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

MONEY SUIT NO. 20 OF 2009

Plaintiff:
Mr. Lalramnghaka
S/o Lalnunzira
Damparengpui

By Advocates : 1. Mr. L.H. Lianhrima
2. Mr. Lalhriatpuia

Versus

Defendants:
1. The State of Mizoram
   Represented by the Chief Secretary to the
   Govt. of Mizoram
   Mizoram- Aizawl
2. The Secretary to the Govt. of Mizoram
   Power & Electricity Department
   Mizoram- Aizawl
3. The Engineer in Chief
   Power & Electricity Department
   Govt. of Mizoram- Aizawl
4. The Chief Engineer (Distribution)
   Power & Electricity Department
   Govt. of Mizoram- Aizawl
5. The Chief Engineer (Transmission)
   Power & Electricity Department
   Govt. of Mizoram- Aizawl
6. The Executive Engineer
   Power & Electricity Department
   Mamit Power Division
   Mamit- Mamit District
7. The Sub- Divisional Officer
   Power Sub- Division
   Mamit, Mamit District

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

Date of Hearing : 19-01-2011
Date of Judgment & Order : 20-01-2011

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

JUDGEMENT & ORDER

GENESIS OF THE CASE

This is a suit for payment of compensation amounting to Rs. 40,00,000/- (Forty lakhs rupees) with pendente lite interest @ 12% per annum by the defendants to the plaintiff due to alleged negligence of the defendants which resulted in electrical accident of the plaintiff namely – Mr. Lalramnghaka S/o Lalnunzira, Damparengpui on Dt. 28-07-2002, the

plaintiff in his plaint submitted that while he was a resident in the Salem Boarding School, Damparengpui during 2002 and when he was only 10 years old, he was burnt by electric current on 28-07-2002. At the relevant time, the plaintiff and his friends were having their meal near Electric Transformer which was located near their hostel. Since there was nor proper safety fencing of the said electric transformer, the plaintiff and his friends entered into the said enclosure for looking a convenient to eat of meal, he was thereby sadly burnt by live electric current from the transformer. He was forthwith fell down and unconscious and immediately taken into PHC, Phaileng and again referred to Durtlang Presbyterian Hospital for treatment. The plaintiff had sustained grievous hurt/injury to his left arm and his left arm was later amputated at the shoulder level.

The plaintiff was discharged from Hospital on 18/9/2002, the assessed percentage of the disability of the plaintiff by the competent Medical Board was 60% by issuing Disability Certificate Dt. 2/9/2008. Even on perusal of police enquiry report of West Phaileng Police Station, it was further reveals that the accident was due to the negligence of the defendants, without safe proper fencing of such danger machine and no danger sign was also stuck up in the said premises. No report of the defendants in compliance with rule 44-A of Indian Electricity Rules, 1956 was also made eliciting the callous attitude of the defendants.

Moreover, although served Legal Notice Dt. 30/12/2008 to the defendants and received the same, the defendant silent on the said Legal Notice.

The plaintiff was a student of Class- III at Salem Boarding School while accident occurred, his accident caused by the negligence and careless of the defendants darken his future while he was a bright students. Hence prayed compensation in the following terms-

A.	Pecuniary Damages	
	(a) Loss of earning capacity	= Rs. 5,00,000/-
	(b) Medical, hospital and nursing expenses	= Rs. 2,00,000/-
	(c) Loss of matrimonial prospect	= Rs. 3,00,000/-
B.	Non pecuniary damages	
(a)	Loss of expectation of life	= Rs. 5,00,000/-
(b)	Loss of amenities of life	= Rs. 5,00,000/-
(c)	Impairment of physiological functions	= Rs. 5,00,000/-
(d)	Impairment of anatomical structures	= Rs. 5,00,000/-
(e)	Pain and suffering	= Rs. 5,00,000/-
(f)	Mental suffering	= Rs. 5,00,000/-
Total		= **Rs. 40,00,000/-**

While the suit was instituted on 26/3/2009, the defendants remains failed to submit written statements if any even after failure to comply Legal Notice duly served to them by the plaintiff till 2/12/2009. Hence, O. VIII, R. 1 of the CPC will be attracted for the end of justice in the civil proceedings like in the instant case. Due to limitation of time and space, I would go

directly to some leading cases rather than mere rhetoric, in **Salem Advocate Bar Association,Tamil Nadu Vs. Union of India** in connection with Writ Petition (civil) 496 of 2002 decided on 02/08/2005 reported in 2005 AIR 3353, 2005 (1) Suppl. SCR 929, 2005 (6) SCC 344, 2005 (6) SCALE 26, 2005 (6) JT 486, the Hon'ble Apex Court held that-

> "The use of the word 'shall' in Order VIII Rule 1 by itself is not conclusive to determine whether the provision is mandatory or directory.
>
> We have to ascertain the object which is required to be served by this provision and its design and context in which it is enacted. The use of the word 'shall' is ordinarily indicative of mandatory nature of the provision but having regard to the context in which it is used or having regard to the intention of the legislation, the same can be construed as directory. The rule in question has to advance the cause of justice and not to defeat it. The rules of procedure are made to advance the cause of justice and not to defeat it. Construction of the rule or procedure which promotes justice and prevents miscarriage has to be preferred. The rules or procedure are handmaid of justice and not its mistress. In the present context, the strict interpretation would defeat justice.
>
> In construing this provision, support can also be had from Order VIII Rule 10 which provides that where any party from whom a written statement is required under Rule 1 or Rule 9, fails to present the same within the time permitted or fixed by the Court, the Court shall pronounce judgment against him, or make such other order in relation to the suit as it thinks fit. On failure to file written statement under this provision, the Court has been given the discretion either to pronounce judgment against the defendant or make such other order in relation to suit as it thinks fit. In the context of the provision, despite use of the word 'shall', the court has been given the discretion to pronounce or not to pronounce the judgment against the defendant even if written statement is not filed and instead pass such order as it may think fit in relation to the suit. In construing the provision of Order VIII Rule 1 and Rule 10, the doctrine of harmonious construction is required to be applied. The effect would be that under Rule 10 of Order VIII, the court in its discretion would have power to allow the defendant to file written statement even after expiry of period of 90 days provided in Order VIII Rule 1. There is no restriction in Order VIII Rule 10 that after expiry of ninety days, further time cannot be granted. The Court has wide power to 'make such order in relation to the suit as it thinks fit'.
>
> Clearly, therefore, the provision of Order VIII Rule 1 providing for upper limit of 90 days to file written statement is directory. Having said so, we wish to make it clear that the order extending time to file written statement cannot be made in routine. The time can be extended only in exceptionally hard cases. While extending time, it has to be borne in mind that the legislature has fixed the upper time limit of 90 days. The discretion of the Court to extend the time shall not be so frequently and routinely exercised so as to nullify the period fixed by Order VIII Rule 1."

In **Sreenivas Basudev vs Vineet Kumar Kothari** decided on 17/3/2006 reported in AIR 2007 Gau 5, (2006) 3 GLR 230, Gauhati High Court has observed that-

> "9. Order VIII, Rule 1 as well as Order VIII, Rule 10 of the Code, which warrant filing of written statement within a period of 90 days from the date of service of summons on the defendant, are part of the procedural law. The procedural law is handmaid of justice and cannot override the necessity to do justice between the parties to the suit. No part of the procedural law and not even Order VIII, Rule 1 or Order VIII, Rule 10 can, in the absence of any explicit legislative intendment, be treated to have disempowered the Court or can be said to stand in the way of the Court to make exception in an appropriate case and accept a written statement beyond the period of 90 days, though, ordinarily and except in rare and compelling circumstances, acceptance of written statement beyond the requisite period of 90 days is not permissible.

> ...14. What crystallizes from the above discussion is that while it is necessary that a defendant is made to file written statement within, at best, the extended time of 90 days from the date of service of the summons, the courts do have the power, in an appropriate case, to accept the written statement beyond the period of 90 days, though such acceptance is not possible except in rare cases and special circumstances."

In **Sreenivas Basudev vs Vineet Kumar Kothari** decided on 17/3/2006 reported in AIR 2007 Gau 5, (2006) 3 GLR 230, Gauhati High Court has observed that-

> "9. Order VIII, Rule 1 as well as Order VIII, Rule 10 of the Code, which warrant filing of written statement within a period of 90 days from the date of service of summons on the defendant, are part of the procedural law. The procedural law is handmaid of justice and cannot override the necessity to do justice between the parties to the suit. No part of the procedural law and not even Order VIII, Rule 1 or Order VIII, Rule 10 can, in the absence of any explicit legislative intendment, be treated to have disempowered the Court or can be said to stand in the way of the Court to make exception in an appropriate case and accept a written statement beyond the period of 90 days, though, ordinarily and except in rare and compelling circumstances, acceptance of written statement beyond the requisite period of 90 days is not permissible.
>
> ...14. What crystallizes from the above discussion is that while it is necessary that a defendant is made to file written statement within, at best, the extended time of 90 days from the date of service of the summons, the courts do have the power, in an appropriate case, to accept the written statement beyond the period of 90 days, though such acceptance is not possible except in rare cases and special circumstances."

It is therefore axiomatic that written statement should be filed within thirty day from the date of service of summons (including duplicate copy of plaint) but extendable for another sixty days with speaking orders. It is further permissible to expand time frame exceeding ninety days where and when exceptional and rare cases/circumstances. Let us again look into the entity of adjournment may be for the purpose of waiting of written statements. In **Salem Advocate Bar Association,Tamil Nadu Vs. Union of India** in connection with Writ Petition (civil) 496 of 2002 decided on 02/08/2005 and reported in 2005 AIR 3353, 2005 (1) Suppl. SCR 929, 2005 (6) SCC 344, 2005 (6) SCALE 26, 2005 (6) JT 486, the Hon'ble Apex Court held that-

> "In some extreme cases, it may become necessary to grant adjournment despite the fact that three adjournments have already been granted (Take the example of Bhopal Gas Tragedy, Gujarat earthquake and riots, devastation on account of Tsunami). Ultimately, it would depend upon the facts and circumstances of each case, on the basis whereof the Court would decide to grant or refuse adjournment. The provision for costs and higher costs has been made because of practice having been developed to award only a nominal cost even when adjournment on payment of costs is granted. Ordinarily, where the costs or higher costs are awarded, the same should be realistic and as far as possible actual cost that had to be incurred by the other party shall be awarded where the adjournment is found to be avoidable but is being granted on account of either negligence or casual approach of a party or is being sought to delay the progress of the case or on any such reason. Further, to save proviso to Order XVII Rule 1 from the vice of Article 14 of the Constitution of India, it is necessary to read it down so as not to take away the discretion of the Court in the extreme hard cases noted above. The limitation of three adjournments would not apply where adjournment is to be granted on account of circumstances which are beyond the control of a party. Even in cases which may not strictly come within the category of circumstances beyond the control of a party, the Court by

resorting to the provision of higher cost which can also include punitive cost in the discretion of the Court, adjournment beyond three can be granted having regard to the injustice that may result on refusal thereof, with reference to peculiar facts of a case. We may, however, add that grant of any adjournment let alone first, second or third adjournment is not a right of a party. The grant of adjournment by a court has to be on a party showing special and extraordinary circumstances. It cannot be in routine. While considering prayer for grant of adjournment, it is necessary to keep in mind the legislative intent to restrict grant of adjournments."

In **State Bank of India Vs. K.M. Chandra Govindji** decided on 08/11/2000 reported in 2000 (8) SCC 532, 2000 (7) SCALE 354, 2000 (2) Suppl. JT 433, it was observed that-

"In ascertaining whether a party had reasonable opportunity to put forward his case or not, one should not ordinarily go beyond the date on which adjournment is sought for. The earlier adjournments, if any, granted would certainly be for reasonable grounds and that aspect need not be once again examined if on the date on which adjournment is sought for the party concerned has a reasonable ground. The mere fact that in the past adjournments had been sought for would not be of any materiality. If the adjournment had been sought for on flimsy grounds the same would have been rejected."

In **Bashir Ahmed Vs. Mehmood Hussain Shah** in connection with Appeal (civil) 4035 of 1995 decided on 20/03/1995 and reported in 1995 AIR 1857, 1995 (2) SCR 812, 1995 (3) SCC 529, 1995 (2) SCALE 566, it was held that-

"Therefore, the court is enjoined to satisfy itself in that behalf. If the party engages another counsel as indicated therein, then the need for further adjournment would be obviated. The words 'in time' would indicate that at least reasonable time may be given when a counsel suddenly becomes unwell. There would be reasonable time for the parties to make alternative arrangement, when sufficient time intervenes between the last date of adjournment and the next date of trial. In such a case, adjournment on the ground of counsel's ill health could be refused and the party would bear the responsibility for his failure to make alternative arrangements. Take for instance, a suit was adjourned for trial for a period of one week and the counsel appears to have suddenly become indisposed which would be known to the party. Therefore, the party, in advance, has to make alternative arrangement to proceed with the trial engaging another counsel The words 'in time' would, therefore, indicate that reasonable time would be required for making alternative arrangements."

In the case of **Nirankar Nath Wahi & Ors. Vs. Fifth Addl. District Judge, Moradabad & Ors**. decided on 07/06/1984 reported in 1984 AIR 1268, 1984 (3) SCR 917, 1984 (1) SCALE 921, it was held that-

"The learned judge should have shown awareness of this dimension of the matter and bearing in mind the adage that 'justice must also appear to have been done', ought to have dealt with the request for a short adjournment with a degree of understanding. More particularly as it was not difficult to realise that a landlord is the last person interested in prolonging the eviction proceedings or the appeal arising from the order passed in such proceedings. The learned Additional District Judge, under the circumstances, might well have granted a short adjournment to enable the appellant to engage a senior counsel of his choice and confidence. For this reason: It is common knowledge that when a leading member of the Bar is sued or sues in a personal capacity, the members of the Bar where he is practising are more than reluctant to accept a brief against their colleague and friend on account of personal relations or on account of likelihood of embarrassment. In a matter like this, the litigant pitted against a

> leading member of the Bar may also want to engage a counsel of his choice and confidence for it may well appear to him that not every member of the Bar might present his case with the degree of zeal, enthusiasm, sincerity and conviction which ordinarily a litigant expects from his advocate."

I therefore must uphold the sanctity of CPC for timely justice and solely for the interest of justice while very sine quo non to revamp subordinate judiciary of Mizoram in line with law of the land at the arena of insulation of judiciary from executive so as to restore public faith in the judiciary. The inordinate delay and unexplained delay for filing of written statements by the defendants in the instant case while the suit is instituted on 26/3/2009 although clarified the persuasion by Ld. AGA could not be exonerated in view of the socio-economic conditions of the victim so as to restore public faith in the judiciary to avoid achlocracy/mobocracy akin to macabre life. I must quote only one point under para. 2.5 [Other Suggested Procedural Changes) of the ***'National Mission for Delivery of Justice and Legal Reform, 2009-2012'*** chalked by the Ministry of Home, Govt. of India, it reads thus-

> "Adjournments repeatedly applied for and routinely granted are the curse of the Indian legal system. This must be eradicated. A "no adjournment" system is the aim, which is achievable. For instance, Judges who grant regular and unnecessary adjournments can be "identified" and counselled, and course corrections can be made.

Furthermore, the "***National Litigation Policy, 2009***" at the result of "National Consultation for Strengthening the Judiciary toward Reducing Pendency and Delays held on the 24th and 25th October, 2009" also stressed that-

> **"III. <u>ADJOURNMENTS</u>**
>
> A) Accepting that frequent adjournments are resorted to by Government lawyers, unnecessary and frequent adjournments will be frowned upon and infractions dealt with seriously.
>
> B) In fresh litigations where the Government is a Defendant or a Respondent in the first instance, a reasonable adjournment may be applied for, for obtaining instructions. However, it must be ensured that such instructions are made available and communicated before the next date of hearing. If instructions are not forthcoming, the matter must be reported to the Nodal Officer and if necessary to the Head of the Department."

By construing the above mission/policies, the Govt. of Mizoram also chalked out 'The Mizoram State Litigation Policy, 2010' under No. G. 11021/8/10-LJA, the 21st September, 2010 Vide, the Mizoram Gazette, Vol. XXXIX, 24.9.2010, Issue No. 39, Part- II (A), p. 10.

As it is the existing Govt. policies and mission project, on the failure and lethargy of the defendants to abide by the above terms makes me confidence on adjudication of the case as enshrined under O. VIII, R. 10 of the CPC.

POINTS FOR DETERMINATION

Although ex parte proceedings, as held in **Ramesh Chand Ardawatiya vs Anil Panjwani** decided on 5 May, 2003 reported in AIR 2003 SC 2508, 2003 (4) ALD 10 SC, the Supreme Court has held that-

> "A prima facie proof of the relevant facts constituting the cause of action would suffice and the Court would grant the plaintiff such relief as to which he may in law be found entitled. In a case which has proceeded ex-parte the Court is not bound to frame issues under Order XIV and deliver the judgment on every issue as required by Order XX Rule 5. Yet the Trial Court would scrutinize the available pleadings and documents, consider the evidence adduced, and would do well to frame the 'point for determination' and proceed to construct the ex-parte judgment dealing with the points at issue one by one."

The followings are therefore points for determination of the instant suit such as-

(1) Whether the instant suit is maintainable in its present form and style

(2) Whether the plaintiff is entitled to the relief claim or not. If so, to what extent

BRIEF ACCOUNT OF EVIDENCE

The plaintiff had produced three (3) witnesses namely-

1. Mr. Lalramnghaka S/o Lalnunzira, Damparengpui (Hereinafter referred to as PW- 1)
2. Mr. Zoramsanga, Officer in Charge, West Phaileng Police Station (Hereinafter referred to as PW- 2)
3. Mr. Laldingliana, SI of Police, West Phaileng Police Station (Hereinafter referred to as PW- 3)

The PW- 1 deposed that while he was a resident in the Salem Boarding School, Damparengpui during 2002 and when he was only 10 years old, he was burnt by electric current on 28-07-2002. At the relevant time, the plaintiff and his friends were having their meal near Electric Transformer which was located near their hostel. Since there was nor proper safety fencing of the said electric transformer, the plaintiff and his friends entered into the said enclosure for looking a convenient to eat of meal, he was thereby sadly burnt by live electric current from the transformer. He was forthwith fell down and unconscious and immediately taken into PHC, Phaileng and again referred to Durtlang Presbyterian Hospital for treatment. The plaintiff had sustained grievous hurt/injury to his left arm and his left arm was later amputated at the shoulder level. He was discharged from Hospital on 18/9/2002, the assessed percentage of the disability of the plaintiff by the competent Medical Board was 60% by issuing Disability Certificate Dt. 2/9/2008. Even on perusal of police enquiry report of West Phaileng Police Station, it is further reveals that the accident was due to the negligence of the defendants, without safe proper fencing of such danger machine and no danger sign was also stuck up in the said premises. No report of the defendants in compliance with rule 44-A of Indian Electricity Rules, 1956 was also made eliciting the callous attitude of the defendants. The victim was a student of Class- III at Salem Boarding School while accident occurred, his accident caused by the negligence and careless of the defendants darkened his whole future while he is a bright

students but turned into difficulty in his studies. Hence prayed monetary compensation in the following terms-

A.	Pecuniary Damages	
	(d) Loss of earning capacity	= Rs. 5,00,000/-
	(e) Medical, hospital and nursing expenses	= Rs. 2,00,000/-
	(f) Loss of matrimonial prospect	= Rs. 3,00,000/-
B.	Non pecuniary damages	
(g)	Loss of expectation of life	= Rs. 5,00,000/-
(h)	Loss of amenities of life	= Rs. 5,00,000/-
(i)	Impairment of physiological functions	= Rs. 5,00,000/-
(j)	Impairment of anatomical structures	= Rs. 5,00,000/-
(k)	Pain and suffering	= Rs. 5,00,000/-
(l)	Mental suffering	= Rs. 5,00,000/-
Total		= Rs. 40,00,000/-

Ext. P- 1 is a plaint
Ext. P- 1 (a & b) are his true signatures
Ext. P- 2 is his photograph
Ext. P- 3 is a copy of Discharged Card
Ext. P- 4 is a copy of Certificate issued by O/C, West Phaileng PS and Mr. Laldingliana, SI of Police Dt. 16/9/2008
Ext. P- 6 is a copy of Legal Notice Dt. 30/12/2008
Ext. P- 7 is a receipt of Legal Notice by defendants

In his cross examination, he further deposed that by responding the invitation by his friends he plied to enter in the premises of electric transformer, he do not know the whether Police personnel of West Phaileng visited the place of occurrence to prepare enquiry report, the expenditure of medical treatment as per the plaint is Rs. 29,425/-.

The PW- 2 deposed that in the month of September, 2008, as requested by the plaintiff, he assigned one Mr. Laldingliana SI of Police to conduct enquiry in respect of burning of the plaintiff by electric current. After spot verification, a report was made. It is true that the plaintiff was burnt by electric current on 28/7/2002 near Salem Boarding School and amputated of his left arm. I also personally witnessed that the said electric transformer does not have a safe fencing and no danger sign was also stuck up as I usually visited the place of occurrence which is within our jurisdiction.

Ext. P- 5-A (Certificate of incident and injury Dt. 16/9/2008) is his true signature

In his cross examination, he further deposed that he was not posted at West Phaileng during 2002 and conducted enquiry in 2008 when the incident took place in 2002. It is a fact that he did not accompany the enquiry officer on the spot while conducting enquiry.

The PW- 3 deposed that while he joined Police profession in 1993, he was posted at West Phaileng in the year 2006 and again transferred at Zawlnuam Police Out Post in the year 2009 and presently posted at Marpara PS. He heard that the plaintiff was burnt by electric current which caused amputation of his left arm. Ext. P- 5- B *(Certificate of incident and injury Dt. 16/9/2008)* is his true signature.

In his cross examination, he further deposed that he was not present on the spot at the time of incident as he was at that time posted elsewhere.

Since, the defendants do not have written statements, Mr. R. Lalremruata, Ld. AGA fairly submitted that they declined to produce their witnesses as well as to arguments of the case in further proceedings. Which impelled the court to deliver judgment on the above facts and circumstances.

FINDINGS

Point No. 1
Maintainability of the suit

On perusal of case record, while the suit is valued at Rs. 40 lakhs 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, a copy of Disability Certificate issued by the Medical Board for Disability Certificate, Presbyterian Hospital, Durtlang Dt. 2.9.2008 elicited that the disability percentage is 60% in the name of the plaintiff is also found in the record.

As required u/s 80 of the CPC, a copy of Legal Notice Dt. 30/12/2008 claiming Rs. 40 lakhs 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.

Point No. 2
Entitlement of the relief and it's extent

By appreciating the above facts and its circumstances, the findings on the crux of incidents can be epitomized that-

(1) The electric transformer was located/installed near the hostel/school of the plaintiff as public school, no safe fencing and danger sign was made by the defendants.

(2) Being an innocent child of 10 years aged, the plaintiff and his friends entered into the premises of the said electric transformer, the live electric current thereby burnt the corpus of the plaintiff. After undergone medical treatment as grievous hurt, the left arm of the plaintiff was amputated and the percentage of his disability is 60 %.

(3) The defendants fails to comply rule 44A of Indian Electricity Rules, 1956 which imposed to conduct a report on occurrence of accident on electrocution and intimation of accident to the superior personnel, it 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."

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, some of the contents of the Schedule I of the said Regulation is extracted that-

*"VII **Danger Notices**:- The owner of every installation of voltage exceeding 250V shall affix permanently in a conspicious position a danger notice in Hindi or English and the local language of the district, with a sign of skull and bones of a design as per the relevant ISNo.2551 on-*

(a) every motor, generator, transformer and other electrical plant and equipment together with apparatus used for controlling or regulating the same;

(b) all supports of overhead lines of voltage exceeding 650V which can be easily climbed-upon without the aid of ladder or special appliances;

Explanation- Rails, tubular poles, wooden supports, reinforced cement concrete poles without steps, I-sections and channels, shall be deemed as supports which cannot be easily climbed upon for the purposes of this clause;

(c) luminous tube sign requiring supply, X-ray and similar high-frequency installations of voltage exceeding 650V but not exceeding 33 kV:

Provided that where it is not possible to affix such notices on any generator, motor, transformer or other apparatus, they shall be affixed as near as possible thereto, or the word 'danger' and the voltage of the apparatus concerned shall be permanently painted on it

Provided further that where the generator, motor, transformer or other apparatus is within an enclosure one notice affixed to the said enclosure shall be sufficient for the purposes of this regulation.

***XVII Display of 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 Chief Electrical Inspector or Electrical 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 sub-station, enclosed switch-station and every factory or other premises to which this regulation applies, shall ensure that all authorized persons employed by him are acquainted with and are competent to apply the instructions referred to in clause (1) of paragraph XVII of Schedule-I.

(4) In every manned generating station, sub-station or switch station of voltage exceeding 650V, an artificial respirator shall be provided and kept in good working condition.

***XVIII Intimation of Accident**:*

If any electrical accident occurs in connection with the generation, transmission, supply or use of electricity 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 authorized person of the State Electricity

Utility/Supplier, not below the rank of a Junior Engineer or equivalent shall send to the Chief Electrical Inspector or Electrical Inspector and Appropriate Commission a Telegraphic/ E-Mail/ Fax/

> *Mobile SMS report within 24 hours of the knowledge of the occurrence of the fatal accident and a written report in the form set out in Schedule XII 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 authorized officer of the State Electricity Utility/ Supplier or other person concerned."*

In short, safety measures imposed by the said Regulation appended in various Schedules were very comprehensive and adequate to avoid accident like in the instant case. 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, Danger Notice is required to display as mandate under rule 35 of the Indian Electricity Rules, 1956. In a nutshell, Chapter- IV of the Indian Electricity Rules, 1956 embodied General Safety Requirements which is very stringent to comply with and to safe an innocent child like the instant victim.

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 knows 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 miximum 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 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."

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.

Pertinently, while the defendants failed to respond Legal Notice served to them by the plaintiff even for mediation. I must take some observations in this lacunae. In **Gopesh Chandra Das v. The Chief Secretary to the Government of Assam and Ors**. (1989) 2 GLR 377: AIR 1990 Gau 74, the Gauhati High Court discussed the object of Section 80 of the Code of Civil Procedure Notice and the manner of its interpretation. In the said case, the High Court observed as follows:

> "...The object of the notice contemplated by Section 80 is to give to the concerned Governments and public officers opportunity to reconsider the legal position and to make amends or settle the claim, if so advised, without litigation. The legislative intention behind that section is that public money and time should not be wasted on unnecessary litigation and the Government and the public officers should be given a reasonable opportunity to examine the claim made against them lest they should be drawn into avoidable litigations. The purpose of law is advancement of justice. It must be remembered that Section 80 of the Code is but a part of the Procedure Code passed to provide the regulation, and machinery, by means of which the Court may do Justice between the parties. It is, therefore, merely a part of the adjective law and deals with procedure alone and must be interpreted in a manner so as to subserve and advance the cause of justice rather than to defeat it...."

In **Manindra Ch. Paul vs State Of Tripura And Ors.** decided on 16 March, 2007 reported in AIR 2007 Gau 103, 2007 (3) GLT 300, the Gauhati High Court has observed that-

> "11. That, from the above decisions of the Hon'ble Apex Court and this Court, it is clear that the object of giving notice under Section 80 of the Code of Civil Procedure is to protect the Government or its instrumentalities from dragging in the Court without prior notice apprising the nature of the claim and also to make endeavour for pre-litigation settlement in order to save time and exchequer in the litigation. From the language employed under Section, 80 of the Code of Civil Procedure, it appears that this Section has not been enacted to defeat the genuine grievance rather it has been made to give early relief to the just claimant by way of settlement. The intention of the legislature for early disposal of the case in which the Government or its public officer is a party may also be seen under Sub-rule (2) of Rule 5B of Order 27 of the Code of Civil Procedure. Under Section 80, C.P.C., the Government or its public officer has been given adequate time for pre-litigation settlement and even after filing a suit, there is a room for early settlement. Sub-rule (2) of Rule 5B of Order 27, C.P.C. provides that even during the course of proceeding, at any stage, if it appears that there is a reasonable opportunity of a settlement between the parties, the Court may adjourn the proceeding for such period as it thinks fit. to make efforts for such a settlement.
>
> 12. That, as stated above, Section 80 of the Code of Civil Procedure is a part of procedural law by means of which the Court may do justice between the parties. Thus, the provision of this Section requires to be interpreted liberally in a reasonable way to advance substantial justice to the public. The whole object of this Section is not to defeat the justice on mere technical ground and by interpreting it in a hyper-technical manner.

In **State Of Punjab vs M/S. Geeta Iron & Brass Works Ltd** decided on 14 October, 1977 and reported in 1978 AIR 1608, 1979 SCR (1) 746, the Apex Court has held that-

> "In the present case a notice under s. 80 C.P.C. was sent. No response. A suit was filed and summons taken out to the Chief Secretary. Shockingly enough, the summons was refused. An ex parte proceeding was taken when the lethargic Government woke up. We like to emphasize that Governments must be made accountable by Parliamentary social audit for wasteful litigative expenditure inflicted on the community by inaction. A statutory notice of the proposed action under S. 80 C.P.C. is intended to alert the State to negotiate a just settlement or at least have the courtesy to tell the potential outsider why the claim is being resisted. Now S. 80 has become a ritual because the administration is often unresponsive and hardly lives up to the Parliament's expectation in continuing s. 80 in the Code despite the Central Law Commission's recommendations for its deletion. An opportunity for settling the dispute through arbitration was thrown away by sheer inaction. A litigative policy for the State involves settlement of Governmental disputes with citizens in a sense of conciliation rather than in a fighting mood. Indeed, it should be a

> directive on the part of the State to empower its law officer to take steps to compose disputes rather than continue them in court. We are constrained to make these observations because much of the litigation in which Governments are involved adds to the case load accumulation in courts for which there is public criticism. We hope that a more responsive spirit will be brought to bear upon governmental litigation so as to avoid waste of public money and promote expeditious work in courts of cases which deserve to be attended to."

Furthermore, in compliance with the directions of the Hon'ble Supreme Court in the case of **Salem Advocate Bar Association V. Union of India, (2005) 6 SCC 344 [Para. 39]**, the Hon'ble Gauhati had taken positive and concrete steps and therefore under *clause VI of the 'Trial Courts and First Appellate Subordinate Courts (under the Gauhati High Court) Case Management Rules, 2007'* the Government is not able to blench on Legal Notice which is extracted as below –

> **"VI. Notice issued under S. 80 of Code of Civil Procedure.**
> Every public authority shall appoint an officer responsible to take appropriate action on a notice issued under S. 80 of the Code of Civil Procedure. Every such officer shall take appropriate action on receipt of such notice. If the Court finds that the concerned officer, on receipt of the notice, failed to take necessary action or was negligence in taking the necessary steps, the Court shall hold such officer responsible and recommended appropriate disciplinary action by the concerned authority"

The defendants as State Government is not only eschewed on Legal Notice but also in the instant suit, it is therefore presumably that the defendants admitted the allegation on the facts and liabilities on the crux.

ORDER

In view of the afore discussions and findings thereof, the defendants are directed to pay compensation amount to the plaintiff at the following rates-

1. Loss of earning capacity = Rs. 5,00,000/-
2. Medical, hospital and nursing expenses = Rs. 49,425/- (Actual expenditure of Rs. 29,425/- + Rs. 10,000/- for transportation and other unbilled expenses + continuity of regular medical treatment is obviously necessary including Prosthetic limb etc. of Rs. 10,000/-)
3. Loss of matrimonial prospect = Rs. 50,000/-
4. Mental suffering = Rs. 50,000/-

Total = Rs. 6,49,425.00 (rupees six lakhs, forty nine thousand, four hundred and twenty five)

Although the plaintiff prayed other relief on (i) Loss of expectation of life = Rs. 5,00,000/- (ii) Loss of amenities of life = Rs. 5,00,000/- (iii) Impairment of physiological functions = Rs. 5,00,000/- (iv) Impairment of anatomical structures = Rs. 5,00,000/- (v) Pain and suffering = Rs. 5,00,000/-, I find that although admitted that the injuries of the plaintiff is truly irreparable loss, means of compensation can only be adopted in the sad occurrence, the said other relief so sought is deemed cover by the above awarded compensation amount.

At the last stage, costs of the suit is the essence for justice like in the instant case as very recently held in the case of **Vinod Seth vs Devinder Bajaj & Anr**. disposed of on 5 July, 2010 in connection with Civil Appeal No. 4891 of 2010 [Arising out of SLP [C] No.6736 of 2009], the Supreme Court has held that-

> "23. The provision for costs is intended to achieve the following goals: (a) It should act as a deterrent to vexatious, frivolous and speculative litigations or defences. The spectre of being made liable to pay actual costs should be such, as to make every litigant think twice before putting forth a vexatious, frivolous or speculative claim or defence. (b) Costs should ensure that the provisions of the Code, Evidence Act and other laws governing procedure are scrupulously and strictly complied with and that parties do not adopt delaying tactics or mislead the court. (c) Costs should provide adequate indemnity to the successful litigant for the expenditure incurred by him for the litigation. This necessitates the award of actual costs of litigation as contrasted from nominal or fixed or unrealistic costs. (d) The provision for costs should be an incentive for each litigant to adopt alternative dispute resolution (ADR) processes and arrive at a settlement before the trial commences in most of the cases. In many other jurisdictions, in view of the existence of appropriate and adequate provisions for costs, the litigants are persuaded to settle nearly 90% of the civil suits before they come up to trial. (e) The provisions relating to costs should not however obstruct access to courts and justice. Under no circumstances the costs should be a deterrent, to a citizen with a genuine or bonafide claim, or to any person belonging to the weaker sections whose rights have been affected, from approaching the courts."

In **Salem Advocate Bar Association,Tamil Nadu Vs. Union of India** in connection with Writ Petition (civil) 496 of 2002 decided on 02/08/2005 reported in 2005 AIR 3353, 2005 (1) Suppl. SCR 929, 2005 (6) SCC 344, 2005 (6) SCALE 26, 2005 (6) JT 486, the Hon'ble Apex Court held that-

> "…The costs have to be actual reasonable costs including the cost of the time spent by the successful party, the transportation and lodging, if any, or any other incidental cost besides the payment of the court fee, lawyer's fee, typing and other cost in relation to the litigation."

By showing more lenience to the defendants, the defendants are further directed to pay only costs of lawyers fee and court fee at Rs. 12,000/- (Rs. 7000/- for lawyers fee + Rs. 5000/- for court fees) to the plaintiff. No other costs for typing, transportation, time spent for the suit etc. In short, the defendants are liable to pay Rs. 6,49,425.00 + Rs. 12,000/- = Rs. 6,61,425/- (Rupees six lakhs, sixty one thousand, four hundred and twenty five) to the plaintiff with an interest rate at 12% per annum w.e.f. 26/3/2009 when institution of the suit. Decree shall be drawn within fifteen days from the date of this judgment and order.

The case shall stand disposed of.

Give this copy and decree to both parties and all concerned.

Dr. H.T.C. LALRINCHHANA
Senior Civil Judge- 3
Aizawl District: Aizawl

Memo No. MS/20/2009, Sr. CJ (A)/ Dated Aizawl, the 20th Jan., 2011

Copy to:

1. Mr. Lalramnghaka S/o Lalnunzira, Damparengpui through Mr. L.H. Lianhrima, Adv.
2. The State of Mizoram Represented by the Chief Secretary to the Govt. of Mizoram, Mizoram- Aizawl through Mr. R. Lalremruata, Asst. Govt. Advocate, District Court- Aizawl
3. The Secretary to the Govt. of Mizoram, Power & Electricity Department, Mizoram- Aizawl through Mr. R.C. Thanga, Govt. Advocate, District Court- Aizawl through Mr. R. Lalremruata, Asst. Govt. Advocate, District Court- Aizawl
4. The Engineer in Chief, Power & Electricity Department, Govt. of Mizoram- Aizawl through Mr. R. Lalremruata, Asst. Govt. Advocate, District Court- Aizawl
5. The Chief Engineer (Distribution), Power & Electricity Department, Govt. of Mizoram- Aizawl through Mr. R. Lalremruata, Asst. Govt. Advocate, District Court- Aizawl
6. The Chief Engineer (Transmission), Power & Electricity Department, Govt. of Mizoram- Aizawl through Mr. R. Lalremruata, Asst. Govt. Advocate, District Court- Aizawl
7. The Executive Engineer, Power & Electricity Department, Mamit Power Division, Mamit- Mamit District through Mr. R. Lalremruata, Asst. Govt. Advocate, District Court- Aizawl
8. The Sub- Divisional Officer, Power Sub- Division, Mamit, Mamit District through Mr. R. Lalremruata, Asst. Govt. Advocate, District Court- Aizawl
9. P.A. to District & Sessions Judge, Aizawl Judicial District- Aizawl
10. i/c Registration, District Court, Aizawl
11. Case record

PESKAR