

**IN THE COURT OF SENIOR CIVIL JUDGE- 3
AIZAWL DISTRICT: AIZAWL, MIZORAM**

CIVIL SUIT NO. 28 OF 2010

Plaintiff:

Smt. Sanghnuni
W/o Mr. R. Pakunga (L)
Phulmawi, Serchhip District

By Advocate's : 1. Mr. C. Lalrinchhunga
2. Mr. H. Lalmuankima
3. Mr. K. Lalnunhlma

Versus

Defendants:

1. The State of Mizoram
Represented by the Chief Secretary
2. Secretary/Commissioner to the Govt. of Mizoram
Power and Electricity Department
Mizoram- Aizawl
3. Engineer in Chief
Power and Electricity Department
Govt. of Mizoram
4. Chief Engineer (Distribution)
Power and Electricity Department
Govt. of Mizoram
5. Superintending Engineer (Transmission Circle)
Power and Electricity Department
Govt. of Mizoram
6. Executive Engineer
Power and Electricity Department
Serchhip Power Division
Govt. of Mizoram
7. Sub- Divisional Engineer
Power and Electricity Department
Serchhip Power Sub- Division
Govt. of Mizoram

By Advocate's : Mr. R. Lalremruata, AGA

Date of Judgment & Order : 18-01-2011

BEFORE

Dr. H.T.C. LALRINCHHANA, Sr. CJ- 3

JUDGMENT & ORDER

GERMINATION OF THE CASE

This is a suit for claiming compensation amounting to Rs. 6,85,000/- (rupees six lakh and eighty five thousand) due to the death of the husband of the plaintiff namely Mr. R. Pakunga, Phulmawi due to electrocution and alleged due to negligence on the part of the defendants.

The plaintiff in her plaint submitted that on the 23rd September, 2008, as requested by one Mr. Sawivela who is Lineman under Power & Electricity Department, Govt. of Mizoram, the husband of the plaintiff namely Mr. R. Pakunga helped the said Lineman to check Power line at Phulmawi village, while putting ladder on the electric pole by Mr. R. Pakunga and his friend, they were electrocuted and as a result Mr. R. Pakunga was died on the spot. Before putting of the said ladder, the said Mr. Sawivela Lineman informed some of the duty at Thingsulthliah Power Sub- Station/Division through telephone to cut off the power supply as intending to check the power line. Due to failure to comply the said request, the said sad incident took place. The plaintiff therefore prayed compensation as follows-

- (1) Loss of dependency = Rs. 6,00,000/- (5000x12x15x2/3)
- (2) Loss of consortium, estate, love and affection and loss of comfort in life and mental shock etc. = Rs. 80,000/-
- (3) Funeral expenses = Rs. 5,000/- [In the sum total of Rs. 6,85,000/- (rupees six lakh and eighty five thousand)]

And any other relief which the court deem fit and proper

The defendants also contested and filed written statements, they submitted that the cause of death of Mr. R. Pakunga was not due to negligence of the defendants but due to ill-fated accident. They admitted that in the morning of 23rd September, 2008, Mr. R. Pakunga and two persons voluntarily came to help Mr. Lalsawivela, Sr. Lineman which he was intending to check the power line at Phulmawi and the accident occurred. Meanwhile, they further contended that on 23.9.2008 at around 7:00 A.M., Pu Lalsawivela, Sr. Lineman in-charge, Phulmawi village contacted Pu R. Thangkima, J.E. in charge, Tlungvel feeder and informed about damage of Gang cum D.O. fuse unit contact point caused by lighting stroke on 22.9.2008 evening. He also requested to shut down Tlungvel feeder (which fed Phulmawi village) for preparing the said damage. But due to poor signal of Cell phone, the in charge J.W. could not contact duty staff of 33 KV sub- station control room, Thingsulthliah. So, the J.E. informed the said Pu Lalsawivela not to do the repairing work unless he received shut down information from him. At 10:00 A.M., Pu Lalsawivela, Sr. Lineman contacted in-charge J.Y.E. for shut down of the line. The J.R. in charge clearly told him 2 (two) times not to do the work and to wait for shutdown of the line. Pu Lalsawivela also replied as 'Yes'. Without receiving back of such information, Pu Lalsawivela, the deceased Pu R. Pakunga and two other persons came voluntarily to help him tried to put an alluminium ladder. After putting Gang cum D.O. fuse switch and the ladder was in contact with the II KV line and the accident occurred. As per the report of the department, the said accident was not due to negligence or ignorance on the part of the defendants. Hence, the defendants prayed to dismiss the suit.

ISSUES

The following issues were framed on 14/6/2010 such as-

1. Whether the suit is maintainable in its present form and style

2. Whether the defendants are liable to pay compensation to the plaintiff.
If so, to what extend.

BRIEF ACCOUNTS OF EVIDENCE

Evidence of the Plaintiff:

The plaintiff had produced the following witnesses-

- (1) Smt. Sanghnuni W/o R. Pakunga (L), Phulmawi- Serchhip District
(Herein after referred to as PW- 1)
- (2) Mr. Lalliankima S/o Rozuala, Phulmawi- Serchhip District (Herein
after referred to as PW- 2)
- (3) Mr. C. Lalramdina S/o C. Rokima, Phulmawi- Serchhip District
(Herein after referred to as PW- 3)

The PW- 1 deposed that the deceased Mr. R. Pakunga was her husband and she is the legal heiress of the said deceased. They do not have any child with the deceased/husband but look after one child who is the daughter of her brother and she is attaining 17 years of age. Her husband is a Church elder in Presbyterian Church and a Carpenter in profession. Since her husband is very expertise in carpentry work, he never met paucity of work by earning Rs. 250/- per day. Her husband is the sole breadwinner in family. Although her husband was worked as Skill- II in P&E Department for sometime, he resigned from the said profession due to inconvenience for transfer. In the forenoon of 23rd September, 2008, Mr. Sawivela, Lineman also asked him to help for checking of electric power line. By inviting others namely- Mr. Lalropuia and Mr. Lalliankima, after breakfast, they intended to check power line. But before checking/repairing of the same, the said Mr. Sawivela informed the workers at Thingsulthliah Power sub-station to switch off the electric current. After that Mr. Sawivela told them that "You can do the work", while making up of ladder, the ladder touch electric line, since electric current was remaining not switch off, her husband Mr. R. Pakunga, Mr. Sawivela and Mr. Lalkima were electrocuted. After taking the body of Mr. Pakunga into the house, he was succumbed due to electrocution. She thereby claimed the sum total of Rs. 6,85,000/- (rupees six lakh and eighty five thousand) for compensation as it was due to negligence and carelessness of the state defendants.

Ext. P- 1 is her plaint copy

Ext. P- 1 (a) [Plaintiff signature in the plaint] and 1 (b) [Verificant of the plaint] are her signatures

Ext. P- 2 is her Affidavit in the plaint

Ext. P- 2 (a) [Deponent of Affidavit] is her signature

Ext. P- 3 is letter of witness prepared by the President, Village Council, Phulmawi

Ext. P- 4 is Death Certificate

Ext. P- 5 is Heirship Certificate

Ext. P- 6 (3 pages) is a copy of Police report

Ext. P- 7 (4 sheets) is PME report

Ext. P- 8 is a copy of Birth Certificate of the deceased

Ext. P- 9 (2 sheets) is a copy of Legal Notice given by the plaintiff to the state defendants.

In her cross examination, she further deposed that she do not know that who was communicated prior to electrocution of the deceased by Mr. Sawivela. She does not know that who were accompanied by her husband at the time of repairing of electric line as she was absent from their house at that time. Neither she herself nor her husband have medicate certificate indicating their health status. It is a fact that the state defendants did not insist he deceased to put a ladder in the electric line.

The PW- 2 deposed that in the morning of 23rd Sept., 2008, as requested by Mr. Sawivela, Lineman, he and Mr. R. Pakunga and Mr. Lalropuia helped him to check electric power supply line, while putting of ladder, they all were electrocuted and as a result of which Mr. R. Pakunga was died after taken into the house. Before putting of ladder, Mr. Sawivela telephoned the workers at Thingsulthliah Power Sub- Station to switch off the electric power supply and after that Mr. Sawivela told them to put a ladder. In his opinion, the accident was because of the negligence and carelessness on the part of the state defendants.

In his cross examination, he further deposed that the state defendants did not insist them to put a ladder by touching electric line. Mr. Sawivela had contacted Mr. TK-a by a telephone but he do not know the reply of the said Mr. TK-a JE through telephone.

In his re-examination, he deposed that he do not know the full name of Mr. TK-a but ascertained that he is working as JE at Thingsulthliah Power Sub- Station.

The PW- 3 deposed that he is a Registrar of Births & Deaths at Phulmawi village sine 2003, he duly issued death certificate of Mr. R. Pakunga on 23rd September, 2008.

Ext. P- 4 (a) [Signature of Issuing Authority of Death Certificate] is his true signature

Ext. P- 8 (a) [Signature of Issuing Authority of Birth Certificate] is his true signature

In his cross examination, he further deposed that he do not know the exact date of issuance of Death Certificate.

Evidence of the Defendants:

On the other hand, the defendants produced the following witnesses-

- (1) Mr. K.A. Varghese, SDO, Power Sub- Division, Thingsulthliah, P&E Department, Govt. of Mizoram (Herein after referred to as DW- 1)

(2) Mr. R. Thangkima, J.E. Power Sub- Division, Thingsulthliah, P&E Department, Govt. of Mizoram (Herein after referred to as DW- 2)

The DW- 1 deposed that he being employees of the state defendants submitted a report as per Rule 44-A of Indian Electricity Rules in the form on account of the deceased of Mr. R. Pakunga. His report contains that on 23.9.2008 at around 7:00 A.M., Pu Lalsawivela, Sr. Lineman in-charge, Phulmawi village contacted Pu R. Thangkima, J.E. in charge, Tlungvel feeder and informed about damage of Gang cum D.O. fuse unit contact point caused by lighting stroke on 22.9.2008 evening. He also requested to shut down Tlungvel feeder (which fed Phulmawi village) for preparing the said damage. But due to poor signal of Cell phone, the in charge J.W. could not contact duty staff of 33 KV sub- station control room, Thingsulthliah. So, the J.E. informed the said Pu Lalsawivela not to do the repairing work unless he received shut down information from him. At 10:00 A.M., Pu Lalsawivela, Sr. Lineman contacted in-charge J.Y.E. for shut down of the line. The J.R. in charge clearly told him 2 (two) times not to do the work and to wait for shutdown of the line. Pu Lalsawivela also replied as 'Yes'. Without receiving back of such information, Pu Lalsawivela, the deceased Pu R. Pakunga and two other persons came voluntarily to help him tried to put an alluminium ladder. After putting Gang cum D.O. fuse switch and the ladder was in contact with the II KV line and the accident occurred. The J.E. also received a call from Pu Lalsawivela hurriedly told that they met an accident. The J.E. also instructed Pu Lalsawivela to do the artificial respiration and necessary First Aid to the victim. While arranging vehicle to pick up the victim into the Hospital, the J.E in charge received a phone call from Pu Lalsawivela that the victim Pu R. Pakunga was died.

Ext. D-1 is the form for reporting electrical accident

Ext. D- 1 (a) [Signature in Form for reporting electrical accident] is his true signature

Ext. D- 2 is accident report

Ext. D- 2 (a) [Signature in Accident report] is his signature

In his cross examination, he further deposed that he was in his room when the J.E. contacted Mr. Lalsawivela, Sr. Linesman informing not to touch power line unless shutting down from the sub-station. It is a fact that his deposition in examination in chief is on the basis of the information furnished to him by the J.E.

The DW-2 deposed that at the time of incident, he was J.E. in charge in the area of occurrence. On 22.9.2008, Mr. Lalsawivela Sr. Lineman verified the cause of not having electric power supply and he thereby found that Gang connection at Phulmawi distribution transformer was malfunction. Initiative was taken to repair the same in the morning of 23.9.2008. Since 33 KV Sub- Station was unreachable by a telephone, they seceded to repair. After breakfast, Mr. Lalsawivela took initiative by plying the place of malfunction accompanied by three Phulmawi villagers namely- Mr. Lalropuia, Mr. Liankima and Mr. R. Pakunga. He asked them not to move for repairing before telling them through telephonic message that

Tlungvel Feeder 11 KV line at 33 KV Sub- Station, Thingsulthliah was shut down. But before communicate them, they put alluminium ladder, the said ladder touch 11 KV line and thereby electrocuted three persons namely- Mr. R. Pakunga, Mr. Lalsawivela and Mr. Liankima at 10:05 A.M., Mr. R. Pakunga was therefore unluckily demised. On that day of 23.9.2008, since Presbyterian Church, Phulmawi have social work for Gospel camping, Mr. R. Pakunga and his friends voluntarily assisted Mr. Lalsawivela. An accident was occurred purely because of volunteer of the deceased.

Ext. D- 2 (b) [Signature in Accident report] is his true signature

In his cross examination, he further deposed that it is a fact that he duly warned Mr. Lalsawivela not to move for repairing before receiving his telephonic message. It is also a fact that the accident can be happened solely because of the fault of the victim deceased.

POINTS OF RIVALRY

In the written and oral arguments, Mr. C. Lalrinchhunga and Mr. H. Lalmuankima, Ld. Advocates for the Plaintiff after appreciating evidences relied that the defendants are liable to pay compensation to the plaintiff in the case of **Joginder Kaur V. Punjab State** (1969 ACJ 28), **State of Rajasthan V. Vidhyawati AIR 1962 SC 933** and the observation of Hon'ble Gauhati High Court in the case of **Smt. S.K. Shangring Lamkang And Ors. Vs. State of Manipur and Ors.** decided on 16 Nov., 2007 reported in 2008 (1) GLT 32= AIR 2008 Gau 46 and compensation amount could be awarded in terms of Schedule II of Motor Vehicle Act, 1988 while the deceased was born on 12th Feb., 1951 and became 57 years old at the time of his death and is a carpenter by profession earning Rs. 250/- per day. Further cited that **Smt. Shakuntala Devi V. Delhi Electric Supply Undertaking & Ors.** reported in 1995 SCC (2) 369.

Mr. R. Lalremruata, Ld. AGA for the defendants after reiterating the ins and outs of evidences contended that the incident was purely accident and the victim without any request voluntarily interposed for repairing works, no liability on the part of the defendants had arisen. It was an act in violation of instruction given to Mr. Lalsawivela by Mr. R. Thangkima, J.E. P&E Department, no fault, negligence and recklessness on the part of the defendants arose.

FINDINGS

Issue No. 1

Maintainability of the suit

On perusal of case record, while the suit is valued at Rs. 6,85,000/- and the requisite court fees as per the Court Fees (Mizoram Amendment) Act, 1996 is Rs. 5000/- and as directed by virtue of S. 149 of the Code of Civil Procedure, 1908, the plaintiff make up deficiency of requisite court fees and is paid in full.

The plaint is duly accompanied by Affidavit sworn by the plaintiff and Verification undersigned by the plaintiff.

The plaintiff is the holder of Heirship Certificate No. 44 of 2010 issued by Ld. Magistrate SDCC, Aizawl under Memo No. SDCC/HC 44/10/SV/358-60 Dated Aizawl, the 25th January, 2010 from claiming compensation from the defendants in respect of the deceased Mr. R. Pakunga.

Certified true copy of PME report under No. D. 11028/154/05- CMO 'E'/82, Dated Aizawl, the 6th Oct., 2008 is also submitted with the plaint and the opinion of medical expert is that the cause of death was due to cardiovascular collapse due to the electrocution.

As required u/s 80 of the CPC, a copy of Legal Notice Dt. 18/8/2009 claiming Rs. 6,85,000/- given to the defendants is also found on the record.

In the matter of jurisdiction of the subject matter, in the case of **Abdul Haque And Ors. vs Bses Yamuna Power Ltd. And Ors.** decided on 20/7/2007 and reported in 142 (2007) DLT 526, their Lordship of Hon'ble Delhi High Court has held that-

“25. The net result is that in cases involving claim for compensation on account of death due to electrocution, where the facts are disputed, the Hon'ble Supreme Court has held that a writ petition for payment of compensation is not maintainable under Article 226 of the Constitution. The remedy in such cases will obviously be only before the Civil Court.

...35. This Court accordingly upholds the preliminary objection of the respondents that since these petitions involve adjudication of disputed questions of fact, they are not maintainable as such under Article 226 of the Constitution. However, it is made clear that it will be open to the petitioners to avail of other appropriate legal remedies in accordance with law.”

Thus, this court is competent to adjudicate the instant case on merit as held and observed in the above case.

To sum up, I find no laches which vitiate the proceedings in the instant suit.

Issue No. 2

Liability to pay compensation and it's extend

By weighting the minutes of evidences of both the plaintiff and the defendants and the contents of the plaint and written statements including documents so filed, the findings of incidents can be epitomized that-

- (1) On the morning of 23.9.2008, the deceased Mr. R. Pakunga with his two local friends namely Mr. Lalropuia and Mr. Liankima voluntarily assisted Sr. Lineman of state defendants namely- Mr. Lalsawivela to repair damage of Gang cum D.O fuse unit contact point at Phulmawi distribution transformer caused by lighting stroke happened on 22.9.2008.
- (2) Before moving to repair directly, Mr. Lalsawivela asked the duty personnel at 33 KV Sub-Station Control room, Thingsulthliah to shut down Tlungvel Feeder 11 KV line as intended to undergo repairing works. But before receiving back of information from the said 33 KV Sub-Station Control room, they tried to put alluminium ladder, while

putting of the same, the said ladder touch live electric line, accident occurred causing untimely sad demise of Mr. R. Pakunga.

Meanwhile, in time report of incident in compliance with rule 44A of Indian Electricity Rules, 1956 appears complies which says that-

“44A. Intimation of Accident- If any accident occurs in connection with the generation, transmission, supply or use of energy in or in connection with, any part of the electric supply lines or other works of any person and the accident results in or is likely to have resulted in loss of human or animal life or in any injury to a human being or an animal, such person or any authorised person of the State Electricity Board/Supplier, not below the rank of a Junior Engineer or equivalent shall send to the Inspector a telegraphic report within 24 hours of the knowledge of the occurrence of the fatal accident and a written report in the form set out in Annexure XIII within 48 hours of the knowledge of occurrence of fatal and all other accidents. Where practicable a telephonic message should also be given to the Inspector immediately the accident comes to the knowledge of the authorised officer of the State Electricity Board/Supplier or other person concerned.”

In this catena, the cited cases of Ld. Advocates for the plaintiff are not much helpful to overcome the midst of the moot point. **Joginder Kumar (supra)** is a case where liability lies to the employees where the deceased is not the employees of the state defendants, **Smt. S.K. Shangring Lamkang And Ors. Vs. State of Manipur and Ors. (supra)** is relevant as strict liability is invokable in electrocution case. The sequence of legal implications and its environs in dynamism can be traced that S. 185 of the Electricity Act, 2003 repealed the old and archaic Indian Electricity Act, 1910, the said *Electricity Act, 2003* is made effective from June 10, 2003, the *Electricity (Amendment) Act, 2003* is also in force with effect from January 27, 2004 and the *Electricity (Amendment) Act, 2007* is in force with effect from June 15, 2007, the *Electricity Rules, 2005* framed under section 176 of the Electricity Act, 2003 is also notified under GSR 379 (E) Dt. 8th June, 2005.

The “Central Electricity Authority (Safety requirements for construction, operation and maintenance of electrical plants and electric lines) Regulations, 2008” under clause (c) of Section 73 read with sub-section (2) of Section 177 of the Electricity Act, 2003 was already framed but not known its effective date. Moreover, the Central Electricity Authority (Grid Standards) Regulations, 2006 framed as per provisions under section 34, Section 73(d) and section 177(2) (a) of the Electricity Act, 2003 was also chalked out but yet effective, **the Central Electricity Authority (Measures relating to Safety and Electricity Supply) Regulations, 2007** under section 53 and read with Clause (b) of sub-section (2) of Section 177 of the Electricity Act, 2003 was also framed out which is intended to repealed the Indian Electricity Rules, 1956 by virtue of clause 31 of the said Regulation read with clause (c) of sub-section (1) of section 185 of the Electricity Act, 2003. But, the effective date of the ‘*Central Electricity Authority (Measures relating to Safety and Electricity Supply) Regulations, 2007*’ is yet not known. Hence, by virtue of clause (c) of sub-section (1) of section 185 of the Electricity Act, 2003, the relevant provisions of the Indian Electricity Rules, 1956 requires to look into. In a nutshell, Chapter- IV and VIII of the Indian Electricity Rules, 1956 embodied General Safety Requirements which is very stringent to comply with and to safe an innocent people.

Besides the above, in compliance with section 3 of the Electricity Act 2003, the National Electricity Policy is further chalked out under No. 23/40/2004-R&R (Vol.II) Dated the 12th, February, 2005 for the improvement of Electricity in the Country with safe and secure mode of transmission.

Judicial intervention on electrocution is rampant that the Hon'ble Supreme Court in **M.P. Electricity Board vs. Shail Kumari and others** reported in [2002 (2) SCC 162] that the liability of the Electricity Board under Law of Torts to compensate for the injuries suffered cannot be denied on the basis that the Electricity Board has taken all safety measures since the liability of the Department is strict liability, relying upon the renowned and celebrated case on the issue, viz., Rylands vs., Fletcher (1868 (3) HL 330: 1861-73 All ER Rep.1). The Supreme Court has held as follows:

"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.

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 (3) HL 330: 1861-73 All ER Rep.1). Blackburn, J., the author of the said rule had observed thus in the said decision: (All ER p. 7E-F) "[The true rule of law is that the person who, for his own purposes, brings on his land, and collects and keeps there anything likely to do mischief if it escapes, must keep it at his peril, and, if he does not do so, he is prima facie answerable for all the damage which is the natural consequence of its escape."

The above are consonance with a series of verdict and observations in the followings, such as –

*In the case of **Smti Maya Rani Banik And Anr. vs State Of Tripura And Ors.** decided on 3 December, 2004 reported in AIR 2005 Gau 64*

*In the case of **Surjya Das vs Assam State Electricity Board And Ors.** decided on 15 September, 2005 reported in (2006) ACC 36, AIR 2006 Gau 59, (2006) 2 GLR 387*

*In the case of **State Of Mizoram And Ors. vs H. Lalrinmawia** decided on 4/3/2008 reported in 2008 (2) GLT 32*

*In the case of **Edentinora Mawthoh vs State Of Meghalaya And Ors.** decided on 7/12/2007 and reported in 2008 (1) GLT 732*

*In the case of **State Of Tripura And Ors. vs Jharna Rani Pal And Anr.** decided on 25 July, 2007 and reported in 2008 (1) GLT 974*

*In the case of **Madhya Pradesh Electricity Board vs Shail Kumari And Ors.** decided on 11/1/2002 and reported in (2002) ACC 526, 2002 ACJ 526, AIR 2002 SC 551*

*In the case of **Smt. S.K. Shangring Lamkang And Anr. vs State Of Manipur And Ors.** decided on 16 November, 2007 and reported in AIR 2008 Gau 46, 2008 (1) GLT 32*

*In the case of **State Of Manipur And Ors. vs Hurilung Kamei** decided on 30/5/2007 reported in 2007 (4) GLT 342*

*In the case of **A.S. Zingthan vs State Of Manipur And Ors.** decided on 18/3/1997 reported in 1999 ACJ 904*

The next task becomes the true meaning and concepts of 'Strict Liability'. In the case of **J.K. Industries Limited Etc.Etc vs The Chief Inspector Of Factories and Boilers & Ors.** decided on 25 September, 1996 and reported in 1996 (6) Suppl. SCR 798, 1996 (6) SCC 665, 1996 (7) SCALE 247, 1996 (9) JT 27, it was observed that-

"The offences are strict statutory offences for which establishment of mens rea is not an essential ingredient. The omission or commission of the statutory breach is itself the offence. Similar type of offences based on the principle of strict liability, which means liability without fault or mensrea, exist in many statutes relating to economic crimes as well as in laws concerning the industry, food adulteration, prevention of pollution etc. In India and abroad. 'Absolute offences' are not criminal offences in any real sense but acts which are prohibited in the interest of welfare of the public and the prohibition is backed by sanction of penalty. Such offences are generally known as public welfare offences."

In the case of **Dineshchandra Jamnadas Gandhi vs State Of Gujarat And Anr** decided on 17 January, 1989 and reported in 1989 AIR 1011, 1989 SCR (1) 138, it was held that-

"12. The plea in the last analysis reduces itself to one of ignorance of the law. This would be no justification. Ten thousand difficulties, it is said, do not make a doubt. As the learned authors (supra) put it. "One who, being ignorant of the law, sells goods at a price in excess of the maximum fixed by the statute, could hardly be said to have been led astray by his conscience while the 'harm prescribed' lacks objective wrongness".

The Statute we are concerned with prescribes a strict liability, without need to establish Mens Rea. The Actus Reus is itself the offence. There might be cases where some mental element might be a part of the Actus Reus itself. This is not one of those cases where anything more than the mere doing of the prescribed act requires to be proved."

In the case of **Madhya Pradesh Electricity Board vs Shail Kumari And Ors.** decided on 11 January, 2002 reported in (2002) ACC 526, 2002 ACJ 526, AIR 2002 SC 551, the Supreme Court has observed that-

"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 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 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*."

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."

The Supreme Court in the case **Syed Akbar V. State of Karnataka**, 1980 ACJ 38: (AIR 1979 SC 1848) dealt with the scope and applicability of the maxim 'res ipsa loquitur' and observed that

"Res ipsa loquitur (telling speaks for itself) is a principle which, in reality, belongs to the law of Torts."

It has been further observed that at page, 1852 (of AIR)

"as a rule mere proof that an event has happened or an accident has occurred, the cause of which is unknown, is not evidence of negligence. But the peculiar circumstances constituting the event or accident, in a particular case, may themselves proclaim in concordant, clear and unambiguous voice the negligence of somebody as the cause of the event or accident. It is to such cases that the maxim 'res ipsa loquitur may apply,' if the cause of the accident is unknown and no. reasonable explanations as to the cause is coming forth from the defendant. To emphasise the point, it may be reiterated that in such cases, the event or accident must be a kind which does not happen in the ordinary course of things if those who have management and control use due care. But, according to some decisions, satisfaction of this condition alone is not sufficient for res ipsa to come into play and it has to be further satisfied that the event which caused the accident was within the defendant's control. The reason for this second requirement is that where the defendant has control of the thing which caused the injury, he is in a better position than the, plaintiff to explain how the accident occurred."

It is therefore very clear that strict liability is liable to invoke in electrocution cases like in the instant case. In Google, **"Strict liability** is explained that in law, strict liability is a standard for liability which may exist in either a criminal or civil context. A rule specifying strict liability makes a person legally responsible for the damage and loss caused by his or her acts and omissions regardless of culpability (including fault in criminal law terms, typically the presence of mens rea). Strict liability is prominent in tort law (especially product liability), corporations law, and criminal law.

In tort law, strict liability is the imposition of liability on a party without a finding of fault (such as negligence or tortious intent). The plaintiff need only prove that the tort occurred and that the defendant was responsible. Strict liability is imposed for legal infractions that are malum prohibitum rather than malum in se, therefore, neither good faith nor the fact that the defendant took all possible precautions are valid defenses. Strict liability often applies to those engaged in hazardous or inherently dangerous ventures.

Strict liability is distinct from absolute liability. Under absolute liability, only an actus reus is required. With strict liability, an actus reus, unintentional or not is all that is required. If the plaintiff can prove that the defendant knew about the defect before the damages occurred, additional punitive damages can be awarded to the victim. In strict liability situations, although the plaintiff does not have to prove fault, the defendant can raise a defense of absence of fault, especially in cases of product liability, where the defense may argue that the defect was the result of the plaintiffs actions and not of the product, that is, no inference of defect should be drawn solely because an accident occurs.

A classic example of strict liability is the owner of a tiger rehabilitation center. No matter how strong the tiger cages are, if an animal escapes and causes damage and injury, the owner is held liable. Another example is a contractor hiring a demolition subcontractor that lacks proper insurance. If the subcontractor makes a mistake, the contractor is strictly liable for any damage that occurs.

The law imputes strict liability to situations it considers to be inherently dangerous. It discourages reckless behavior and needless loss by forcing potential defendants to take every possible precaution. It also has the effect of simplifying and thereby expediting."

So long as 'Strict liability' is invokable in electrocution case and as held in **M.P. Electricity Board vs. Shail Kumari and others (supra)**, whether negligent or carelessness of the defendants are immaterial under the aegis of strict liability. I find that the defendants are liable to pay compensation to the plaintiff in the instant case.

Ld. Counsels for the plaintiff relied for the quantum of compensation in terms of assessment practiced in motor accident claims. Meanwhile, in my opinion, motor accident claims is under the entity of vicarious liability depends on the nature of occurrences like negligence on the part of defaulters etc. which is quite different from the entity of 'Strict Liability'. Again in Google, **Vicarious liability** is a form of strict, secondary liability that arises under the common law doctrine of agency – *respondeat superior*—the responsibility of the superior for the acts of their subordinate, or, in a broader sense, the responsibility of any third party that had the "right, ability or duty to control" the activities of a violator. It can be distinguished from contributory liability, another form of secondary liability, which is rooted in the tort theory of enterprise liability. Which is in consonance with the observations of Hon'ble Gauhati High Court in **Dr. Parimal Chakraborty And Etc. vs Smt. Bijaya Paul And Ors.** decided on 22 November, 2006 reported in AIR 2007 Gau 72 and Supreme Court observations in the case of **M.S. Grewal & Anr vs Deep Chand Sood & Ors** decided on 24 August, 2001 in connection with Appeal (civil) 9738 of 1996 reported in 2001 AIR 3660, 2001 (2) Suppl. SCR 156, 2001 (8) SCC 151, 2001 (5) SCALE 610, 2001 (7) JT 159.

In this uphill task, reliance can be sought as held in the case of **M.S. Grewal & Anr vs Deep Chand Sood & Ors** decided on 24 August, 2001 in connection with Appeal (civil) 9738 of 1996 reported in 2001 AIR 3660, 2001 (2) Suppl. SCR 156, 2001 (8) SCC 151, 2001 (5) SCALE 610, 2001 (7) JT 159, the Supreme Court has held that-

“So far as the determination of compensation in death cases are concerned, apart from the three decisions of Andhra Pradesh High Court, which had been mentioned in the order of this Court dated 15th December, 1993, this Court in the case of General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas and Ors. (1994 (2) SCC 176), exhaustively dealt with the question. It has been held in the aforesaid case that for assessment of damages to compensate the dependants, it has to take into account many imponderables, as to the life expectancy of the deceased and the dependants, the amount that the deceased would have earned during the remainder of his life, the amount that he would have contributed to the dependants during that period, the chances that the deceased may not have lived or the dependants may not live up to the estimated remaining period of their life expectancy, the chances that the deceased might have got better employment or income or might have lost his employment or income altogether. The Court further observed that the manner of arriving at the damages is to ascertain the net income of the deceased available for the support of himself and his dependants, and to deduct therefrom such part of his income as the deceased was accustomed to spend upon himself, as regards both self-maintenance and pleasure, and to ascertain what part of his net income the deceased was accustomed to spend for the benefit of the dependants, and thereafter it should be capitalised by multiplying it by a figure representing the proper number of years purchase. It was also stated that much of the calculation necessarily remains in the realm of hypothesis and in that region arithmetic is a good servant but a bad master, since there are so often many imponderables. In every case, it is the overall picture that matters, and the Court must try to assess as best as it can, the loss suffered. On the acceptability of the multiplier method, the Court observed: The multiplier method is logically sound and legally well-established method of ensuring a just compensation which will make for uniformity and certainty of the awards. A departure from this method can only be justified in rare and extraordinary circumstances and very exceptional cases.

In the decision of Susamma Thomas (supra), this Court in paragraphs 7 & 8 of the report observed:

7. In a fatal accident action, the accepted measure of damages awarded to the dependants is the pecuniary loss suffered by them as a result of the death. How much has the widow and family lost by the fathers death? The answer to this lies in the oft-quoted passage from the opinion of Lord Wright in *Davies v. Powell Duffryn Associated Collieries Ltd.*[1942 AC 617] which says:

The starting point is the amount of wages which the deceased was earning, the ascertainment of which to some extent may depend on the regularity of his employment. Then there is an estimate of how much was required or expended for his own personal and living expenses. The balance will give a datum or basic figure which will generally be turned into a lump sum by taking a certain number of years purchase. That sum, however, has to be taxed down by having due regard to uncertainties, for instance, that the widow might have again married and thus ceased to be dependent, and other like matters of speculation and doubt.

8. The measure of damage is the pecuniary loss suffered and is likely to be suffered by each dependent. Thus except where there is express statutory direction to the contrary, the damages to be awarded to a dependant of a deceased person under the Fatal Accidents Acts must take into account any pecuniary benefit accruing to that dependant in consequence of the death of the deceased. It is the net loss on balance which constitutes the measure of damages. (Per Lord Macmillan in *Davies v. Powell*) Lord Wright in the same case said, The actual pecuniary loss of each individual entitled to sue can only be

ascertained by balancing on the one hand the loss to him of the future pecuniary benefit, and on the other any pecuniary advantage which from whatever source comes to him by reason of the death. These words of Lord Wright were adopted as the principle applicable also under the Indian Act in *Gobald Motor Service Ltd. v. R..M.K. Veluswami* [AIR 1962 SC 1] where the Supreme Court stated that the general principle is that the actual pecuniary loss can be ascertained only by balancing on the one hand the loss to the claimants of the future pecuniary benefit and on the other any pecuniary advantage which from whatever source comes to them by reason of the death, that is, the balance of loss and gain to a dependant by the death, must be ascertained. Needless to say that the multiplier method stands accepted by this Court in the decision last noticed and on the acceptability of multiplier method this Court in para 16 had the following to state:

It is necessary to reiterate that the multiplier method is logically sound and legally well established.

There are some cases which have proceeded to determine the compensation on the basis of aggregating the entire future earnings for over the period the life expectancy was lost, deducted a percentage therefrom towards uncertainties of future life and award the resulting sum as compensation. This is clearly unscientific. For instance, if the deceased was, say 25 years of age at the time of death and the life expectancy is 70 years, this method would multiply the loss of dependency for 45 years virtually adopting a multiplier of 45 and even if one-third or one-fourth is deducted therefrom towards the uncertainties of future life and for immediate lump sum payment, the effective multiplier would be between 30 and 34. This is wholly impermissible. We are, aware that some decisions of the High Courts and of this Court as well have arrived at compensation on some such basis."

In this view, although difference of vicarious and strict liability is pointed out above, I have no other choice except the claims amount of the plaintiff in the suit. In short, it may not be a wrong connotation to verse the incident that due to poor and ill equipments of electric power supply by the state (as defined under Article 12 of the Constitution) in this Globalisation era to the citizenry and lack of adequate manpower, one reputed volunteer sacrificed for the need of rural villagers to assist the personnel was untimely and sadly demised, which is irreparable loss in all terms.

ORDER

As per the findings and lengthy discussions of the above, it is hereby ORDERED that the defendants are liable to pay compensation amount to the plaintiff due to death of her husband namely- Mr. R. Pakunga of Phulmawi village on electrocution that-

- | | |
|--|-----------------------------------|
| (1) Loss of dependency | = Rs. 6,00,000/- (5000x12x15x2/3) |
| (2) Loss of consortium, estate, love and affection and loss of comfort in life and mental shock etc. | = Rs. 80,000/- |
| (3) Funeral expenses | = Rs. 5,000/- |

In the sum total of Rs. 6,85,000/- (rupees six lakh and eighty five thousand) only with an interest rate at Rs. 13% per annum with effect from 15/2/2010 the date when institution of the suit till realization of the said amount.

On account of the peculiarities of the case, no order as to costs. Parties are therefore directed to bear their own cost. Decree shall be drawn within fifteen days from the date of this order.

The case shall stand disposed of accordingly.

Give this judgment and order copy to all concerned.



Dr. H.T.C. LALRINCHHANA

Senior Civil Judge- 3

Aizawl District: Aizawl

Memo No. CS/28/2010, Sr. CJ (A)/

Dated Aizawl, the 18th Jan., 2011

Copy to:

1. Smt. Sanghnuni W/o Mr. R. Pakunga (L), Phulmawi, Serchhip District through Mr. C. Lalrinchhunga, Advocate
2. The State of Mizoram Represented by the Chief Secretary through Mr. R. Lalremruata, AGA
3. Secretary/Commissioner to the Govt. of Mizoram, Power and Electricity Department, Mizoram- Aizawl through Mr. R. Lalremruata, AGA
4. Engineer in Chief, Power and Electricity Department- Govt. of Mizoram through Mr. R. Lalremruata, AGA
5. Chief Engineer (Distribution), Power and Electricity Department- Govt. of Mizoram through Mr. R. Lalremruata, AGA
6. Superintending Engineer (Transmission Circle), Power and Electricity Department- Govt. of Mizoram through Mr. R. Lalremruata, AGA
7. Executive Engineer, Power and Electricity Department, Serchhip Power Division- Govt. of Mizoram through Mr. R. Lalremruata, AGA
8. Sub- Divisional Engineer, Power and Electricity Department, Serchhip Power Sub- Division- Govt. of Mizoram through Mr. R. Lalremruata, AGA
9. P.A. to District & Sessions Judge, Aizawl Judicial District- Aizawl
10. Case Record.

PESKAR