or further direction in the present matter that passage of time may necessitate and which is not foreseen at present.

(43) In signing off, this court records its appreciation on the clarity brought to bear by Mr. Anil Malhotra, learned amicus curiae on the subject and also affirms its thanks to my Secretary, Mr. M.F. Khan to suggest attaching Appendices 1 & 2 to this judgment to make it self contained and comprehensive and for the Nigam to realize in one glance the magnitude of the disablement and the problems that lie ahead for which really no amount of monetary amends are good enough.