

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

MONEYSUIT NO. 12 OF 2011

Plaintiff:

Mr. Mathaia
F/o Lianchheuva (L)
Sairang, Aizawl

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 Superintending Engineer
Power and Electricity Department
Maintenance Division-I, Aizawl
Govt. of Mizoram
5. The Executive Engineer
Power & Electricity Department
Maintenance Division- I, Aizawl
6. The Executive Engineer
Power & Electricity Department
Maintenance Division- II, Aizawl

By Advocates

: 1. Mr. R. Lalremruata, AGA
2. Miss Bobita Lalhmingmawii, AGA

Date of Arguments : 09-05-2012

Date of Judgment & Order : 10-05-2012

BEFORE

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

JUDGEMENT & ORDER

GENESIS OF THE CASE

This is a suit for payment of compensation amounting to Rs. 30,00,000/- (Thirty lakhs rupees) with pendente lite interest @ 12% per annum from the defendants to the plaintiff due to alleged negligence of the defendants which resulted in electrical accident of the son of the plaintiff namely – Mr. Lianchheuva (18 years) burnt by the live electric conductor on Dt. 24.1.2010 resulting in his death. The investigating police personnel also submitted enquiry report and inquest of the dead body was also conducted. Being a daily labourer, the deceased normally earned Rs. 180/- to 200/- per day. Legal notice under section 80 of the CPC was also duly served to the defendants. A requisite court fees at Rs. 5000/- is also paid in full. The plaintiff therefore prayed lumpsum payment of Rs. 30 lakhs with pendente lite interest rate @ 12% per annum to the plaintiff by the defendant and any other relief which this court may deem fit and proper. The facts submitted by the plaintiff in his plaint revealed that as per investigation conducted by the police and PME report, the deceased was burnt to death by the electric current. The said electric conductor, which had been negligently hanging down from its pole was only about 11 feet from the ground while the papaya tree was about 12 feet tall from the ground. Accident was therefore due to negligence on the part of the defendants.

The defendants in their written statement contended that the conductor was not hanging down from its pole but was string between the two poles and its clearance above the ground was about 16 feet which is more than the minimum prescribed clearance i.e. 4.6 metres (Approx. 15.18 feet) as per rule 77 (3) of the Indian Electricity Rules, 1956. The concerned officer of Power and Electricity Department also submitted a report thereof as required for onward submission to the Electrical Inspectorate. The defendants have no negligence at all in the instant accident which is also lacking by the police report and PME report.

ISSUES

The following issues are framed on 07-06-2011 as follows-

1. Whether the plaintiff has cause of action or not.
2. Whether the plaintiff is entitled to the relief claimed or not. If so, to what extend.

BRIEF ACCOUNT OF EVIDENCE

For the plaintiff:

The plaintiff had produced the following witnesses namely

1. Mr. Mathaia S/o Thanlawma, Sairang (Hereinafter referred to as PW- 1)
2. Mr. Lalnunzira S/o Lalmuankima, Sairang (Hereinafter referred to as PW- 2)
3. Mr. Vanlalmuana S/o Vanthawma, Sairang (Hereinafter referred to as PW- 3)

The **PW-1** in his examination in chief deposed that his son namely Mr. Lianchheuva was burnt by the hanging live electric wire whilst he intended to collect papaya in the evening of 24/1/2010 @ 4:00 P.M., he was thereby dead. The police report under GDE No. 334 of also revealed that his son was died due to burnt by electric wire. The said electric conductor, which had been negligently hanging down from its pole was only about 11 feet from the ground while the papaya tree was about 12 feet tall from the ground. Accident was therefore due to negligence on the part of the defendants. He further deposed that-

Ext. P- 1 is a plaint submitted by him

Ext. P- 1 (a & b) are his true signatures

Ext. P- 2 is a copy of Death Certificate

Ext. P- 3 is Police report

Ext. P- 4 is a copy of PME report

Ext. P-5 is a copy of Inquest report

Ext. P-6 is a copy of challan for Dead body

Ext. P-7 is a copy of letter issued by ASI Rohmingthanga Dt. 25/ 1/2010

Ext. P-8 is a copy of Command Certificate

Ext. P-9 is a copy of Dead body receipt

Ext. P-9 (a) is his signature

Ext. P-10 is a copy of Certificate issued by the VCP, Sairang Dt. 17/11/2010

Ext. P-11 is a copy of Certificate issued by the VCP, Sairang Dt. 15/2/2011

Ext. P-12 is a copy of Legal Notice

Ext. P-13 is Legal Notice receipt

Ext. P-14 is court fees amounting to Rs. 5000/-

During his cross examination, he admitted that nowhere in the police report, PME report and VCP Certificates, the caused of death of his son was due to electric burnt. The place of occurrence is the garden of Smt. Thangpuii. The electric wire is not fitted just above the papaya tree. He did not know that whether his son was climbed in the papaya tree or not. He did not have birth certificate of his deceased son. He did not measure the height of electric wire in the place of occurrence.

In his re examination, he deposed that although he did not see while his deceased son climbed at papaya tree, he affirmed that his deceased son was climbed in the papaya tree for collection of its fruit as elicited by the place of occurrence. Although the electric wire was not just above papaya tree, there was only about 1 foot distance of papaya tree from the line of electric wire

The **PW -2** in his examination in chief deposed that he rushed to the place of occurrence just incident and found that the electric wire/conductor was extremely lower in the region and the maximum height will be 12 feet and the lowest height will be approximately 10 feet. The papaya tree was big and tall and the fruit of papaya will be approximately 1 feet distance from the electric conductor. Just after taken the deceased into Sairang hospital, he was died.

In his cross examination, he further deposed that he did not see while the deceased Mr. Lianchheuva was touch with electric live wire. He did not measure the height of electric conductor and also not measure the distance of the papaya tree and the line of electric conductor.

The **PW -3** deposed in his examination in chief that he rushed to the place of occurrence just incident occurred on 24th Jan., 2010 (Sunday) and found that the electric wire/conductor was extremely lower in the region and the maximum height will be 12 feet and the lowest height will be approximately 10 feet. The papaya tree was big and tall and the fruit of papaya will be approximately 1 feet distance from the electric conductor. Just after taken the deceased into Sairang hospital, he was died.

In his cross examination, he further deposed that he did not see while the deceased Mr. Lianchheuva was touch with electric live wire. He did not measure the height of electric conductor and also not measure the distance of the papaya tree and the line of electric conductor.

For the defendants:

On the otherhand, the defendants had produced had produced the following witnesses namely-

1. Mr. Lalrinmawia, SDO, P&E Department, Govt. of Mizoram (Hereinafter referred to as DW-1)
2. Mr. C. Sawitlinga, J.E. P&E Department, Govt. of Mizoram (Hereinafter referred to as DW-2)

The **DW -1** in his examination in chief deposed that the deceased Mr. Lianchheuva was not electrocuted by the live electric conductor which hung down from its pole as it was string between the two poles and its clearance i.e. 4.6 metres (Approx. 15.18 ft) as per the Indian Electricity Rules, 1956. As per police and PME report, the deceased was not burnt to death by electric current but the cause of death was shock due to electric current. The said papaya tree does not stand just below the said conductor but about 10 ft from the level of the conductor. The deceased rather tried to plug papaya fruit by using the nearby available alluminium pipe of 40 mm diameter of around 18 ft long and accidentally touched the electric conductor with the said pipe. No cause of action had arisen in favour of the plaintiff as the PME report and police report fails to reveal that the deceased was burnt by electric live wire and no negligence on the part of the defendants had occurred.

During his cross examination, he admitted that the caused of death of Mr. Lianchheuva was due to electrocution at a Department level. Mr. David Ramnunsanga who prepared electrical accident report is not Electrical Inspector. He admitted that at the time of the death of the deceased he was not only SDO, Rural Sub-Division but also fails to present at the place of occurrence. He also admitted that in the police report, no mention was made about aluminum pipe. The place of occurrence was within the private garden area. He did not know the profession/occupation of the deceased Mr. Lianchheuva.

The **DW -2** in his examination in chief deposed that if the distance of papaya tree and level of electric conductor be one ft, there will be occurrence of automatic trip of power supply when windy and stormy but never happened whilst the place of occurrence is nearby their duty quarters. They never experienced such incident. The distance of papaya tree is almost 10 feet from the line of electric conductor.

During his cross examination, he admitted that he did not present at the place of occurrence at the time of incident and also did not see the victim's body. But he visited the place of occurrence on the same night. Normally, the height of electric wire is about 18 ft. He did not sure about the height of electric wire that caused the death of Mr. Lianchheuva from the ground. He did not measure the exact height of papaya tree but merely believe it would be around 10 ft. He did not know that whether the 11 KV line Electric wire was inspected by the electric inspector prior or after the accident. He admitted as a fact that there was an eye witness when the deceased touched electric wire with alluminium pipe which is about 18 ft.

In his re-examination, he further deposed that as per the Indian Electricity Rules, 1956, the prescribed clearance is approximately 15-18 feet.

ARGUMENTS

At the time of written and oral arguments, learned counsels of both parties remain stood in their own zeal by appreciating their respective evidences.

FINDINGS

Issue No. 1

Whether the plaintiff has cause of action or not.

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.

Judicial intervention on electrocution is very 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). As admitted by the DW-1 during his cross examination that the cause of death of the deceased was electrocution and as observed by the Hon'ble Supreme Court in **Swamy Atmananda & Ors.Vs. Sri Ramakrishna Tapovanam & Ors.** decided on 13/04/2005 in connection with Appeal (Civil) 2395 of 2000 and reported in 2005 AIR 2392, 2005 (3) SCR 556, 2005 (10) SCC 51, 2005 (4) SCALE 117, 2005 (4) JT 472, it was held that-

“A cause of action, thus, means every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded.”

I therefore find that cause of action is in favour of the plaintiff and this issue decided in favour of the plaintiff.

Issue No. 2

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

Although DWs concocted that the cause of incident was due to using aluminum pipe by the deceased Mr. Lianchheuva by touching live electric conductor, depositions of the available two DWs in the factum is without basis as they were absent from the place of occurrence at the time of

incident and no basis is found. Meanwhile, evidences of the plaintiff is corroborative in nature stating that whilst the electric conductor was about 11 feet height from the landscape which itself is arbitrary and in violation of the provisions of rule 77 (3) of the Indian Electricity Rules, 1956. More so, as per the said rule 77, jungle clearance is also requisite towards safety and secure conditions from electric conductor and its poles. The story of factum of incident versioned by the plaintiff is more thrust worthy like climbing of the deceased to plug papaya in the papaya tree and thereby touch live electric conductor which is lower than the minimum prescribed height as per the provisions of rule 77 (3) of the Indian Electricity Rules, 1956.

Above all, 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. Whether 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 or not is also rather questionable as no document is exhibit by the defendants, 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 Hon'ble Supreme Court in **M.P. Electricity Board vs. Shail Kumari and others** reported in [2002 (2) SCC 162] has held as follows:

"8. Even assuming that all such measures have been adopted, a person undertaking an activity involving hazardous or risky exposure to human life, is liable under law of torts to compensate for the injury suffered by any other person, irrespective of any negligence or carelessness on the part of the managers of such undertakings. The basis of such liability is the foreseeable risk inherent in the very nature of such activity. The liability cast on such person is known, in law, as "strict liability". It differs from the liability which arises on account of the negligence or fault in this way i.e. the concept of negligence comprehends that the foreseeable harm could be avoided by

taking reasonable precautions. If the defendant did all that which could be done for avoiding the harm he cannot be held liable when the action is based on any negligence attributed. But such consideration is not relevant in cases of strict liability where the defendant is held liable irrespective of whether he could have avoided the particular harm by taking precautions.

The doctrine of strict liability has its origin in English common law when it was propounded in the celebrated case of *Rylands v. Fletcher* (1868 (3) HL 330: 1861-73 All ER Rep.1). Blackburn, J., the author of the said rule had observed thus in the said decision: (All ER p. 7E-F) "[The true rule of law is that the person who, for his own purposes, brings on his land, and collects and keeps there anything likely to do mischief if it escapes, must keep it at his peril, and, if he does not do so, he is prima facie answerable for all the damage which is the natural consequence of its escape."

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

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

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

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

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

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

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

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

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

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

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

"The offences are strict statutory offences for which establishment of mens rea is not an essential ingredient. The omission or commission of the statutory breach is itself the

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

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

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

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

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

"7. It is an admitted fact that the responsibility to supply electric energy in the particular locality was statutorily conferred on the Board. If the energy so transmitted causes injury or death of a human being, who gets unknowingly trapped into it the primary liability to compensate the sufferer is that of the supplier of the electric energy. So long as the voltage of electricity transmitted through the wires is potentially of dangerous dimension the managers of its supply have the added duty to take all safety measures to prevent escape of such energy or to see that the wire snapped would not remain live on the road as users of such road would be under peril. It is no defence on the part of the management of the Board that somebody committed mischief by siphoning such energy to his private property and that the electrocution was from such diverted line. It is the look out of the managers of the supply system to prevent such pilferage by installing necessary devices. At any rate, if any live wire got snapped and fell on the public road the electric current thereon should automatically have

been disrupted. Authorities manning such dangerous commodities have extra duty to chalk out measures to prevent such mishaps.

8. Even assuming that all such measures have been adopted, a person undertaking an activity involving hazardous or risky exposure to human life, is liable under law of torts to compensate for the injury suffered by any other person, irrespective of any negligence or carelessness on the part of the managers of such undertakings. The basis of such liability is the foreseeable risk inherent in the very nature of such activity. The liability cast on such person is known, in law, as "strict liability". It differs from the liability which arises on account of the negligence or fault in this way i.e. the concept of negligence comprehends that the foreseeable harm could be avoided by taking reasonable precautions. If the defendant did all that which could be done for avoiding the harm he cannot be held liable when the action is based on any negligence attributed. But such consideration is not relevant in cases of strict liability where the defendant is held liable irrespective of whether he could have avoided the particular harm by taking precautions.

9. The doctrine of strict liability has its origin in English Common Law when it was propounded in the celebrated case of *Rylands v. Fletcher* (1868 Law Reports (3) HL 330). Blackburn J., the author of the said rule had observed thus in the said decision:

"The rule of law is that the person who, for his own purpose, brings on his lands and collects and keeps there anything likely to do mischief if it escapes, must keep it at his peril; and if he does so he is *prima facie* answerable for all the damage which is the natural consequence of its escape."

10. There are seven exceptions formulated by means of case law to the doctrine of strict liability. It is unnecessary to enumerate those exceptions barring one which is this. "Act of stranger i.e. if the escape was caused by the unforeseeable act of a stranger, the rule does not apply". (vide Page 535 Winfield on Tort, 15th Edn.)

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

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

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

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

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

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

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

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

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

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

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

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

A classic example of strict liability is the owner of a tiger rehabilitation center. No matter how strong the tiger cages are, if an animal escapes and

causes damage and injury, the owner is held liable. Another example is a contractor hiring a demolition subcontractor that lacks proper insurance. If the subcontractor makes a mistake, the contractor is strictly liable for any damage that occurs.

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

So long as ‘Strict liability’ is invokable in electrocution case and as held in **M.P. Electricity Board vs. Shail Kumari and others (supra)**, whether negligent or carelessness of the defendants are immaterial under the aegis of strict liability. Like in the instant case, I find that the defendants also committed negligence by not properly manage and maintain electric conductor as prescribed by the Indian Electricity Rules, 1956, they are therefore liable to pay compensation to the plaintiff in the instant case.

In respect of the quantum of compensation, since no other reliance is available it may be appropriated to seek conclusion as per the Second Schedule in the Motor Vehicle Act, 1988 under S. 163 A of the said Act. There is no disputes on the age of the deceased and the profession of the deceased as admitted as casual labour. Commonly accepted that the daily unskilled casual labour can earn Rs. 200/- per day at this stage. Thus, $5000 \times 12 \times 16 \times \underline{2} = \text{Rs. } 9,60,000/-$ will be reasonable for the quantum.

3

ORDER

As per the findings reached in the afore issues, it is hereby ORDERED and DECREED that the defendants viz. Power and Electricity Department, Govt. of Mizoram shall pay Rs. 9,60,000/- (Rupees nine lakhs and sixty thousand) with an interest rate @ 9% per annum with effect from 15/2/2011 (When institution of the suit) till realization to the plaintiff due to burnt of his son Mr. Thanchheuva by electric live conductor on 24.1.2010 resulted to death of the said victim.

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 9% per annum from the date of this order till realization. No other costs for typing, transportation, time spent for the suit etc.

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 10th May, 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/12/2011, Sr. CJ (A)/

Dated Aizawl, the 10th May, 2012

Copy to:

1. Mr. Mathaia F/o Lianchheuva (L), Sairang, Aizawl 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 Superintending Engineer, Power and Electricity Department- Maintenance Division- I, Govt. of Mizoram through Mr. R. Lalremruata, Asst. Govt. Advocate, District Court- Aizawl
6. The Executive Engineer, Power & Electricity Department, Maintenance Division- I, Aizawl through Mr. R. Lalremruata, Asst. Govt. Advocate, District Court- Aizawl
7. The Executive Engineer, Power & Electricity Department, Maintenance Division- II, Aizawl through Mr. R. Lalremruata, Asst. Govt. Advocate, District Court- Aizawl
8. P.A. to Hon'ble District & Sessions Judge, Aizawl Judicial District- Aizawl
9. Case record

PESKAR