Madhya Pradesh Electricity Board vs Shail Kumari And Ors. on 11 January, 2002

Equivalent citations: I(2002)ACC526, 2002ACJ526, AIR2002SC551, 2002(3)ALD4(SC), 2002(3)ALT34(SC), [2002(1)JCR375(SC)], JT2002(1)SC50, 2002(1)KLT480(SC), (2002)2MLJ9(SC), 2002(2)MPHT324, RLW2002(1)SC189, 2002(1)SCALE119, (2002)2SCC162, [2002]1SCR164, 2002(1)UJ390(SC), AIR 2002 SUPREME COURT 551, 2002 (2) SCC 162, 2002 AIR SCW 129, 2002 (1) ALL CJ 218, (2002) 1 ALLMR 963 (SC), (2002) 1 ALL WC 495, (2002) 1 JCR 375 (SC), 2002 (1) ALL MR 963, 2002 (1) SCALE 119, (2002) 1 JT 50 (SC), 2002 SCC(CRI) 315, 2002 (2) SRJ 428, 2002 (1) SLT 149, 2002 (1) UJ (SC) 390, (2002) 2 PAT LJR 189, (2002) 1 CIVILCOURTC 685, (2002) 1 JAB LJ 240, (2002) 1 ICC 1089, (2002) 1 ACJ 526, (2002) 1 KER LT 480, (2002) 2 MAD LJ 9, (2002) 2 MAHLR 274, (2002) 22 OCR 290, (2002) 1 RAJ LW 189, (2002) 1 RECCRIR 433, (2002) 1 SCJ 253, (2002) 3 ANDHLD 4, (2002) 1 SUPREME 98, (2002) 1 SCALE 119, (2002) WLC(SC)CVL 134, (2002) 1 UC 357, (2002) 2 MPHT 324, (2002) 1 ACC 271, (2002) 46 ALL LR 448, (2002) 3 ANDH LT 34, (2002) 2 BLJ 160, (2002) 2 CIVLJ 424, 2002 (2) ALD(CRL) 756

Bench: K.T. Thomas, S.N. Phukan

JUDGMENT

Thomas, J.

1. Leave granted.

2. The supplier of electricity in a locality is striving to squirm cut of the liability to compensate the dependents of the sole victim of a snap electrocution. The supplier, Madhya Pradesh Electricity Board (for short the Board) pleads that the electrocution was due to the clandestine pilferage committed by a stranger unauthorisedly siphoning the electric energy rom the supply line and hence the wrong doer alone should be mulcted with the burden of damages. In a suit filed by the dependents of the victim the trial court agreed with the Board in regard to the aforesaid contention, but the High Court disagreed and directed the Board to pay the amount of damages assessed. The said judgment of the High Court of Madhya Pradesh is now under challenge in this appeal. After hearing learned counsel for the Board we do not find the necessity to seek the help of the respondents in deciding this appeal and hence service of notice on the respondents is dispensed

with.

3. One Jogendra Singh, a workman in a factory, aged 37, was riding on a bicycle on the night of 23.8.1997 while returning from his factory, without any premonition of the impending disaster awaiting him en-route. The disaster was lying on the road in the form of a live electric wire. Thee was rain and hence the road was partially inundated with water. The cyclist did not notice the live wire on the road and hence he rode the vehicle over the wire which twitched and snatched him and he was instantaneously electrocuted. He fell down and died within minutes.

4. When the action was brought by his widow and minor son, nobody disputed the fact that Jogendra Singh died at the place and at the time mentioned by the claimants. Nor has it been disputed that he was electrocuted by the live wire lying on the road. The main contention advanced by the appellant Board is that one Hari Gaikwad (third respondent) had taken a wire from the main supply line in order to siphon the energy for his own use and the said act of pilferage was done clandestinely without even the notice of the Board; and that the line got unfastened from the hook and it fell on the road over which the cycle ridden by the deceased slided resulting in the instantaneous electrocution.

5. Third respondent disclaimed any liability, repudiated the allegation of pilferage of electric energy and disowned having taken the line from the main supply wire which became the death trap of Jogendra Singh.

6. The compensation claim was in a sum of Rs. 6.9 lacs. The trial court assessed the compensation amount to which the claimants are entitled as Rs. 4.34 lacs. But the claimants were non-suited by the trial court solely on the premise that the claimants "failed to prove who was liable for the above compensation". A Division Bench of the High Court of Madhya Pradesh allowed the appeal filed by the claimants and directed the Board to pay the compensation amount of Rs. 4.34 lacs to the claimants. The Division Bench reached the said conclusion on the following reasoning:

> "The MPEB has stated in paragraph No. 5 of the document Ex. P/6 that it has kept staff to see that no pilferage of electricity takes place and it had no knowledge about this pilferage of electricity line by Hari Gaikwad. Therefore, it becomes clear that the electricity supply line was moving in that part of the area out of which the wire was hanging, may be or may not be put by Hari Gaikwad, put it was live electricity wire and when the deceased came in contact with it he died of electrocution. Therefore, the defences put up by the MPEB are absolutely without any basis and do not reflect the real position at the spot, rather attempt has been made to conceal the real position in order to avoid responsibility and liability for payment of compensation."

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 doe snot apply". (vide Page 535 Winfield on Tort, 15th Edn.)

11. The rule of strict liability has been approved and followed in many subsequent decision 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 Rod 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."

13. In the present case, the Board made an endeavour to rely on the exception to the rule of strict liability (Rylands v. Fletcher) being "an act of stranger". The said exception is not available to the Board as the act attributed to the third respondent should reasonably have been anticipated or at any rate its consequences should have been prevented by the appellant-Board. In Northwestern Utilities, Limited v. London Guarantee and Accident Company, Limited {1936 Appeal Cases 108}, the Privy Council repelled the contention of the defendant based on the aforesaid exception. In that case a hotel belonging to the plaintiffs was destroyed in a fire caused by the escape and ignition of natural gas. The gas had percolated into the hotel basement from a fractured welded joint in an intermediate pressure main situated below the street level and belonging to the defendants which was a public utility company. The fracture was caused during the construction involving underground work by a third party. The Privy Council held that the risk involved in the operation undertaken by the defendant was so great that a high degree care was expected of him since the defendant ought to have appreciated the possibility of such a leakage.

14. The Privy Council has observed in Quebec Railway, Light Heat and Power Company Limited v. Vandry and Ors. {1920 Law Reports Appeal Cases 662} that the company supplying electricity is liable for the damage without proof that they had been negligent. Even the defence that the cables were disrupted on account of a violent wind and high tension current found it sway through the low tension cable into the premise of the respondents was held to be not a justifiable defence. Thus, merely because the illegal act could be attributed to a stranger is not enough to absolve the liability of the Board regarding the live wire lying on the road.

15. In W.B. State Electricity Board v. Sachin Banerjee the Electricity Board adopted a defence that electric lines were illegally hooked for pilferage purposes. This Court said that the Board cannot be held to be negligent on the said fact situation but the question of strict liability was not taken up in that case.

16. In the light of the above discussion we do not think that the Board has nay reasonable prospect of succeeding in this appeal. Hence even without issuing notice to the respondents we dismiss this appeal.