

IN THE HIGH COURT OF MANIPUR

AT IMPHAL

W.P. (C) No. 167 of 2019

1. ***Baby Khushi Kumari (minor)*** aged about 5 years, resident of Senduari Gaj Singh, Muzaffarpur, Bihar-843111 presently residing at House No. 3, 2nd floor Chingmeirong, Dingu Road, Near Classing Grande Hotel, P.S. Lamphal, P.O. Imphal, Imphal East District, Manipur-795001.
2. Shri Mukesh Mahto aged about 29 years, S/o Vilash Mahto resident of Senduari Gaj Singh, Muzaffarpur, Bihar-843111 presently residing at residing at House-No. 3, 2nd Floor Chingmeirong, Khongnang Anikarak, Dingu Road, Near Classic Grande Hotel, Imphal East District, Imphal.

... Petitioners

-Versus-

1. The State of Manipur represented by the Chief Secretary, Govt. Of Manipur, Secretariat, Babupara, P.O. & P.S. Imphal, Imphal West District, Manipur-795001.
2. The Commissioner (Power), Government of Manipur, Secretariat, Babupara, P.O. & P.S. Imphal, Imphal West District, Manipur, Pin No. 795001.
3. The Manipur State Power Distribution Company Limited (MSPDCL), represented by Managing Director, Near 2nd M.R. North A.O.C., Imphal, P.O. Lamlong & P.S. Imphal, Imphal East District, Manipur, Pin No. 795001.

... Respondents

B E F O R E

HON'BLE MR. JUSTICE KH. NOBIN SINGH

For the Petitioner : Mr. Tungrei Ngakang, Advocate
For the Respondents : Mr. S. Rupachandra, Addl. A.G.
asstd. by Ms. Joan Kipgen, Advocate
Date of Hearing : **25-02-2020**
Date of Judgment & Order : **19-03-2020**

JUDGMENT & ORDER

[1] Heard Mr. Tungrei Ngakang, learned Advocate appearing for the petitioners and Mr. S. Rupachandra, learned Addl. Advocate General for the respondents.

[2] By the instant writ petition, the petitioners have prayed for issuing a writ of mandamus or any other appropriate writ to direct the respondents to pay compensation of Rs.1,62,97,800/- (Rupees one crore sixty-two lakhs ninety seven thousand and eight hundred) with 12% interest from the date of the incident.

[3.1] According to the petitioners, the petitioner No.2 is the natural father of the victim minor girl, the petitioner No.1. On 17-12-2017, while the petitioner No.1 was playing with her sister at the varendah, she came in contact with HT live overhead line passing adjacent to the building and in consequence thereof, the petitioner No.1 sustained serious multiple injuries. After the incident, she was taken to the Raj Medicity Hospital, Imphal on 17-12-2017 but she was shifted to the Shija Hospital & Research Institute, Imphal in the evening itself. As the condition of petitioner No.1 was getting worse, she was taken to Safdarjang Hospital, New Delhi on 19-12-2017. The Doctors who examined the petitioner, gave their opinion that both the arms from shoulders were required to be amputated in order to save her life and accordingly, on 29-12-2017, both the hands of the petitioner No.1 were amputated at Safdarjung Hospital.

[3.2] As the petitioner No.2 was in Delhi in connection with the medical treatment of his daughter, the petitioner No.1 and since there was no one to look after her except himself, no complaint could be filed in time before the concerned authority. After the petitioner No.1's health was getting little improvement only, the petitioner No.2 started going from pillar to posts consulting well wishers and educated persons for getting financial assistance from the Government. After the advice being received from well wishers, a complaint was lodged with the Officer In-charge, Lamphel Police Station, Imphal West vide his letter dated 11-11-2018 with a request to register a case against the Electricity Department.

[3.3] A representation dated 06-02-2019 was submitted to the Chief Secretary, Manipur requesting him for redressing the grievances of the petitioner No.1 by way of giving financial assistance. But he was not paid any compensation nor was any decision communicated to him.

[3.4] After the complaint being lodged with the Police, the Officer In-charge of Lamphel Police Station registered a GD Entry and made a discreet inquiry into the matter and reported that the matter was a genuine one.

[3.5] After both hands of the petitioner no.1 having been amputated, the petitioner No.1 had applied for disable certificate from the JNIMS Hospital, Porompat, Imphal in which it is stated that the percentage of disability of the petitioner No.1 was 90%. At the time of the incident, the

[4]

petitioner No.1 was studying at Kids' High School, Dewlahland, Imphal East, Manipur in the year 2017 and she was an outstanding student securing 100% in all the subjects in her final examination. The petitioner No.2 contacted the Ideal Artificial Limbs Solution, leading solution provider enquiring about the procedure for supply of Upper limb prosthetic fitment vide its letter dated 27-12-2018 for left side and right side above elbow prosthesis with maintenance and he was told that the cost thereof was about Rs.6,97,800/- (Rupees six lakhs ninety seven thousand eight hundred).

[3.6] Being aggrieved by the inaction on the part of the respondents, the instant writ petition has been filed by the petitioners on the inter-alia grounds that there was negligence on the part of the authority for the reason that the provisions of the Electricity Act, 2003 and Rules made thereunder, were not complied with by the Electricity Department.

[4] A counter affidavit was filed on behalf of the respondent No.2 stating that on the fateful day i.e. on 17-12-2017 at 11:10 a.m., the petitioner No.1 was trying to catch the 11 KV line from the landing of the stair case (1st Floor) lying about 1.5 ft. from the H.T. Line. Thus, the accident occurred. The stair case was very near to the 11 KV Line and was newly constructed/ extended without the knowledge of the concerned authority. The 11KV line Mantripukhri Feeder-I was erected long time back before the construction of the building and the extension of stair case of the building. At that time, the distance between 11 KV line and

[5]

wall of the building was about 1.9 metres which is a permissible distance. The stair case was constructed in the year 2014 very near to the 11KV line at about 1.5 ft. without any prior information being given to the concerned authority. The statement given by the owner of the building has shown that the building was constructed in the year 2009 and the stair case was constructed in 2014. As per the Rule 82 of the Indian Electricity Rule 1956, for erection of or alteration to building structures etc, the owner should give notice in writing of his attention to the Supplier and to the Electrical Inspector so that the Supplier may shift the line to a safer place with due formalities. There was no any written report/ complaint to the concerned authority. But although the incident took place on 17-12-2017, the complaint was lodged with the Police only on 11-11-2018 and therefore, there was a gap of more than 10 months between the incident and the reporting of the matter to the police. At the time of the incident, the amount of Ex-Gratia was 10,000/- (Rupees ten thousand) but pursuant to the order dated 07-03-2018, the amount has been revised to Rs.50,000/- (Rupees fifty thousand).

[5] The supply and maintenance of electricity wire is governed by the provisions of the Electricity Act and the Rules made thereunder. Section 29 of the Act and Rule 46 thereof read as under:

“29. Construction, installation, protection, operation and maintenance of electric supply lines and apparatus- [(1) All electric supply lines and apparatus shall be of sufficient ratings for power, insulation and estimated fault current and of sufficient mechanical strength, for the duty which they may be required to

perform under the environmental conditions of installation, and shall be constructed, installed, protected, worked and maintained in such a manner as to ensure safety of [human beings, animals and property].

(2) Save as otherwise provided in these rules, the relevant code of practice of the [Bureau of Indian Standards] [including National Electrical Code] if any may be followed to carry out the purposes of this rule and in the event of any inconsistency, the provision of these rules shall prevail.

(3) The material and apparatus used shall conform to the relevant specifications of the [Bureau of Indian Standards] where such specifications have already been laid down.

46. Periodical inspection and testing of installation - (1)(a) Where an installation is already connected to the supply system of the supplier, every such installation shall be periodically inspected and tested at intervals not exceeding five years either by the Inspector or any officer appointed to assist the Inspector or by the supplier as may be directed by the State Government in this behalf or in the case of installations belonging to, or under the control of the Central Government, and in the case of installation in mines, oilfields and railways by the Central Government.

[(aa) the periodical inspection and testing of high voltage and extra high voltage installations belonging to supplier, shall also be carried out at intervals not exceeding five years by the inspector or any officer appointed to assist the inspector.]

(b) Where the supplier is directed by the Central or the State Government as the case may be to inspect and test the installation he shall report on the condition of the installation to the consumer concerned in a form approved by the Inspector and shall submit a copy of such report to the Inspector or to any

officer appointed to assist the Inspector and authorised under sub-rule (2) of rule 4A.

(c) Subject to the approval of the Inspector, the forms of inspection report contained in Annexure IXA may, with such variations as the circumstances of each case require, be used for the purposes of this sub-rule.

(2)(a) The fees for such inspection and test shall be determined by the Central or the State Government, as the case may be, in the case of each class of consumers and shall be payable by the consumer in advance.

(b) In the event of the failure of any consumer to pay the fees on or before the date specified in the fee-notice, supply to the installation of such consumer shall be liable to be disconnected under the direction of the Inspector. Such disconnection, however, shall not be made by the supplier without giving to the consumer seven clear days' notice in writing of his intention so to do.

(c) In the event of the failure of the owner of any installation to rectify the defects in his installation pointed out by the Inspector or by any officer appointed to assist him and authorised under sub-rule (2) of rule 4A in the form set out in Annexure IX and within the time indicated therein, such installation shall be liable to be disconnected [under the directions of the Inspector] after serving the owner of such installation with a notice:

Provided that the installation shall not be disconnected in case an appeal is made under rule 6 and the appellate authority has stayed the orders of disconnection:

Provided further that the time indicated in the notice shall not be less than 48 hours in any case:

[8]

Provided also that nothing contained in this clause shall have any effect on the application of Rule 49.

(3) *Notwithstanding the provisions of this rule, the consumer shall at all times be solely responsible for the maintenance of his installation in such condition as to be free from danger.”*

[6] On perusal of the provisions of the Act and the Rules made thereunder and in particular, the provisions of Section 29 of the Act and Rule 46 of the rules as reproduced hereinabove, it is seen that all electric supply lines and apparatus shall be of sufficient ratings for power, insulation and estimated fault current and of sufficient mechanical strength which can perform under the environmental conditions of installation. They shall be constructed, installed, protected, worked and maintained in such a manner as to ensure safety of human beings, animals and property. The periodical inspection and testing of high voltage and extra high voltage installations belonging to supplier, shall also be carried out at intervals not exceeding five years by the inspector or any officer appointed to assist the inspector. In other words, a duty is cast upon the respondents to install supply lines and apparatus of high standard keeping in mind the safety of human beings, animal and property and they shall be periodically inspected by the inspector or any officer appointed for that purpose.

[7] In ***Chairman, Grid Corporation of Orissa Ltd. & ors. Vs. Smt. Sukamani Das, (1999) 7 SCC 298***, the Hon'ble Supreme Court, while considering the issue whether the negligence on the part of the

respondents must be established by the petitioner and the appropriate remedy would be to approach the Civil Court of competent jurisdiction, if there are disputed questions of facts, held:

“6. In our opinion, the High Court committed an error in entertaining the writ petitions even though they were not fit cases for exercising power under Article 226 of the Constitution. The High Court went wrong in proceeding on the basis that as the deaths had taken place because of electrocution as a result of the deceased coming into contact with snapped live wires of the electric transmission lines of the appellants, that “admittedly/ prima facie amounted to negligence on the part of the appellants”. The High Court failed to appreciate that all these cases were actions in tort and negligence was required to be established firstly by the claimants. The mere fact that the wire of the electric transmission line belonging to Appellant 1 had snapped and the deceased had come in contact with it and had died was not by itself sufficient for awarding compensation. It also required to be examined whether the wire had snapped as a result of any negligence of the appellants and under which circumstances the deceased had come in contact with the wire. In view of the specific defences raised by the appellants in each of these cases they deserved an opportunity to prove that proper care and precautions were taken in maintaining the transmission lines and yet the wires had snapped because of circumstances beyond their control or unauthorised intervention of third parties or that the deceased had not died in the manner stated by the petitioners. These questions could not have been decided properly on the basis of affidavits only. It is the settled legal position that where disputed questions of

facts are involved a petition under Article 226 of the Constitution is not a proper remedy. The High Court has not and could not have held that the disputes in these cases were raised for the sake of raising them and that there was no substance therein. The High Court should have directed the writ petitioners to approach the civil court as it was done in OJC No. 5229 of 1995.”

The principles laid down therein have been reiterated by the Hon'ble Supreme Court in ***SDO, Grid Corporation of Orissa Ltd. Vs. Timudu Oram, (2005) 6 SCC 156*** wherein the Hon'ble Supreme court held:

“6. In Chairman, Grid Corpn. of Orissa Ltd. (GRIDCO) with which case these appeals were listed for hearing but could not be heard for want of service, this Court took the view that the High Court committed an error in entertaining the writ petitions under Article 226 of the Constitution and were not fit cases for exercising the jurisdiction under Article 226 of the Constitution. It was held that actions in tort and negligence were required to be established initially by the claimants. The mere fact that the wire of electric transmission line belonging to the appellants had snapped and the deceased had come into contact with it and died by itself was not sufficient for awarding compensation. The Court was required to examine as to whether the wire had snapped as a result of any negligence on the part of the appellants, as a result of which the deceased had come in contact with the wire. In view of the defence raised and the denial by the appellants in each of the cases, the appellants deserved an opportunity to prove that proper care and precautions were taken in maintaining the transmission line and yet the wires had snapped

because of the circumstances beyond their control or unauthorised intervention of third parties. Such disputed questions of fact could not be decided in exercise of jurisdiction under Article 226 of the Constitution. That the High Court could not come to the conclusion that the defence raised by the appellants had been raised only for the sake of it and there was no substance in it. In para 6 it was observed thus: (SCC pp. 301-02)

“6. In our opinion, the High Court committed an error in entertaining the writ petitions even though they were not fit cases for exercising power under Article 226 of the Constitution. The High Court went wrong in proceeding on the basis that as the deaths had taken place because of electrocution as a result of the deceased coming into contact with snapped live wires of the electric transmission lines of the appellants, that „admittedly/prima facie amounted to negligence on the part of the appellants“. The High Court failed to appreciate that all these cases were actions in tort and negligence was required to be established firstly by the claimants. The mere fact that the wire of the electric transmission line belonging to Appellant 1 had snapped and the deceased had come in contact with it and had died was not by itself sufficient for awarding compensation. It also required to be examined whether the wire had snapped as a result of any negligence of the appellants and under which circumstances the deceased had come in contact with the wire. In view of the specific defences raised by the appellants in each of these cases they deserved an opportunity to prove that proper care and precautions were taken in maintaining the transmission lines and yet the wires had

snapped because of circumstances beyond their control or unauthorised intervention of third parties or that the deceased had not died in the manner stated by the petitioners. These questions could not have been decided properly on the basis of affidavits only. It is the settled legal position that where disputed questions of facts are involved a petition under Article 226 of the Constitution is not a proper remedy. The High Court has not and could not have held that the disputes in these cases were raised for the sake of raising them and that there was no substance therein. The High Court should have directed the writ petitioners to approach the civil court as it was done in OJC No. 5229 of 1995.”

[8] In ***Rudul Sah Vs. State of Bihar & ors., (1983) 4 SCC 141***

which relates to an illegal detention of a person for about 14 years, the petitioner who was acquitted by the Court of Session, was released from the jail after about 14 years. A habeas corpus petition was filed praying for some reliefs, out which the one which is relevant for the present case, is the prayer for payment of compensation. Underlining the importance of Article 21 of the Constitution of India which guarantees the right to life and liberty, the Hon'ble Supreme Court ordered for payment of compensation in the nature of a palliative. Para 9 and 10 thereof are as under:

“9. It is true that Article 32 cannot be used as a substitute for the enforcement of rights and obligations which can be enforced efficaciously through the ordinary processes of courts, civil and criminal. A money claim has therefore to be

agitated in and adjudicated upon in a suit instituted in a Court of lowest grade competent to try it. But the important question for our consideration is whether in the exercise of its jurisdiction under Article 32, this Court can pass an order for the payment of money if such an order is in the nature of compensation consequential upon the deprivation of a fundamental right. The instant case is illustrative of such cases. The petitioner was detained illegally in the prison for over 14 years after his acquittal in a full-dressed trial. He filed a habeas corpus petition in this Court for his release from illegal detention. He obtained that relief, our finding being that his detention in the prison after his acquittal was wholly unjustified. He contends that he is entitled to be compensated for his illegal detention and that we ought to pass an appropriate order for the payment of compensation in this habeas corpus petition itself.

- 10.** *We cannot resist this argument. We see no effective answer to it save the stale and sterile objection that the petitioner may, if so advised, file a suit to recover damages from the State Government. Happily, the State's counsel has not raised that objection. The petitioner could have been relegated to the ordinary remedy of a suit if his claim to compensation was factually controversial, in the sense that a civil court may or may not have upheld his claim. But we have no doubt that if the petitioner files a suit to recover damages for his illegal detention, a decree for damages would have to be passed in that suit, though it is not possible to predicate, in the absence of evidence, the precise amount which would be decreed in his favour. In these circumstances, the refusal of this Court to pass an order of compensation in favour of the petitioner will be doing mere lip-service to his fundamental right to liberty*

which the State Government has so grossly violated. Article 21 which guarantees the right to life and liberty will be denuded of its significant content if the power of this Court were limited to passing orders of release from illegal detention. One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Article 21 secured, is to mulct its violators in the payment of monetary compensation. Administrative sclerosis leading to flagrant infringements of fundamental rights cannot be corrected by any other method open to the judiciary to adopt. The right to compensation is some palliative for the unlawful acts of instrumentalities which act in the name of public interest and which present for their protection the powers of the State as a shield. If civilisation is not to perish in this country as it has perished in some others too well known to suffer mention, it is necessary to educate ourselves into accepting that, respect for the rights of individuals is the true bastion of democracy. Therefore, the State must repair the damage done by its officers to the petitioner's rights. It may have recourse against those officers."

In ***Nilabati Behera (Smt.) Alias Lalita Behera Vs. State of Orissa & ors., (1993) 2 SCC 746***, a letter was sent to the Hon'ble Supreme Court by Smt. Nilabati Behera about the death of her son which was converted into a petition under Article 32 of the Constitution of India for determining the claim of compensation. The Hon'ble Supreme Court, after referring to its various decisions on the similar issues, was of the view that the liability of the State of Orissa to pay compensation could not be doubted but the Hon'ble Supreme Court

went ahead spelling out the principles as regards the liability of the State for payment of compensation and the liability in private law for payment of compensation in an action tort. It has been observed that the award of compensation in a proceeding under Article 32 or under Article 226 of the Constitution of India is a remedy available in public law, based on strict liability for contravention of fundamental rights to which the principle of sovereign immunity does not apply, even though it may be available as defence in private law in an action based on tort. The Hon'ble Supreme Court held:

“17. It follows that „a claim in public law for compensation“ for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution, is an acknowledged remedy for enforcement and protection of such rights, and such a claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right is „distinct from, and in addition to, the remedy in private law for damages for the tort“ resulting from the contravention of the fundamental right. The defence of sovereign immunity being inapplicable, and alien to the concept of guarantee of fundamental rights, there can be no question of such a defence being available in the constitutional remedy. It is this principle which justifies award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution, when that is the only practicable mode of redress available for the contravention made by the State or its servants in the purported exercise of their powers, and enforcement of the fundamental right is claimed by resort to the remedy in public law under the Constitution by recourse to Articles 32

and 226 of the Constitution. This is what was indicated in Rudul Sah and is the basis of the subsequent decisions in which compensation was awarded under Articles 32 and 226 of the Constitution, for contravention of fundamental rights.

- 20.** *We respectfully concur with the view that the court is not helpless and the wide powers given to this Court by Article 32, which itself is a fundamental right, imposes a constitutional obligation on this Court to forge such new tools, which may be necessary for doing complete justice and enforcing the fundamental rights guaranteed in the Constitution, which enable the award of monetary compensation in appropriate cases, where that is the only mode of redress available. The power available to this Court under Article 142 is also an enabling provision in this behalf. The contrary view would not merely render the court powerless and the constitutional guarantee a mirage, but may, in certain situations, be an incentive to extinguish life, if for the extreme contravention the court is powerless to grant any relief against the State, except by punishment of the wrongdoer for the resulting offence, and recovery of damages under private law, by the ordinary process. If the guarantee that deprivation of life and personal liberty cannot be made except in accordance with law, is to be real, the enforcement of the right in case of every contravention must also be possible in the constitutional scheme, the mode of redress being that which is appropriate in the facts of each case. This remedy in public law has to be more readily available when invoked by the have-nots, who are not possessed of the wherewithal for enforcement of their rights in private law, even though its exercise is to be tempered by judicial restraint to avoid circumvention of*

private law remedies, where more appropriate.

22. *The above discussion indicates the principle on which the court's power under Articles 32 and 226 of the Constitution is exercised to award monetary compensation for contravention of a fundamental right. This was indicated in Rudul Sah and certain further observations therein adverted to earlier, which may tend to minimise the effect of the principle indicated therein, do not really detract from that principle. This is how the decisions of this Court in Rudul Sah and others in that line have to be understood and Kasturilal distinguished therefrom. We have considered this question at some length in view of the doubt raised, at times, about the propriety of awarding compensation in such proceedings, instead of directing the claimant to resort to the ordinary process of recovery of damages by recourse to an action in tort. In the present case, on the finding reached, it is a clear case for award of compensation to the petitioner for the custodial death of her son."*

In ***D.K. Basu Vs. State of West Bengal, (1997) 1 SCC 416***, a letter came to be treated as a petition which raises an issue to develop custodial jurisprudence and to formulate modalities for awarding compensation to the victim and/ or family members of the victim for atrocities and death caused in police custody. The Hon'ble Supreme Court reiterated the decision rendered in Nilabati Behera case and held:

"44. *The claim in public law for compensation for unconstitutional deprivation of fundamental right to life and liberty, the protection of which is guaranteed under the Constitution, is a claim based on strict liability and is in addition to the claim available in private law for damages for tortious acts*

of the public servants. Public law proceedings serve a different purpose than the private law proceedings. Award of compensation for established infringement of the indefeasible rights guaranteed under Article 21 of the Constitution is a remedy available in public law since the purpose of public law is not only to civilise public power but also to assure the citizens that they live under a legal system wherein their rights and interests shall be protected and preserved. Grant of compensation in proceedings under Article 32 or Article 226 of the Constitution of India for the established violation of the fundamental rights guaranteed under Article 21, is an exercise of the courts under the public law jurisdiction for penalising the wrongdoer and fixing the liability for the public wrong on the State which failed in the discharge of its public duty to protect the fundamental rights of the citizen.

- 45.** *The old doctrine of only relegating the aggrieved to the remedies available in civil law limits the role of the courts too much, as the protector and custodian of the indefeasible rights of the citizens. The courts have the obligation to satisfy the social aspirations of the citizens because the courts and the law are for the people and expected to respond to their aspirations. A court of law cannot close its consciousness and aliveness to stark realities. Mere punishment of the offender cannot give much solace to the family of the victim- civil action for damages is a long drawn and a cumbersome judicial process. Monetary compensation for redressal by the court finding the infringement of the indefeasible right to life of the citizen is, therefore, useful and at time perhaps the only effective remedy to apply balm to the wounds of the family members of the deceased victim, who may have*

been the breadwinner of the family.”

In ***M.C. Mehta & anr. Vs. Union of India & ors., (1987) 1 SCC 395***, the Hon'ble Supreme Court while observing that it has the power to grant remedial reliefs including the power to award compensation in appropriated cases, held:

“3. The first question which requires to be considered is as to what is the scope and ambit of the jurisdiction of this Court under Article 32 since the applications for compensation made by the Delhi Legal Aid and Advice Board and the Delhi Bar Association are applications sought to be maintained under that article. We have already had occasion to consider the ambit and coverage of Article 32 in the Bandhua Mukti Morcha v. Union of India and we wholly endorse what has been stated by one of us namely, Bhagwati, J. as he then was in his judgment in that case in regard to the true scope and ambit of that article. It may now be taken as well settled that Article 32 does not merely confer power on this Court to issue a direction, order or writ for enforcement of the fundamental rights but it also lays a constitutional obligation on this Court to protect the fundamental rights of the people and for that purpose this Court has all incidental and ancillary powers including the power to forge new remedies and fashion new strategies designed to enforce the fundamental rights. It is in realisation of this constitutional obligation that this Court has in the past innovated new methods and strategies for the purpose of securing enforcement of the fundamental rights, particularly in the case of the poor and the disadvantaged who are denied their basic human rights and to whom freedom and liberty have no meaning.

7. We are also of the view that this Court under Article 32(1) is free to devise any procedure appropriate for the particular purpose of the proceeding, namely, enforcement of a fundamental right and under Article 32(2) the court has the implicit power to issue whatever direction, order or writ is necessary in a given case, including all incidental or ancillary power necessary to secure enforcement of the fundamental right. The power of the court is not only injunctive in ambit, that is, preventing the infringement of a fundamental right, but it is also remedial in scope and provides relief against a breach of the fundamental right already committed vide *Bandhua Mukti Morcha* case. If the court were powerless to issue any direction, order or writ in cases where a fundamental right has already been violated, Article 32 would be robbed of all its efficacy, because then the situation would be that if a fundamental right is threatened to be violated, the court can inject such violation but if the violator is quick enough to take action infringing the fundamental right, he would escape from the net of Article 32. That would, to a large extent, emasculate the fundamental right guaranteed under Article 32 and render it impotent and futile. We must, therefore, hold that Article 32 is not powerless to assist a person when he finds that his fundamental right has been violated. He can in that event seek remedial assistance under Article 32. The power of the court to grant such remedial relief may include the power to award compensation in appropriate cases. We are deliberately using the words “in appropriate cases” because we must make it clear that it is not in every case where there is a breach of a fundamental right committed by the violator that compensation would be awarded by the court in a petition under Article 32. The

infringement of the fundamental right must be gross and patent, that is, incontrovertible and ex facie glaring and either such infringement should be on a large scale affecting the fundamental rights of a large number of persons, or it should appear unjust or unduly harsh or oppressive on account of their poverty or disability or socially or economically disadvantaged position to require the person or persons affected by such infringement to initiate and pursue action in the civil courts. Ordinarily, of course, a petition under Article 32 should not be used as a substitute for enforcement of the right to claim compensation for infringement of a fundamental right through the ordinary process of civil court. It is only in exceptional cases of the nature indicated by us above, that compensation may be awarded in a petition under Article 32. This is the principle on which this Court awarded compensation in Rudul Shah v. State of Bihar. So also, this Court awarded compensation to Bhim Singh, whose fundamental right to personal liberty was grossly violated by the State of Jammu and Kashmir. If we make a fact analysis of the cases where compensation has been awarded by this Court, we will find that in all the cases, the fact of infringement was patent and incontrovertible, the violation was gross and its magnitude was such as to shock the conscience of the court and it would have been gravely unjust to the person whose fundamental right was violated, to require him to go to the civil court for claiming compensation.”

[9] From the aforesaid decisions, it is seen that this Court under Article 226 of the Constitution of India is competent to award compensation in the cases of violation of fundamental rights. It is an

undeniable fact that compensation can be claimed by an aggrieved person under the provisions of various laws enacted by the Union of India or the States which is a remedy available in private law and that compensation can be claimed in public law as well. The purpose of awarding compensation is to compensate the loss or injury suffered by a person so as to make good to him, although he cannot be compensated fully in terms of money. In other words, it is to mitigate his hardship in terms of money. The quantum of compensation will definitely depend upon the facts and circumstances of each case, as no straightjacket formula which will be applicable in all cases, can be laid down by the court. Compensation can be broadly divided into two - one, a compensation that can be claimed in private law and two, a compensation that can be claimed in public law for violation of fundamental rights. So far as the present case is concerned, it falls in the second category, in the sense that the compensation is being claimed by the petitioner for violation of his fundamental rights and therefore, the contention of the learned counsel appearing for the respondents is devoid any merit and is not acceptable to this court.

[10] It is thus clear that the Hon'ble Supreme Court or for that matter, the High Court in exercise of power under Article 226 of the Constitution of India is competent to award compensation in cases where the fundamental rights, guaranteed in the Constitution, have been infringed by the State authorities. It may be noted that the aforesaid decisions have been rendered by the Hon'ble Supreme Court on the

general issue relating to the liabilities of the States to pay compensation in cases of violation of fundamental rights. But a specific case of electrocution in which it has been held that the victim is entitled to compensation, is the one rendered in ***MP Electricity Board Vs. Shail Kumari & ors., (2002) 2 SCC 162*** wherein a workman in a factory, while returning from the factory, was riding a cycle and when he unknowingly rode over the wire, he was electrocuted and accordingly, he died. The stand of the Board was that it was not responsible for it and that one Hari Gaikwad had taken a wire from the main supply line in order to siphon the energy for his own use and the said act of pilferage was done clandestinely without even notice of the Board and that the line got unfastened from the hook and it fell on the road over which the cycle ridden by the deceased slid resulting in the instantaneous electrocution. In view of the responsibility conferred statutorily upon the Board, the Hon'ble Supreme Court rejected its contention that the electrocution was due to the clandestine pilferage committed by a stranger unauthorisedly siphoning the electric energy from the supply line and held:

“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.”

Similarly is the case in ***Raman Vs. Uttar Haryana Bijli Vitran Nigam Ltd., Civil Appeal No.11466 of 2014*** decided by the Hon’ble Supreme Court on 17-12-2014. In the said case, the appellant, a four year old boy was electrocuted on 03-11-2011 by coming direct contact with the naked electric wire open on the roof of his house. Immediately after the incident, he was taken for first aid to a nearby Hospital at Panipat from where he was referred to Post Graduate Institute of Medical Sciences, Rohtak. The final treatment was given at Safdarjang Hospital, New Delhi, where the doctor left with no other option but carry out triple amputation by removing both his arms upto arm pit and left leg upto knee as the grievous injuries suffered were not curable. The appellant approached the High Court by way of a writ petition seeking for an award of compensation which was opposed by the respondents therein by filing a written statement denying the allegations made therein stating that the iron angle found on the roof of the house was not installed by any employee of the respondents; that

the father of the appellant was to be blamed for installing the insulator himself on the roof of the house on which high tension wire was erected. In other words, the stand of the respondents therein was that its employees could not be held responsible for the mishap occurred on the fateful day.

The learned Single Judge, while deciding the said writ petition, referred to various provisions of the Indian Electricity Act, 2003 and the rules made thereunder and in particular, Rules, 29, 44 and 46 which require the electricity authorities to conduct periodical inspection of the lines maintained by them and to take all such safety measures to prevent accident and maintain the lines in such a manner that life and property of the general public is protected. The learned Single Judge also adverted to Section 68 of the Indian Electricity Act, 2003 and Rule 91 of the electricity Rules, 1956 which lay down the procedure of safety and protective devices to be provided for overhead electric lines erected over any part of the street or public place or any consumer's premises and mandate that those shall be protected with a device approved by the Inspector for rendering the line electrically harmless in case it breaks. After taking into account many factors and keeping all aspects of the matter *including the application of the principle of multiplier method laid down in **Sarla Verma & ors. Vs. Delhi Transport Corporation & anr.***, the learned Single Judge awarded compensation with various directions including the one for payment of compensation of Rs.30 lacs and in addition thereto, the Board would

[26]

pay and deposit compensation of Rs.30 lacs to be kept in a separate account, the interest accrued thereon shall be used towards monthly requirement of the appellant. On an appeal preferred by the respondents, the Division Bench of the High Court allowed it on the basis of the alleged concession given by the Advocate on behalf of the appellant resulting in the modifications as mentioned in the order. Being aggrieved by it, the appellant preferred the civil appeal before the Hon'ble Supreme Court which after, referring to its earlier decisions, allowed the appeal and upheld the judgment and order of the learned Single Judge except minor modifications, as detailed in para 21 thereof, being made by it.

[11] An issue similar to that of the issue involved herein has been considered by this Court in Moirangthem Indrakumar Singh case and even the ruling cited hereinabove, have been referred to therein and this Court held that in view of and in terms of the decisions, as referred to hereinabove, relating to payment of compensation in the cases arising out of incidents of electrocution due to the negligence on the part of the State authorities, this Court is of the view that the instant writ petition deserves to be allowed by this court. Therefore, the question that arises for consideration by this court is as to what amount of compensation would be just and reasonable in the facts and circumstances of the present case. In Raman case (supra), the Hon'ble Supreme Court was confronted with a question as to how the just and reasonable compensation be determined in a case and after examining

its earlier decisions, it came to the conclusion that it is difficult for any court to lay down rigid tests which should be applied in all situations and that in the Indian context, various factors like educational qualification, nature of job, past performance, scope of higher salary, the expenditure that the claimant has incurred and is likely to incur, family dependence, inflation etc. should be taken into consideration. While determining the compensation, the Hon'ble Supreme Court has emphasised the need to strike a balance between the inflated and unreasonable demands of a victim and the equally untenable claim of the opposite party saying that nothing is payable. In view of its earlier decisions referred to therein, the Hon'ble Supreme Court was of the view that the compensation awarded at Rs.60 lakhs in the judgment of the learned Single Judge, out of which Rs.30 lakhs were to be deposited jointly in the name of the appellant represented by his parents as natural guardian and the Chief Engineer or its nominee representing the respondents in a fixed deposit till he attains the age of majority, was just and proper but set aside the portion thereof as mentioned in its para 19 of the judgment and order and modified it accordingly. But the Hon'ble Supreme Court rejected the use of multiplier system as the only basis for purpose of determining the just and reasonable compensation in such cases like the present one.

[12] Coming to the facts of that case, the petitioner No.1 was a child of about 5 years. On 17-12-2017, while the petitioner No.1 was playing with her sister at the varendah, she came in contact with HT live

overhead line passing adjacent to the building and in consequence thereof, the petitioner No.1 sustained serious multiple injuries. As the condition of petitioner No.1 was getting worse in Manipur, she was taken to Safdarjang Hospital, New Delhi on 19-12-2017 where both hands were amputated in order to save her life. Being a child, she did not have any idea about the safety in respect of the electricity and she was not concerned about the construction of the building and the stair case. No negligence can be attributed to her at all. The fact that the respondents were not aware of the construction of the stair case, shows that there was no regular check on the line. Had there been a regular check on the line, they could have found the construction of the stair case without informing them and appropriate action could have been taken against the owner of the house which the respondents failed to do that. In ***MP Electricity Board Vs. Shail Kumari & ors. Case*** (supra), the Hon'ble Supreme Court has held that 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. Therefore, the contention of the answering respondents appears to be of no substance at all and cannot be countenanced by this court. Because of the incident as aforesaid, the petitioner No.1 will have to suffer from mental agony and hardship for another 65 years, as the longevity of life of Indian citizen is about 70 years. The disability that she has suffered, can

[29]

be said to be almost permanent in nature, in the sense that she will have to do everything with the help of other. She has to face difficulties on all walks of her life. Keeping in mind the various factors including the age of the child, loss of pleasure and happiness, pain and suffering, mental distress, future medical expenses, the financial capacity of the respondents etc., this Court is of the view that a compensation of Rs.10,00,000/-(Rupees thirty lakhs) can be said to be just and reasonable.

[13] In view of the above, the instant writ petition is allowed with the direction that the respondents shall pay a sum of Rs.10,00,000/- (Rupees ten lakhs) only after deducting the amount, if any, already paid by the respondents within a period of 60 (sixty) days from today. In case they fail to pay the said amount within the time granted by this Court, the said amount of Rs.10 lakhs shall accrue an interest @ 6% per annum and the said amount of Rs.10 lakhs with interest shall be paid within 60 (sixty) days from the expiry of the earlier period of 60 (sixty) days. If the petitioners are not satisfied with the compensation as directed by this Court, it is open to them to approach the concerned civil court for further compensation. There shall be no order as to costs.

JUDGE

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