

S. No. 1
Regular Cause List

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

WP(C)No. 3500/2019

CM No. 2760/2021 CM No. 7104/2019

Aatif Irshad Kumar

...Petitioner(s)

Through: Mr B. A.Tak, Advocate.

Vs.

Union Territory of J&K and Ors.

...Respondent(s)

Through: Mr Asif Maqbool, Dy.AG for R 1 to 4.

Mr Suman Sharma, Advocate for R 5 and 7.

CORAM:

HON'BLE MR JUSTICE JAVED IQBAL WANI, JUDGE

ORDER

17.11.2022

1. The petitioner in the instant petition filed under Article 226 of the Constitution implores for the following reliefs: -

I) *By issuance of writ of Mandamus, or any other order or direction, respondents be directed to pay an amount of its 1.22 Crores (Rupees One crore twenty two lacs) along with interest at the bank rate to the victim namely Aatif Ershad Kumar, through his father Irshad Ahmad Kumar petitioner herein.*

II) *By issuance writ of Mandamus, or any other order or direction, respondents be directed to pay the interim compensation of Rs 20.00 lacs (Rupees twenty lacs) so that the Artificial Limb is purchased for the victim so that he can become able to go to wash room himself*

III) *Any other order, relief or direction, which is not specifically herein prayed may also be passed in favour of the petitioner which the Hon'ble court deems just and proper may also be passed in favour of the petitioner and against the respondent.*

2. The reliefs aforesaid are being sought by the petitioner on the following facts: -

- a. That in the year 2018, the petitioner, a minor of the age 5 to 6 years came in a direct contact with live 33000 KV HT line passing through adjacent to his residential house situated at Mantrigam Bandipora, where the victim is stated to have been residing with his family. The residential house in question is stated to have been constructed in the year 2008 and the 33000 KV HT line laid by the respondents in the year 2012 being maintained and looked after by the respondents 2 to 4. The said HT line is stated to have been knowingly installed by the respondents adjacent to the residential house in question despite objections raised by the inhabitants of the village including father of the victim petitioner herein.
- b. The victim petitioner is stated to have suffered severe burnt injuries on account of electrocution and consequently admitted in SMHS hospital Srinagar on 17.11.2018 for treatment wherein the said victim is stated to have been operated number of times resulting into amputation of his right hand, thumb of the left hand, finger of right foot, besides burnt injuries to the whole body. The disability suffered by the victim petitioner are stated to have been evaluated and assessed by Medical Board to the extent of 90% Permanent in nature and a certificate also issued in this regard being certificate No. CMO/BPR/DMB/19/564 dated 12.06.2019.
- c. It is being further stated that victim petitioner besides having received treatment at SMHS hospital Srinagar, was also shifted to Delhi for further treatment inasmuch as to have rehabilitation process availed including for providing an artificial limb with costs of Rs. 13,36,633/- as assessed

by the authorities at Delhi provided in the certificate/proposal No. DEL/458/11/19 dated 05.11.2019. The parents of the victim petitioner are stated to have incurred an amount of Rs. 2 lacs for getting the victim petitioner treated at Delhi.

- d. It is being next stated that the victim petitioner on account of his 90% permanent disability became wholly and solely dependent upon his parents and required a monthly treatment amounting to Rs. 30000-35000 which parents of the victim petitioner are stated to have not been able to spend upon the said treatment of the victim petitioner.
 - e. It is being next stated that on account of inability of the parents to provide lifelong treatment to the victim petitioner, the father of the victim petitioner approached the official respondents including Deputy Commissioner, Bandipora, for providing assistance in this regard as also for grant of compensation which, however, is stated to have not been provided compelling the victim petitioner to approach this Court for grant of reliefs as aforesaid.
3. **Per contra**, objections to the petition have been filed by respondents 1 to 4, wherein it is being stated that the electrocution of the victim petitioner cannot be attributed to the respondents, as there is no negligence on the part of the respondents committed in this regard. The victim petitioner is stated to have got electrocuted on 17.11.2018 due to his own negligence while playing with some metallic object on his 3rd storied residential house as confirmed by the locals of the area.
 4. It is, however, being admitted that the victim petitioner suffered severe burnt injuries and also that two FIRs being FIR Nos. 13 and 14 of 2018 at Police Station Pethkote on 24.11.2018 in this behalf was got registered by the concerned police station upon a direction issued by the Chief Judicial Magistrate, Bandipora.

5. It is also not being denied in the objections that HT line in question stands installed/laid in the year 2012 passing through the road side all along its feasibility routes, however, it is being stated that father of victim petitioner constructed 3rd story of his residential house after laying of HT line, as such, there was no negligence on the part of the respondents.
6. The respondents in the objections have not denied specifically the permanent disability suffered by the victim petitioner or else the expenses incurred by his parents on his treatment at SMHS hospital Srinagar and also in Delhi.
7. It is being reiterated and repeated in the objections that there is no fault on the part of the respondents, as such, the victim petitioner is not entitled to any compensation from the respondents.
8. Respondent Nos. 5 to 7 have also filed objections to the petition wherein it is being specifically stated that the HT line in question has been laid throughout the State of Jammu and Kashmir (now UT of Jammu and Kashmir) by the respondent Power Development Department and that respondent Nos. 5 to 7 have no role either in laying the said HT line or supply of power through it, as such, in the aforesaid backdrop it is denied by the said respondents that the petitioner has any cause available against them and consequently respondents are liable to pay any compensation thereof to the petitioner victim.

Heard learned counsel for the parties and perused the record.

9. It is an admitted fact emerging from the pleadings of the parties that the victim petitioner has got electrocuted on 17.11.2018 in his residential house upon coming into contact with 33000 KV HT line passing through adjacent to his house. It is also not in dispute that the victim petitioner on account of the said electrocution suffered permanent disability of 90% as certified by competent Medical Board.
10. The only issue which is being joined in the matter by the respondents 1 to 4 is that the father of the victim petitioner had constructed 3rd

story of his residential house in close proximity of the HT line in question having been laid in the year 2012. The said assertion of the respondents 1 to 4 is not based on any proof or documentary evidence supporting the said assertion. The said assertion is stated to be based on the version of the locals whose particulars even have not been provided in the objections. Assuming for the sake of arguments the said assertion of the respondents to be true and correct yet, it was incumbent and obligatory for the respondents under and in terms of the provisions of the Jammu and Kashmir Electricity Act, 2010 read with Jammu and Kashmir Electricity Rules 1978 to have not permitted the father of the victim petitioner to raise alleged construction of 3rd story of his residential house in close proximity of HT line in question.

In law the liability cast upon the respondents 1 to 4 being the functionaries of the State in law under Law of Torts to compensate the petitioner on account of negligence and carelessness would lie within the parameters of “**strict liability**” and though there are exceptions to the rule of strict liability, yet the Apex Court in case titled as “**M. C. Mehta Vs. Union of India reported in 1987 (1) SCC 395,**” has held that “where an enterprise is engaged in a hazardous and inherently dangerous activity and harm is caused on anyone on account of the accident in operation of the such activity, the enterprise is strictly and absolutely liable to compensate those who get affected by the accident and such liability is not subject to any of the exceptions to the principle of strict liability under the rule contained in **Rylands Vs. Fletcher**”.

11. In view of aforesaid legal position, the defence setup by the respondents 1 to 4 as against the case setup by the petitioner victim cannot by any sense of imagination said to be potent enough to dislodge the claims of the petitioner victim laid in the instant petition against the respondents 1 to 4. Therefore, the aforesaid

assertion/defence of the respondents 1 to 4 is turned down and rejected.

12. Now the moot question which requires to be adverted to by this Court in the instant petition would be, as to what amount of compensation, the petitioner victim would be entitled to, payable by the respondents 1 to 4 for the 90% permanent disability suffered by him.

In regard to above it would be advantageous and appropriate to seek guidance in the matter from the ration laid down by the Apex court in case titled as “ **Raman Vs. Uttar Haryana Bijli Vitran Nigam limited and Ors. Reported in 2014 (15) SCC 1**” and “**National Insurance Company Vs. Pranay Sethi reported in 2017 (16) SCC 680**”.

Accordingly following amount of compensation is assessed and worked out to be payable to the petitioner victim by the respondents.

1.Computation on account of Non-pecuniary heads: -

- i) Pain, suffering together with shock as an ingredient of pain and suffering has to be computed on the strength of loss of amenities together with notional loss of income is assessed @ Rs. 10,00,000/- (Rupees Ten lac)

2. Loss under Pecuniary Heads: -

- ii) Cost input towards providing and fixing of artificial Limb based on certification done at new Delhi Rs. 13,36,633/- say 13.50 lacs.
- iii) Cost incurred for treatment at New Delhi including transportation. Rs. 2.50. Lacs
- iv) Expenses to be incurred towards hiring of service of attendant keeping in view disability of 90% for minimum period of 07 years and Rs. 5000 per month= $5 \times 12 \times 7 = 4.20$ lacs

Total Compensation= Rs. 30,20,000/- (Thirty Lac and Twenty Thousand only)

13. Viewed thus, what has been considered observed and analyzed hereinabove, the instant petition is disposed of in the following terms:-

- i) The respondents 1 to 4 are commanded to pay an amount of Rs. 30,20,000/- (Thirty Lac and Twenty Thousand only) along with interest at the rate of 6% per annum from the date of filing of the petition till the date of actual deposit to the victim petitioner by depositing the same in a Fixed Deposit Account in the name of the victim petitioner (minor) represented by his father as a natural guardian till the age of attaining majority by the victim petitioner in a nationalized Bank.
- ii) The monthly interest that would be earned on the aforesaid amount of compensation during the period of minority of the victim petitioner shall be withdrawn by the father of the victim petitioner and spend upon victim petitioner as monthly expenses including treatment.

Disposed of along with connected CM/s.

(JAVED IQBAL WANI)
JUDGE

SRINAGAR

17.11.2022

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