

**IN THE COURT OF SENIOR CIVIL JUDGE- 1  
AIZAWL DISTRICT: AIZAWL, MIZORAM**

*MONEYSUIT NO. 52 OF 2011*

*Plaintiff:*

Mr. Lalthlamuana  
F/o Reuben Lalmuansanga  
Saitual Chhimveng, Aizawl District

*By Advocate's* : Mr. F. Lalengliana

*Versus*

*Defendants:*

1. The Chief General Manager  
BSNL North East-I  
Telecom Circle  
Shillong, Meghalaya
2. The General Manager  
Bharat Sanchar Nigam Ltd. (BSNL)  
Mizoram SSA, Aizawl
3. The Sub-Divisional Engineer  
BSNL  
Tuikhuahtlang, Aizawl
4. The State of Mizoram  
Represented by the Chief Secretary
5. The Engineer in Chief  
Power & Electricity Department  
Govt. of Mizoram- Aizawl
6. The Superintending Engineer  
Transmission Circle  
Power and Electricity Department  
Govt. of Mizoram
7. The Executive Engineer  
Construction Division  
Power & Electricity Department
8. The Sub-Divisional Officer  
Power & Electricity Department  
Power Sub-Division, Saitual

*By Advocates for defts 4-8* : 1. Mr. R. Lalremruata, AGA  
2. Miss Bobita Lalhmingmawii, AGA

Date of Arguments : 29-08-2012  
Date of Judgment & Order : 31-08-2012

### **BEFORE**

Dr. H.T.C. LALRINCHHANA, MJS  
Senior Civil Judge- 1  
Aizawl District: Aizawl

### **JUDGMENT & ORDER**

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#### **GENESIS OF THE CASE**

The son of the plaintiff namely- Mr. Reuben Lalmuansanga (2 ½ years) was electrocuted on 1/3/2010 with an injury causing amputation of his right arm. On that day, the victim boy went to the neighbour's house in the Staff Quarter of BSNL at Saitual Chhimveng. The said victim innocent boy went out from the said neighbour's house and thereby electrocuted by the electric transformer of BSNL. The plaintiff claimed that the said electric transformer was not properly fenced to prevent people and animal from going through as there are holes in some portion of the fencing which is wide enough for entry of innocent boy. The plaintiff therefore prayed the following relief-

#### Special damages

- |  |                  |
|--|------------------|
| 1. Expenses incurred on medicine etc.    | = Rs. 34,180/-   |
| 2. Future disability due to the accident | = Rs. 4,80,000/- |
| 3. Loss of future income                 | = Rs. 1,48,000/- |
| 4. Miscellaneous expenditure             | = Rs. 10,000/-   |

Sub- total = Rs. 6,72,180/-

#### General damages

- |  |                  |
|--|------------------|
| 1. Pain and suffering due to grievous injury | = Rs. 35,000/-   |
| 2. Exemplary damages                         | = Rs. 2,50,000/- |

Sub- total = Rs. 2,85,000/-

The total claimed amount therefore becomes Rs. 9,57,180/-

The defendants 4-8 in their joint written statement stated that the plaintiff has no cause of action. The said transformer owned by BSNL was installed within a restricted area of BSNL complex which was properly fenced by RCC with a heavy steel gate and with a fencing net in order to prevent people and animal from going near the said transformer. The touch voltage and step voltage of earthed body are within a safe limit as per the

SDO in charge made an accident report. They are not liable in the instant case as all connected lines of the said transformer are the property of the BSNL, the BSNL also did not deposit annual maintenance cost to them. They are not therefore liable in the case at hand.

The defendants 1-3 viz. BSNL did not contest in the case not only failure to file written statements but also remain fails to adduce evidence and also fails to appear in the later proceedings.

### **ISSUES**

The following issues are framed on 11-10-2011 namely -

1. Whether the suit is maintainable in respect of court fees, legal notice etc. its present form and style
2. Whether the accident happened due to negligence on the part of the defendants or not
3. Whether the plaintiff is entitled to the relief claimed or not. If so, who is liable and to what extend.

### **BRIEF ACCOUNT OF EVIDENCE**

For the plaintiff:

The plaintiff had produced the following witnesses namely

1. Mr. Lalthlamuana F/o Reuben Lalmuansanga, Saitual Chhimveng (Hereinafter referred to as PW- 1)
2. Mr. Lalhriatzuala S/o Zohruaia (L), Keifang (Hereinafter referred to as PW- 2)
3. Smt. Malsawmtluangi W/o Lalthlamuana, Saitual chhimveng (Hereinafter referred to as PW- 3)
4. Mr. Ramfangzauva S/o Khuanghnuna, Saron Veng, Aizawl (Hereinafter referred to as PW- 4)

The **PW -1** in his examination in chief mainly affirmed his plaint being the plaintiff. He further deposed that-

*Ext. P- 1 is a copy of FIR*

*Ext. P- 2 is a copy of letter sent by O/C, Saitual PS to Medical Superintendent, Presbyterian Hospital, Durtlang*

*Ext. P- 3 is a copy of Medical Certificate Dt. 21/5/2010*

*Ext. P- 4 is a copy of letter dt. 19.3.2010 sent to SDE, BSNL by SDO, Saitual Power Sub-Division*

*Ext. P-5 is a copy of Discharge Certificate*

*Ext. P-6 is a copy of receipt of medical expense*

*Ext. P-7 is a copy of Notice dt. 20.01.2011*

*Ext. P-8 is a copy of postal receipt*

*Ext. P-9 is a copy of photograph of the victim*

During his cross examination, he deposed that the transformer is inside the BSNL complex and is meant for BSNL Tower etc. maintained by the BSNL.

The **PW-2** in his examination in chief deposed that he heard the sound of electrocution of the victim as he was nearby. One Mr. Lalchenpuia taken out of the victim and found the burnt effect of the victim in his arm and chest and he was unconscious. The victim was thereby taken in Saitual Hospital and later referred to Presbyterian Hospital, Durtlang, the right hand/arm of the victim was amputation.

In his cross examination, he deposed that the transformer is belonging to BSNL located in their own complex.

The **PW-3** deposed in his examination in chief that she is the mother of the victim and wife of the plaintiff. They stayed near the BSNL transformer. Even on the day of accident, the victim was toys with the son of Mr. Lalchenpuia who was the Chowkider of BSNL in their house. Although she asked to call her victim child, as he refused, he left to their neighbours. She was subsequently informed about electrocution of her son. At that time, her son studied KG-I at Oxford English School, Saitual, the right arm of her son was amputation and the middle finger of the left hand of her son was also paralyze due to the said electrocution.

In her cross examination, she deposed that the said electric transformer was inside the compound of the BSNL and found that it was maintained by the BSNL.

The **PW-4** in his examination in chief deposed that he was an officer in charge of Saitual Police Station since 20<sup>th</sup> April, 2010. On the basis of information, they registered a case on the incident on 16/5/2010 as belated information. He personally seen the victim boy whose right arm was amputation. Ext. P-2 is prepared by me. Ext. P-2 (a) is his signature.

In his cross examination, he deposed that he did not personally visited the place of occurrence but stated as a fact that the accident occurred within the restricted area of the BSNL complex.

For the defendants 4-8:

The defendants 4-8 had produced only one witness namely- Mr. Zothansanga, SDO, Saitual Power Sub-Division, Power & Electricity Department (Hereinafter referred to as DW), during his examination in chief, he mainly affirmed the contents of their written statements. He further deposed that-

*Ext. D-1 is their written statement*

*Ext. D-1(a) is a signature of Under Secretary to the GOM, P&E*

*Ext. D-2 is the picture of fenced transformer*

*Ext. D-3 is the form of reporting electrical accidents*

During his cross examination, he deposed that the instant transformer was purchased by BSNL from P&E Department. In his knowledge, the height of fenced of transformer is about 4 ½ feet. He also knew that the victim boy was handicapped due to the said accident.

### **ARGUMENTS**

By supplementing written argument, Mr. R. Lalremruata, learned AGA for the defendants 4-8 stated that they are not responsible in the case as the said electric transformer was purely owned and managed by the BSNL in their own complex.

Mr. F. Lalengliana also argued that as held by the Hon'ble Supreme Court in **M.P. Electricity Board vs. Shail Kumari and others** reported in [2002 (2) SCC 162], the defendant BSNL are solely liable for giving compensation to the plaintiff as the photograph of the place of occurrence marked as Ext. P-2 clearly depicted that there is a hole where the innocent child can passage of the fencing in the corner of fencing of the electric transformer.

### **FINDINGS**

#### **Issue No. 1**

#### **Whether the suit is maintainable in respect of court fees, legal notice etc. its present form and style**

The plaint is accompanied by proper verification with affidavit, requisite court fees at Rs. 5000/- is also paid in full. As elicited by Ext. P-7, legal notice was duly served to all defendants on 20<sup>th</sup> January, 2011. Thus, this issue is decided in favour of the plaintiff.

#### **Issue No. 2**

#### **Whether the accident happened due to negligence on the part of the defendants or not**

On close look of Ext. D-2, the electric transformer was fenced properly as also deposed by DW but can be found some holes in the corner where innocent kids can enter. As revealed by Ext. D- 3, the defendants 4-8 complied with the provisions of rule 44A of Indian Electricity Rules, 1956 by giving timely report in a prescribed mode.

However, 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. 8<sup>th</sup> 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 conspicuous 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 endosure one notice affixed to the said endosure 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. Although there can be no held that the defendants committed recklessness and gross negligence, failure to stuck up danger notice and remains holes in the corner is apart of negligence in view of the above set of stringent conditions lies to the authority who is responsible to maintain the same.

### **Issue No. 3**

**Whether the plaintiff is entitled to the relief claimed or not. If so, who is liable and to what extend.**

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, 15<sup>th</sup> Edn.)

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

12. In *M.C. Mehta v. Union of India* this Court has gone even beyond the rule of strict liability by holding that

"where an enterprise is engaged in a hazardous or inherently dangerous activity and harm is caused on any one on account of the accident in the operation of such activity, the enterprise is strictly and absolutely liable to compensate those who are affected by the accident; such liability is not subject to any of the exceptions to the principle of strict liability under the rule in *Rylands v. Fletcher*."

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 cases 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. Like in the instant case, I find that the defendants also committed negligence by not properly maintain the fencing as it remains some holes in the corner and lacks to stuck up danger notice and sign in that danger machine, they are therefore liable to pay compensation to the plaintiff in the instant case.

As deposed by DW for defendants 4-8 and various depositions of PWs, the instant electric transformer was installed within the complex of defendants 1-3, the defendants 1-3 also fails to deposit annual maintenance cost to the defendants 4-8. Liability will certainly falls to the defendants 1-3.

With regards to quantum of compensation amount, the observation of Hon'ble Gauhati High Court in **State of Mizoram & Anr. Vs. Master Laldinpuia** in connection with RFA No. 8 of 2008 decided on 26.5.2009 is relied in **R.D. Hattangadi vs Pest Control (India) Pvt. Ltd** decided on 6 January, 1995 and reported in 1995 AIR 755 = 1995 SCC (1) 551=JT 1995 (1) 304 = 1995 SCALE (1) 79, wherein, the Supreme Court has observed that-

"12. In its very nature whenever a tribunal or a court is required to fix the amount of compensation in cases of accident, it involves some guesswork, some hypothetical consideration, some amount of sympathy linked with the nature of the disability caused. But all the aforesaid elements have to be viewed with objective standards.

...17. The claim under SI. No. 16 for pain and suffering and for loss of amenities of life under SI. No. 17, are claims for non-pecuniary loss. The appellant has claimed lump sum amount of Rs 3,00,000 each under the two heads. The High Court has allowed Rs 1,00,000 against the claims of Rs 6,00,000. When compensation is to be awarded for pain and suffering and loss of amenity of life, the special circumstances of the claimant have to be taken into account including his age, the unusual deprivation he has suffered, the effect thereof on his future life. The amount of compensation for non-pecuniary loss is not easy to determine but the award must reflect that different circumstances have been taken into consideration. According to us, as the appellant was an advocate having good practice in different courts and as because of the accident he has been crippled and can move only on wheelchair, the High Court should have allowed an amount of Rs 1,50,000 in respect of claim for pain and suffering and Rs 1,50,000 in respect of loss of amenities of life. We direct payment of Rs 3,00,000 (Rupees three lakhs only) against the claim of Rs 6,00,000 under the heads "Pain and Suffering" and "Loss of amenities of life".

In that **State of Mizoram & Anr. Vs. Master Laldinpuia (supra)**, a victim boy of aged 7 years while playing football near one Electric Transformer lacking proper fencing entered/ran into the said Electric Transformer, he was thereby burnt by live electric current and also taken into the hospital and unconscious. Both his arms were amputated due to the said accident and the Medical Board certified that the victim was 100% disability, the Hon'ble Gauhati High Court therefore awarded compensation at Rs. 9,35,000/- (Rupees nine lakhs, thirty five thousand) only for

pecuniary and non-pecuniary damages. In the instant case, as revealed by Ext. P-3, the victim boy sustained the following injuries-

1. Gangrene of (R) hand and distal forearm
2. Lacerated wound cubital fossa (R)
3. Lacerated wound (R) axilla

Below elbow, amputation (R) was done on 24.3.2010 and was discharged from hospital on 10/4/2010. The plaintiff therefore sought the following compensations-

#### Special damages

- |  |                  |
|--|------------------|
| 1. Expenses incurred on medicine etc.    | = Rs. 34,180/-   |
| 2. Future disability due to the accident | = Rs. 4,80,000/- |
| 3. Loss of future income                 | = Rs. 1,48,000/- |
| 4. Miscellaneous expenditure             | = Rs. 10,000/-   |

Sub- total = Rs. 6,72,180/-

#### General damages

- |  |                  |
|--|------------------|
| 1. Pain and suffering due to grievous injury | = Rs. 35,000/-   |
| 2. Exemplary damages                         | = Rs. 2,50,000/- |

Sub- total = Rs. 2,85,000/-

The total claimed amount therefore becomes Rs. 9,57,180/-

In view of the afore discussions and findings thereof and by making reliance in **State of Mizoram & Anr. Vs. Master Laldinpuia (supra)**, the defendants are directed to pay compensation amount to the plaintiff at the following rates-

#### A. Pecuniary Damages

- |   |                  |
|---|------------------|
| (i) Loss of earning capacity                | = Rs. 3,00,000/- |
| (ii) Medical, hospital and nursing expenses | = Rs. 34,180/-   |
| (iii) Loss of matrimonial prospect          | = Rs. 5,000/-    |
| (iv) Special Diet                           | = Rs. 5,000/-    |

Sub- total = Rs. 3,44,180/-

#### B. Non pecuniary damages

- |  |                |
|--|----------------|
| (i) Loss of amenities of life              | = Rs. 10,000/- |
| (ii) Impairment of physiological functions | = Rs. 50,000/- |
| (iii) Impairment of anatomical structures  | = Rs. 50,000/- |
| (iv) Pain and suffering                    | = Rs. 5,000/-  |
| (v) Mental suffering                       | = Rs. 10,000/- |

Sub- total

= Rs. 1,25,000/-

The total amount for compensation will be **Rs. 4,69,180/-** (Rupees four lakhs, sixty nine thousand, one hundred and eighty) to be paid by the defendants 1-3 to the plaintiff with an interest rate at 12% per annum till realization from 27-04-2011 when institution of the suit.

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. 15,000/- (Rs. 10,000/- for lawyers fee + Rs. 5000/- for court fees) to the plaintiff with interest rate at 12% per annum from the date of this order till realization. No other costs for typing, transportation, time spent for the suit etc.

### **ORDER**

In view of the findings mentioned above, it is hereby ORDERED and DECREED that the defendants 1-3 viz. BSNL are directed to pay compensation amount to the plaintiff worth amounting to **Rs. 4,69,180/-** (Rupees four lakhs, sixty nine thousand, one hundred and eighty) with an interest rate at 12% per annum till realization from 27-04-2011 when institution of the suit. The defendants 1-3 are further directed to pay costs of the suit @ Rs. 15,000/- (Rs. 10,000/- for lawyers fee + Rs. 5000/- for court fees) to the plaintiff with interest rate at 12% per annum from the date of this order till realization.

The defendants are directed to realize the above decretal amount within sixty days from the date of this order.

The case shall stand disposed of.

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

Given under my hand and seal of this court on this 31<sup>st</sup> August, 2012 Anno Domini within the premises and during the working hours of this court and is pronounced in an open court.

**Dr. H.T.C. LALRINCHHANA**

Senior Civil Judge - 1

Aizawl District: Aizawl

Memo No. MS/52/2011, Sr. CJ (A)/      Dated Aizawl, the 31<sup>st</sup> August, 2012

Copy to:

1. Mr. Lalthlamuana F/o Reuben Lalmuansanga, Saitual Chhimveng, Aizawl District through Mr. F. Lalengliana, Adv.
2. The Chief General Manager, BSNL North East-I, Telecom Circle, Shillong, Meghalaya through Mr. F. Lalengliana, Adv.
3. The General Manager, Bharat Sanchar Nigam Ltd. (BSNL), Mizoram SSA, Aizawl through Mr. F. Lalengliana, Adv.
4. The Sub-Divisional Engineer, BSNL, Tuikhuahtlang, Aizawl through Mr. F. Lalengliana, Adv.

5. 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
6. 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
7. The Engineer in Chief, Power & Electricity Department, Govt. of Mizoram- Aizawl through Mr. R. Lalremruata, Asst. Govt. Advocate, District Court- Aizawl
8. The Superintending Engineer, Transmission Circle, Power and Electricity Department- Govt. of Mizoram through Mr. R. Lalremruata, Asst. Govt. Advocate, District Court- Aizawl
9. The Executive Engineer, Construction Division, Power & Electricity Department, Maintenance Division- I, Aizawl through Mr. R. Lalremruata, Asst. Govt. Advocate, District Court- Aizawl
10. The Sub-Divisional Officer, Power Sub-Division, Saitual through Mr. R. Lalremruata, Asst. Govt. Advocate, District Court- Aizawl
11. P.A. to Hon'ble District & Sessions Judge, Aizawl Judicial District- Aizawl
12. Case record

PESKAR