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(2008) 06 GAU CK 0035

Gauhati High Court

Case No: None

Khiradabala Nath and Others		APPELLANT
	Vs	
Assam State Electricity Board and Others		RESPONDENT

Date of Decision: June 4, 2008

Acts Referred:

- Constitution of India, 1950 - Article 12, 14, 21, 226, 32
- Limitation Act, 1963 - Section 14

Citation: (2009) 3 GLR 24 : (2008) 4 GLT 116

Hon'ble Judges: I.A. Ansari, J

Bench: Single Bench

Judgement

I.A. Ansari, J.
All these writ petitions, having raised common questions of law, were heard analogously and are being disposed of by this common, judgment and order.

2. Whether compensation, arising out of tortious act of the employees or functionaries of the State or its instrumentality, can be made available to a victim by invoking High Court''s jurisdiction under Article 226 .of the Constitution of India, which is essentially a ''public law'' remedy and, ordinarily, not available in the domain of ''private law''? If so, when can such an exercise of power, under Article 226 of the Constitution, would be possible or subject to what conditions, such exercise of power, under Article 226 of the Constitution, is possible? What is the rule of ''strict liability''? How does ''strict liability'' differ from tortious liability, ordinarily, arising out of neglect, fault or wrongful act ? All these questions have arisen out of applications, made under Article 226, seeking compensation for the death of, or injuries caused to, persons in the accidents arising out of ''electrocution''. The facts of each case and merit thereof would be discussed at an appropriate stage of this judgement and order.

3. I have heard Mr. S. Medhi, learned Counsel, for the petitioner, in WP(C) No. 5772/2001, Mr. D. Saikia, learned Counsel, for the petitioners, in WP(C) Nos. 3417/2003 and 3418/2003, Ms. D. Das Roy, learned Counsel, for the petitioner, in WP(C) No. 8140/2002, Mr. A.K. Jain, learned Counsel, for the petitioner, in WP(C) No. 8733/2004 and for the petitioners in WP(C) No. 1290/ 2005, and Mr. R. Paul, learned Counsel, for the petitioners in WP(C) No. 2328/2005, and Mr. D. Bhattacharya, learned Standing Counsel, ASEB, appearing on behalf of the respondents. I have also heard Mr. N. Dutta, learned Senior Counsel, asAmicus Curiae.

4. It is pertinent to note that drawing distinction between ''public law'' and ''private law'', a three-Judge Bench of the Supreme Court, in Common Cause, A Registered Society Vs. Union of India and Others, , laid down that under the ''public law'', it is essentially the dispute between a citizen or a group of citizens, on the one hand, and the State or other public bodies, on the other, which is resolved and that such exercise of power is aimed at maintaining rule of law and preventing the State or public bodies from acting in arbitrary manner or in violation of rule. In Common Cause (supra), it was further observed that with the expanding horizon of Article 14 read with other articles dealing with fundamental rights, every executive action of the Government or of other public bodies, including instrumentalities of the Government, or of those, which can be legally treated as ''authority'' within the meaning of Article 12, if arbitrary, unreasonable or contrary to law, is, now, amenable to the writ jurisdiction of the Supreme Court under Article 32 or of the High Courts under Article 226 and can be validity scrutinized on the touch stone of the constitutional mandates.

5. Even long before the decision, in Common Cause (supra), was laid down, the Supreme Court, in Life Insurance Corporation of India Vs. Escorts Ltd. and Others, , held that ordinarily, in exercise of power under Article 226 or Article 32, the Court will examine actions of the State if they pertain to the ''public law'' domain and refrain from examining them it they pertain to the ''private law'' field, but the difficulty will lie in demarcating the frontier between the ''public law domain, and the ''private law field'', for, it is impossible to draw a line of distinction between the two and that the question must be decided, in each case, with reference to the particular action, the activity in which the State or the instrumentality of the State is engaged, when performing the action, the ''public law'' or ''private law'' character of the action and a host of other relevant circumstances.

6. Whether compensation for tortious act of the employees of the State can make the State vicariously liable and whether in such cases, the State can be forced by invoking High Court''s jurisdiction, under Article 226, to grant compensation to a victim, when the remedy, under Article 226, is a ''public law'' remedy, came up for consideration in The Chairman, Railway Board and Others Vs. Mrs. Chandrima Das and Others, . In Chairman, Railway Board (supra), Chandrima Das, as a practicing advocate, filed a petition, under Article 226, claiming compensation for the victim, a

Bangladeshi National and an elected representative of the Union Board, who had been subjected to gang rape by many including employees of the Railways, in a room, at Yatri Niwas, at Howrah Station. The Calcutta High Court awarded a sum of Rs. 10 Lakhs, as compensation, for the victim on the ground that the rape was committed, at me building, belonging to the Railways and was perpetrated by the Railway employees. This direction came to be challenged, in the Supreme Court, on the ground, inter alia, that since commission of rape was an individual act of persons, who maybe Railway employees, such individuals would alone be liable to be prosecuted and, on being found guilty, they may be liable to pay fine or compensation, but, having regard to the facts of the case, the Railways, or, for that matter, Union of India, would not be vicariously liable and that in respect of claim for damages for the offence of gang rape, the remedy lay in the domain of ''private law'' and not under ''public law'' and, hence, the victim ought to have instituted appropriate suit, claiming compensation, for the tortious act of the individuals concerned and could not have taken recourse to the public law remedy as envisaged in Article 226.

7. Referring to a number of its earlier decisions, namely, Bhim Singh, MLA Vs. State of Jammu & Kashmir and Others, ; Peoples'' Union for Democratic Rights Vs. State of Bihar and Others, ; Peoples'' Union For Democratic Rights Through Its Secretary and Another Vs. Police Commissioner, Delhi Police Headquarters and Another, ; Saheli, A Women''s Resources center, Through Ms Nalini Bhanot and Others Vs. Commissioner of Police Delhi Police Headquarters and Others, ; Arvinder Singh Bagga Vs. State of U.P. and Others, ; P. Rathinam v. Union of India Death of Sawinder Singh Grover In re: Inder Singh Vs. State of Punjab and others, and D.K. Basu Vs. State of West Bengal, , the Apex Court, in Chairman, Railway Board (supra), held that though exercise of jurisdiction, under Article 226, was earlier limited to public domain and the public law remedy, contained in Article 226, was not available in ''private law domain'', such as, contractual matters, the fact remains that over a period of time, the public law remedies have been extended not only to contractual matters, but also to the realm of tort and it was for this reason that in Rudul Sah Vs. State of Bihar and Another, , the State was made liable to pay compensation for causing to the victim, while in custody, injuries, which amounted to tortious act committed by State''s employees. The Apex Court pointed out, in Chairman, Railway Board (supra), that where public functions are involved and the matter relates to the violation of fundamental rights or enforcement of public duties, the remedy would still be available ''under the public law domain, notwithstanding the fact that a suit could have been instituted for damages under ''private law''.

8. Having treated, in the light of its earlier decision, in Shri Bodhisattwa Gautam Vs. Miss Subhra Chakraborty, , the offence of ''rape'', as a violation of the right guaranteed to every person to live with human dignity under Article 21, the Apex Court, in Chairman, Railway Board (supra), held the Central Government vicariously liable for the offence of rape committed by the employees of the Railways, upheld

the directions for compensation given by the High Court and further pointed out, at para 42, as follows:

42. Running of the Railway is a commercial activity. Establishing the Yatri Niwas as various railway stations to provide lodging and boarding facilities to passengers on payment of charges is a part of the commercial activity of the Union of India and this activity cannot be equated with the exercise of sovereign power. The employees of the Union of India who are deputed to run the Railways and to manage the establishment, including the railway stations and the Yatri Niwas, are essential components of the government machinery which carries on the commercial activity. If any of such employees commits an act of tort, the Union Government, of which they are the employees, can, subject to other legal requirements being satisfied, be held vicariously liable in damages to the person wronged by those employees. Kasturi Lal decision therefore, cannot be pressed into aid. Moreover, we are dealing with this case under the ''public law'' domain and not in a suit instituted under the ''private law'' domain against persons who, utilizing their official position, got a room in the Yatri Niwas booked in their own name where the act complained of was committed.

9. The decision, in Chairman, Railway Board (supra), is, thus, an authority for the proposition that for the tortious act of a Government employee, if such an act is committed within the premises belonging to the Government or by virtue of the office or colour of the office, which such an employee holds, the Government would be vicariously liable to pay compensation to the victim and such a liability can be enforced by invoking High Court''s jurisdiction under Article 226, though the remedy of instituting suit for damages was available to the victim.

10. In Smt. Kumari Vs. State of Tamil Nadu and others, , a six years old child died as a result of fall from ten feet deep sewerage tank in the city of Madras, the tank having been left open and not covered with lid. The child''s father made an application, under Article 226, in Madras High Court, seeking a writ, in the nature of mandamus, directing the respondents to pay Rs. 50,000/- as compensation. The High Court dismissed the writ petition on the ground that in writ jurisdiction, it was not possible to determine as to which of the respondents was negligent in leaving the sewerage tank uncovered. The Supreme Court, however, set aside the High Court''s order and directed the State of Tamil Nadu to pay to the Child''s father a sum of Rs. 50,000/- as compensation, with interest, leaving it, however, open to the State of Tamil Nadu to initiate proceedings for recovery of the said amount from any of the respondents or authorities, which might be responsible for keeping the sewerage tank open.

11. Though not explicitly observed in Kumari (supra), the fact remains that even in this case, the right to invoke the public remedy, as existing in Article 226, by a victim of the tortious act of a Government employee, was, thus, impliedly upheld. It, therefore, becomes clear that it is not necessary that in every case, the remedy for

tortious act must be held to be available in suits and not within the ambit of''public law'' remedy as existing in Article 226.

12. The question, now, is as to whether the ''public law remedy'' contained in Article 226, can be made available to all such cases, wherein allegations of tortious act committed by the State or its instrumentality or employees thereof are made. While considering this aspect of law, what needs to be borne in mind is that Article 226 is invokable, when there is cause of action. Compensation for a tortious act would be available, in the domain of ''public lay'' remedy under Article 226, if the cause of action, arising out of a tortious act, is proved to have been committed by an employee of the State either in discharge of his duties or under the colourable exercise of his duties. ''Cause of action'' is essentially abundle of facts, which, if traversed, a plaintiff must prove to entitle him to receive a judgment in his favour. The cause of action bears no relation to the defence, which may be set up by the defendant, nor does it depend upon the character of the reliefs) sought for. The cause of action is nothing, but the media upon which the plaintiff or the petitioner seeks the Court to arrive at a conclusion in his favour. A fact, pleaded by a petitioner, seeking remedy under Article 226, may or may not be an admitted fact. If a writ petition involves disputed questions of fact and determination of such a dispute requires making of roving enquiry, remedy, under Article 226, would not, ordinarily, be available to the person, who claims to be aggrieved.

13. In Chairman, Grid Corporation of Orissa Ltd. (Gridco) and Others Vs. Smt. Sukamani Das and Another, , the question, as passed by the Court itself, was whether the High Court was justified in exercising its power under Article 226 of the Constitution and awarding compensation to the writ petitioners even though the appellants, who were the respondents in the said writ petition, had denied their liability on the ground that the death had not occurred as a result of their negligence, but because of an act of God or because of acts of some other persons.

14. It is also pertinent to note that in Sukamani Das''s case (supra), several writ petitions were considered, wherein compensation for death caused due to electrocution had been claimed by filing petitions under Article 226. All these writ petitions were resisted by the authorities, who were supplying electrical energy, by denying their liabilities on the ground, inter alia, that the deaths had been caused not as a result of the action or inaction of the service provider of electricity, but because of act of God or acts of some other persons. Having examined the pleaded facts of each of the cases involved in Sukamani Das''s case (supra), the Supreme Court concluded that all the writ petitions involved disputed questions of fact. It is in such circumstances that the Supreme Court pointed out that recourse to Article 226 is not proper, when disputed questions of fact are involved and that the High Court ought to have directed the writ petitioners to approach the civil court. The relevant observations, made in Sukamani Das''s case (supra), in this regard, read as under:

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 electrocution as a result of the deceased coming into contract 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. Mere fact that the wire of the electric transmission line belonging to the appellant No. 1 had snapped and the deceased had come into contract 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 into 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 unauthorized 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.

15. Thus, in Sukamani Das''s case (supra), the Apex Court has, nowhere, laid down that the remedy, under Article 226, would not be available in all such cases, where compensation for tortious act is claimed against the State or an instrumentality of the State. What Sukamani Das''s case (supra) lays down really is that when the question of compensation cannot be decided without determination of the correctness or veracity of such pleaded facts, which are intensely disputed, recourse to Article 226 is not proper.

16. In other words, Sukamani Das''s case (supra) does not completely bar a High Court from invoking its jurisdiction, under Article 226, for awarding compensation to a victim, who may have suffered injury or loss due to tortious act of the State or an instrumentality of the State or public body or employees thereof. In fact, Sukamani Das''s case (supra) is not an authority for the proposition thait in no case of tortious liability, where the Siate denies its liability] recourse to Article 226 can be had at all. What the Apex Court has laid down, in Sukamtoi Das''s case, is that when a writ petition, seeking compensation for tortious acts of a Government servant, is filed, High Court would decline to exercise its jurisdiction, under Article 226, if the writ petition involves determination of disputed questions of fact.

17. In Tamil Nadu Electricity Board Vs. Sumathi and Others, , the Supreme Court has, in fact, clarified that when disputed questions of fact arise and there is clear denial of any tortious liability, the public law remedy, as envisaged by Artide 226 of the Constitution, may not be proper, but this will not mean that in every case of tortious liability, recourse must be had to a suit and not to a writ petition, for when the negligence is apparent, there would be, according to what the Apex Court holds, in Sumathi (supra), no bar to the invoking of jurisdiction under Article 226. The relevant observations, at para 9 of Sumathi (supra), read as under:

In view of the clear proposition of law laid by this Court in Sukumani Das case when a disputed question of fact arises and there is clear denial of any tortious liability, remedy under Article 226 of the Constitution may not be proper. However, it cannot be understood as laving a law that in every case of tortious liability recourse must be had to a suit. When there is negligence on the face of it and infringement of Article 21 is there, it cannot be said that there will be any bar to proceed under Article 226 of the Constitution, Right to life is one of the basic human rights'' guaranteed under Article 226 of the Constitution.

18. S.D.O. Grid Corporation of Orissa Ltd. and Others Vs. Timudu Oram, , is yet another case, wherein the Supreme Court considered the question if the High Court was justified in exercising its power under Article 226 of the Constitution and in awarding compensation to the writ petitioner, though the respondents, in the writ petition, had denied their liability on the ground that the death had not occurred as a result of their negligence, but because of negligence of the writ petitioner or because of an act of God or because of acts of some other persons. Having considered the facts of each of the cases, which were involved in Timudu Oram (supra), the Supreme Court held that since the appellants had disputed the negligence attributed to them and no finding had been recorded by the High Court that the Grid Corporation of Orissa Ltd. was, in anyway, negligent in the performance of its duty, the High Court was not justified in awarding compensation by invoking its jurisdiction under Article 226.

19. It is worth noticing that Timudu Oram (supra) involved cases, which were to be listed along with the case of Sukamani Das (supra), but were left out or could not be dealt with as the service had not been completed on the respondents. Thus, neither Sukamani Das (supra) nor Timudu Oram (supra) lays down, as an absolute and invariable rule, that under no circumstances, the State, in a proceeding under Article 226, can be held liable for the tortious act of its servant if the accident is the result of an act done in exercise of duty by its employee or due to omission to exercise duty by the employee concerned. What Sukamani Das (supra) and Timudu Oram (supra) do lay down is that when a claim for compensation, arising out of tortious act, is made and the facts are in dispute, recourse to Article 226 is not proper and it is institution of suit which is the appropriate remedy in such a case.

20. Parvati Devi v. Commissioner of Police, Delhi, 2000 (3) SCC 754 was a case, wherein Parvati''s husband had died on account of electrocution, while walking on the road. Though the fact that her husband had died on account of electric shock was established, Parvati Devi could not produce relevant materials indicating negligence of any particular officer or authority. In such circumstances, the High Court refused to award compensation. Interfering with the order of the High Court and directing compensation of a sum of Rs. 1 lakh for the legal heir of the said deceased by New Delhi Municipal Corporation, the Apex Court held that once it is established that the death had occurred on account of electrocution, while walking on the road, the authority concerned (NDMC in the case) must be held to be negligent and responsible for the death, in question and, therefore, liable to pay damages.

21. Having thus, clarified that a claim for compensation, arising out of a tortious act, can, in a appropriate case, be made available to a victim by invoking High Court''s power under Article 226, particularly, when no disputed questions of fact are raised, it is, now, time to move to the doctrine of strict liability and determine as to what this doctrine conveys and when the said doctrine can be applied.

22. 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 an undertaking is known, in law as ''strict liability''. The concept of "strict liability'' differs from the liability, which, ordinarily, arises on account of the negligence or fault, for, when a person is held responsible for negligence or fault, the concept comprehends that the foreseeable harm could have been avoided by taking reasonable precautions.

23. Thus, in a case, where the doctrine of ''strict liability, is not applicable and the defendant shows that all such steps, which could have been taken for avoiding the harm, which a person has suffered, had been taken by the defendant, the defendant would not be held liable. Such consideration of negligence or fault is, however, irrelevant in the case of ''strict liability'', for, in a case, covered by the rule of ''strict liability'', the defendant is held liable irrespective of the fact as to whether he could have or could not have avoided the particular harm by taking precaution. To put it a little differently, the rule of ''strict liability'' means that a person would be liable to compensate a person wronged even if the wrong was caused not due to negligence or default of the person, who is sued, or even when the defendant had taken all precautions, which could have been taken to avoid a foreseeable harm. However, the concept of ''strict liability; is attracted, one may point out, only in those cases, where the defendant undertakes an activity involving hazardous or risky exposure to human life, for, the very nature of his activity exposes human beings to danger.

24. The Rule of ''strict liability'', which has its origin in common law, is actually based on the decision in the case of Rylands v. Fletcher, reported in (1861) AllER 1, wherein Blackburn, J., observed thus:

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 in 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. He can excuse himself by showing that the escape was owing to the plaintiff''s default, or, perhaps, that the escape was the consequence of vis major, or the act of god ; but, as nothing of this sort exists here, it is unnecessary to inquire what excuse would be sufficient.

25. The House of Lords considered the rule of ''strict liability'' as propounded by Blackborn, J., and upheld the ratio with the following dictum:

We think that 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 in 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. He can excuse himself by showing that the escape was owing 10 the plaintiff''s default, or, perhaps, that the escape was the consequence of vis major, or the act of God; but, as nothing of this sort exists here, it is unnecessary to inquire what excuse would be sufficient.

26. The above rule, in course of time, gained approval in a large number of decisions rendered by courts in England and abroad. ''Winfield on Tort'' has published a chapter with the title, "Rule in Rylands v. Fletcher". At page 543 of the 15th Edition of his celebrated work, the learned author has pointed out that:

Over the years, Rylands v. Fletcher has been applied to a remarkable variety of things: fire, gas, explosions, electricity, oil, noxious fumes, colliery spoil, rusty wire from a decayed fence, vibrations, poisonous vegetation.

27. ''Winfield on Tort'' enumerates seven defences, recognized in common law, against actions brought on the strength of the rule in Rylands v. Fletcher. These defences or exceptions to the applicability of the rule of ''strict liability'' are:

(1) Consent of the plaintiff i.e. volenti non fit injuria.

(2) Common benefit i.e. where the source of the danger is maintained for the common benefit of the plaintiff and the defendant, the defendant is not liable for its escape.

(3) Act of stranger i.e. if the escape was caused by the unforeseeable act of a stranger, the rule does not apply.

(4) Exercise of statutory authority i.e. the rule will stand excluded either when the act was done under a statutory duty or when a statute provides otherwise.

(5) Act of God or vis major i.e. circumstances which no human foresight can provide against and of which human prudence is not bound to recognize the possibility.

(6) Default of the plaintiff i.e. if the damage is caused solely by the act or default of the plaintiff himself, the rule will not apply.

(7) Remoteness of consequences i.e. the Rule cannot be applied ad infinirum, because even according to the formulation of the rule made by Blackburn, J., the defendant is answerable only for all the damage "which is the natural consequence of its escape".

28. In M.C. Mehta and another Vs. Union of India and others, , R.N. Bhagawati, C.J., speaking for the Constitution Bench, has traced out the evolution of the rule of ''strict liability'', commencing from Rylands v. Fletcher, its development and applicability, in india, in the following words:

31. We must also deal with one other question which was seriously debated before us and that question is as to what is the measure of liability of an enterprise which is engaged in an hazardous or inherently dangerous industry, if by reason of an accident occurring in such industry, persons die or are injured. Does the rule in Rylands v. Fletcher apply or is there any other principle on which the liability can be determined. The rule in Rylands v. Fletcher was evolved in the year 1866 and it provides that a person who for his own purposes brings on to his land and collects and keeps there anything likely to do mischief if it escapes must keep it at his peril and, if he fails to do so, is prima facie liable for the damage which is the natural consequence of its escape. The liability under this rule is strict and it is no defence that the thing escaped without that person''s wilful act, default or neglect or even that he had no knowledge of its existence. This rule laid down a principle of liability that if a person who brings on to his land collects and keeps there anything likely to do harm and such thing escapes and does damage to another, he is liable to compensate for the damage caused. Of course, this rule applies only to non-natural user of the land and it does not apply to things naturally on the land or where the escape is due to an act of God and an act of a stranger or the default of the person injured or where the thing which escapes is present by the consent of the person injured or in certain cases where there is statutory authority. Vide Halsbury''s Laws of England, Vol. 45, para 1305. Considerable case law has developed in England as to what is natural and what is non-natural use of land and what are precisely the circumstances in which this rule maybe displaced. But it is not necessary for us to consider these decisions laying down the parameters of this rule because in a modern industrial society with highly developed scientific knowledge and technology where hazardous or inherently dangerous industries are necessary to carry as part of the developmental programme, this rule evolved in the 19th century at a time when all these developments of science, and technology had not taken place cannot afford any guidance in evolving any standard of liability consistent with the constitutional norms and the needs of the present day economy and social

structure. We need not feel inhibited by this rule which was evolved in the context of a totally different kind of economy. Law has to grow in order to satisfy the needs of the fast changing society and keep abreast with the economic developments taking place in the country. As new situations arise the law has to be evolved in order to meet the challenge of such new situations. Law cannot afford to remain static. We have to evolve new principles and lay down new norms which would adequately deal with the new problems which arise in a highly industrialised economy. We cannot allow our judicial thinking to be constricted by reference to the law as it prevails in England or for the matter of that in any other foreign country. We no longer need the crutches of a foreign legal order. We are certainly prepared to receive light from whatever source it comes but we have to build our own jurisprudence and we cannot countenance an argument that merely because the law in England does not recognise the rule of strict and absolute liability in cases of hazardous or inherently dangerous activities or the rule laid down in Rylands v. Fletcher as developed in England recognises certain limitations and exceptions, we in India must hold back our hands and not venture to evolve a new principle of liability since English courts have not done so. We have to develop our own law and if we find that it is necessary to construct a new principle of liability to deal with an unusual situation which has arisen and which is likely to arise in future on account of hazardous or inherently dangerous industries which are concomitant to an industrial economy, there is no reason why we should hesitate to evolve such principle of liability merely because it has not been so done in England. We are of the view that an enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas owes an absolute and non-delegable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous nature of the activity which it has undertaken. The enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity in which it is engaged must be conducted with the highest standards of safety and if any harm results on account of such activity, the enterprise must be absolutely liable to compensate for such harm and it should be no answer to the enterprise to say that it had taken all reasonable care and that the harm occured without any negligence on its part. Since the persons harmed on account of the hazardous or inherently dangerous activity carried on by the enterprise would not be in a position to isolate the process of operation from the hazardous preparation of substance or any other related element that caused the harm the enterprise must be held strictly liable for causing such harm as a part of the social cost of carrying on the hazardous or inherently dangerous activity. If the enterprise is permitted to carry on an hazardous or inherently dangerous activity for its profit, the law must presume that such permission is conditional on the enterprise absorbing the cost of any accident arising on account of such hazardous or inherently dangerous activity as an appropriate item of its overheads. Such hazardous or inherently dangerous activity

for private profit can be tolerated only on condition that the enterprise engaged in such hazardous or inherently dangerous activity indemnifies all those who suffer on account of the carrying on of such hazardous or inherently dangerous activity regardless of whether it is carried on carefully or not. This principle is also sustainable on the ground that the enterprise alone has the resource to discover and guard against hazards or dangers and to provide warning against potential hazards. We would therefore hold that where in enterprise is engaged in a hazardous or inherently dangerous activity and harm results to anyone on account of an accident in the operation of such hazardous or inherently dangerous activity resulting, for example, in escape of toxic gas the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident and such liability is not subject to any of the exceptions which operate vis-a-vis the tortious principle of strict liability under the rule in Rylands v. Fletcher.

29. From what have been observed above, in M.C. Mehta (supra), one can note the fact that the rule of strict liability'' was further developed to a concept of absolute liability, in M.C. Mehta (supra). It is for this reason that the Supreme Court points out, in Smt. Kaushnuma Begum and Others Vs. The New India Assurance Co. Ltd. and Others, , speaking through K.T. Thomus, J., that the Constitution Bench, in M.C. Mehta(supra), did not disapprove the rule of '' strict liability''; rather, the learned Chief Justice further observed, "...we are certainly prepared to receive light from whatever source it comes". It means, observes the Supreme Court in Kumari (Smt.), that the Constitution Bench, in M.C. Mehta (supra), did not foreclose the application of the rule of ''strict liability'' as a legal proposition.

30. It is in the backdrop of the above position of law that one has to consider the case of Quebec Rly., Light, Heat and Power Co. Ltd. v. Vandry, reported in 1920 AC 662, wherein the Privy Council had held a company, supplying electricity, liable for damages without proof that they had been negligent. Even the defences that the cables were disrupted on account of violent wind and that high-tension current found its way through the low-tension caule into the premises of the respondents were, in Quebec Rly., Light, Heat and Power Co. Ltd. (supra), held to be not sustainable defences.

31. In the case at hand, we are, thus, concerned with the rule of ''strict liability'', which, in short, means that a person, who, for his own purposes, brings on his land, 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.

32. Thus, the rule of ''strict liability'', which makes a person liable to compensate one, who suffers injury by an act of an undertaking, which is involved in hazardous or risky exposure to human life, is subject to certain exceptions, which have been enumerated hereinabove, one of such exceptions being the default of the plaintiff, i.e., when damage is caused solely by the act of the plaintiff himself. This, in turn,

means that the death or injury must have been caused by the act or default of the deceased or the injured, as the case may be. If the deceased or the injured had merely contributed partly to the accident, the rule of "strict liability" will still apply. The responsibility to supply electrical energy in the localities, where the accidents, in the present cases, took place, was statutorily conferred on the respondents. If the energy transmitted by the respondents cause injury to, or death of, a human being, who gets unknowingly trapped into it, the primary liability to compensate the sufferer is that of 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 or hanging on the road from electrical poles, for, users of such road would be under peril. Madhya Pradesh Electricity Board Vs. Shail Kumari and Others,].

33. Yet another defence to the applicability of the doctrine of "strict liability", apart from an act of God, is this: "Act of stranger i.e. if the escape was caused by the unforeseeable act of a stranger, the rule does not apply." (Videp.535, Winfieldon Tort, 15th Edn.). It is, however, of immense importance to note that unlike the default of "an act of stranger", which is a good defence in England, to the applicability of the doctrine of "strict liability", this defence appears to be substantially diluted, in india, by the Supreme Court"s decision, in M.P. Electricity Board (supra), inasmuch as the Supreme Court has pointed out, in M.P. Electricity Board (supra), that in a case, otherwise, covered by the rule of" strict liability", it is no defence, on the part of the management of an undertaking, which is involved in hazardous or risky exposure to human life, that somebody had committed mischief by siphoning such energy to his private property or that the electrocution was from such diverted line. It is the lookout of the managers of the supply system to prevent such pilferage by installing necessary devices and at any rate, points out the Supreme Court in M.P. Electricity Board (supra), when any live wire gets snapped and falls on a public road, the electric current thereto should be instantly disrupted and that the authorities, manning such dangerous commodities, have extra duty to chalk out measures to prevent such mishaps.

34. It maybe noted, as already indicated above, that the rule of "strict liability", with some modifications, has come to be formally embedded in the law of compensation even-in this country. The concept of "strict liability", as the same had evolved in English Common Law and the application thereof to the cases in India, with such exceptions as have developed, in course of time, in India, have succinctly dealt with in M.R. Elctricity Board v. ShailKumari and Ors. reported in (2002) 3 SCC 162 wherein having explained the doctrine of "strict liability", the Supreme Court has clearly held that this doctrine is applicable to all such undertakings or bodies, which transmit electrical energy. Pointing out the applicability of the Rule of "strict liability", in such undertakings and bodies, the Supreme Court, in M.P. Electricity Board (supra), if I may reiterate observed and held as follows:

7. It is admitted fact that the responsibility to supply electric energy in a particular locality was statutorily conferred on the Board. If the energy so transmitted causes injury or death of a human being who gets unwillingly trapped into it, the primary liability to compensate the suffers 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 not 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 duties, 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 persons 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 rises 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 defence 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 defence is held liable irrespective of whether he could have avoided the particular harm by taking precautions.

35. Before proceeding further, I may also pause here and mention that though an attempt has been made, on behalf of the respondents, to show that the concept of ''strict liability'', which was resorted to in M.P. Electricity Board (supra), has not been agreed to by the Apex Court in its later decision in Timudu Oram (supra), it needs to be pointed out that two decisions of this Court, having already considered similar submissions and having taken into account the facts of both the cases, namely, Sukamani Das and Timudu Oram (supra), have held that the principle of ''strict liability'', which was taken resort to, and applied in, M.P. Electricity Board (supra), remained undiluted by the Supreme Court''s subsequent decision in Timudu Oram (supra). In Surjya Das v. Assam State Electricity Board and Ors. reported in (2006) 2 GLR 387, Gogoi, J., in this regard, observed as under:

The rule of strict liability, which has its origin in English Common law, has been applied to several situations in the country with suitable adaptations and

modifications. The following observations contained in para 8 of the judgment in M.P. Electricity Board (supra) would amply sum up the present day position in so far as the application of the principle is concerned.

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 rule of strict liability with suitable modifications had come to be firmly embedded in the system of jurisprudence prevailing in the country and the law laid down by the Apex Court in the case of M.P. Electricity Board (supra) does not stand whittled by the subsequent pronouncements of the Apex Court in the case of SDO Grid Corporation of Orissa Ltd. and Ors. (supra). In paragraph 8 of the aforesaid judgment, the earlier decision of in the case of M.P. Electricity Board (supra) was considered and the Apex Court, without, in any manner effecting the principle of strict liability/preferred not to rely on the judgment of the Apex Court in the case of M.P. Electricity Board (supra) as the said judgment had followed a determination of negligency of the Civil Court. In the above premises, it can, therefore, be reasonably understood that the Apex Court in the case of SDO Grid Corporation of Orissa Ltd. and Ors. (supra) had distinguished the judgment in the case of M.P. Electricity Board (supra) on its own facts without in any way affecting the principle of law laid down therein.

36. Similar views have been expressed in Smt. S.K. Shangring Lamkang and Another Vs. State of Manipur and Others, by MBK Singh, J. too.

37. It is, now, the stage to note that in H.S.E.B. v. Ram Nath reported in : (2004)5SCC793 , a five year old child died as a result of coming into contact with a high tension wire, which passed over the roof of her house, and her parents filed a writ petition, under Article 226, claiming compensation against the service provider. The High Court, applying the principle of res ipsa loquitior, directed payment of compensation of Rs. 1 lakh. The High Court''s direction came to be challenged by relying on Sukamani Das (supra). Declining to interfere with the High Court''s direction in Ram Nath (supra), the Supreme Court, in Ram Nath''s case (supra), pointed out that apart from the fact that there was no disputed question of fact

involved, the appellants were carrying out a business which was inherently dangerous and, hence, it was the duty of the appellants to ensure that no injury results from their activities. The relevant observations, made at para 6 of Ram Nath''s case (supra) read as under:

The appellants are carrying on a business which is inherently dangerous. If a person were to come into contact with a high-tension wire, he is bound to receive serious injury and/or die. As they are carrying on a business which is inherently dangerous, the appellants would have to ensure that no injury results from their activities. If they find that unauthorized constructions have been put up close to their wires it is their duty to ensure that the construction is got demolished by moving the appropriate authorities and if necessary, by moving a court of law. Otherwise, they would take the consequences of their inaction. If there are complaints that these wires are drooping and almost touching houses, they have to ensure that the required distance is kept between the houses and the wires, even though the houses be unauthorized. In this case we do not find any disputed question of fact.

38. Bearing in mind the position of law, as discussed above, let me now, turn to the maintainability and merit of each of the writ petitions which have been heard.

WP(C) No. 5772/2001

39. In this writ petition, made under Article 226 of the Constitution, the petitioner, who is widow of Pauma Ram Nath, has sought for issuance of appropriate Writ(s) commanding the respondents to pay a sum)f Rs. 5,00,000/- (five lakhs), as compensation, for the death of her husband, her case >eing, in brief, that when her husband, Pauma Ram Nath, was returning home from his shop by riding a bicycle, at about 4 am, on 08.08.2000, his bicycle was struck by a live electrical wire hanging about two feet above he road and, as a result of coming into con-act with the live electrical wire, he got electrocuted and died on the spot.

40. The respondents have filed their affidavit denying and disputing their liability to pay any compensation, their case is, in brief thus: The victim, Shri Pauma Ram Nath, got electrocuted as he had come in contact with snapped Low Tension live wire at the early hours of the day, i.e., at around 4.00 a.m. It is ''presumed'' that the conductor might have snapped due to natural calamities, on the night of 07.08.2000, as there was heavy shower and thunder on the night of 07.08.2000 and the same could be rectified, on the following day, i.e. 08.08.2000, after 8.00 hours. Since the electricity line was rectified, the question of negligence, on the part of the respondents, in maintaining the electricity line, in question, does not arise.

41. The averments made, in the affidavit-in-opposition filed by the respondents, are clearly too vague, indefinite and wholly presumptuous in nature. Thus, when the respondents do not boldly deny that the conductor got snapped and the said deceased, having come in contact with the live wire hanging from the above, got electrocuted, it becomes, in the face of the facts of the present case, abundantly

clear that the said deceased died due to sheer negligence of the respondents inasmuch as the respondents did not take requisite care, which was required by them. Even according to the averments made in the affidavit-in-opposition of the respondents, the deceased was not responsible for his death nor was his death a result of the act of God. This apart, his death is also not attributed to an act of any stranger.

42. It is, therefore, clear that the said deceased got electrocuted by coming in contact with a live wire without any fault on his part nor was his electrocution due to an act of God or an act of any stranger. In the context of the fact that the respondents carry out generation and transmission on of electricity, it is clear that the respondents have undertaken an activity involving hazardous and risky exposure and inherent danger to human lives. The respondents, in such circumstances, will be governed by the principle of strict liability, and for an accident, as in the present case the respondents must be held liable to pay compensation on the basis of the principle of ''strict liability''.

43. The conclusion, reached above, brings this Court to the question of quantum of compensation payable to the petitioner. In this regard, it is worth noticing that in State of Tripura and Others Vs. Jharna Rani Pal and Another, a Division Bench of this Court has held that even in a suit arising out of the Fatal Accidents Act, 1855, the mechanism of the use of multiplier, as envisaged under the Motor Vehicles Act 1988, can very well be followed. I may, now, point out that the deceased, in the present case, used to maintain a family consisting of six persons including his wife and four children; hence, it can be safely inferred that his monthly income was not less than Rs. 3,000/-. From this amount, if 1/3rd is deducted as his personal expenses, the monthly expenditure of the deceased on his family will come to the tune of Rs. 2,000/-. Since the deceased was aged about 65 years, 5 would be the appropriate multiplier. The just compensation, therefore, works out to the tune of Rs. 2,000 ⊗ 12 ⊗ 5 = 1,20,000/-.

44. In the result and for the reasons discussed above, the respondents are held, in this case, liable to pay a sum of Rs. 1,20,000/- as compensation with interest @6% per annum from the date of filing of this writ petition, i.e., 16.08.2001 until realization of the entire amount.

WP(C) No. 3418 of 2003

45. In this writ petition, made under Article 226 of the Constitution, the petitioner, who is mother of the deceased, Subhash Das, has sought for issuance of appropriate Writ(s) commanding the respondents to pay a sum of Rs. 5,00,000/- (five lakhs), as compensation, for the death of her son, her case being, in brief, that when the deceased was working as a helper to a mason at the house of one Hareswar Das, at Hajo, arid trying to bend an iron rod, the rod touched the over-head electric wire, which was loosely hanging, while passing over the residential premises of the

said Hareswar Das and as a result of the fact that the said iron rod came in contact with the loosely hanging live wire, Subhash Das got electrocuted and died at the age of 18 years.

46. The respondents have not filed any affidavit denying or disputing the claim of the petitioner. The police report and the report of the Electrical Inspector reveal thus: The deceased was engaged as a helper to a mason for construction of a boundary wall at the house of Hareswar Das. When the deceased was trying to straighten an iron rod, it touched the live 11 KV feeder, which was passing through the plot of land of Hareswar Das. As a result of the electrical shock, which Subhash Das had suffered, he got electrocuted.

47. In such circumstances, as indicated above, there can be no escape from the conclusion that it was due to the negligence of the respondents that Subhash Das got electrocuted. This apart, it is not even contended by the respondents that Subhash Das''s death is due to his own negligence or due to an act of God or an act of any stranger. In such a situation, the respondents must be liable to pay compensation on the basis of the principle of ''strict liability''.

48. The conclusion, reached above, brings this Court to the quantum of compensation payable to the petitioner. I may, now, point out that the petitioner, in the present case, was about 35 years old, when she lost her 18 year old unmarried son, who was a daily wage earner. In such circumstances, the deceased can be safely held to have been earning at least, Rs. 2,000/- per month. As long as he had remained unmarried, the petitioner would have been receiving, at least, 2/3rd of his earnings, but after his marriage, the deceased would have raised his own family and the petitioner''s share in her son''s earnings would have got reduced to almost 1/3rd.

49. In the backdrop of the position of law, as discussed above, and in the context of the facts of the present case, it becomes clear that when 1/3rd of the earning of the said deceased, which would amount to Rs. 500/-is multiplied by 16, which is the appropriate multiplier, the just compensation works out to the tune of Rs. 500 $\times$ 12 $\times$ 16 = 96,000/-.

50. In the result and for the reasons discussed above, the respondents are held liable to pay a sum of Rs. 96,000/- as compensation, with interest @ 6% per annum from the date of filing of this writ petition, i.e., 08.05.2003, until realization of the entire amount.

WP(O No. 8140/2002

51. In this writ petition, made under Article 226 of the Constitution of India, the petitioner has sought for issuance of appropriate Writ(s) commanding the respondents to pay a sum of Rs. 10,00,000/-(ten lakhs), as compensation, for the death of her husband, Nazruk Ali.

52. The case of the petitioner is that on 02.05.2002, at about 7 a.m., when the petitioner''s husband, NazrukAli, was carrying dismantled rod and CI Sheets at Japorigog, Lakhimi Nagar, he came in contact with a live electrical wire, which had been lying on the ground for a considerable long period of time. Having so come in contact with live electrical wire, the petitioner''s husband got electrocuted and died instantaneously. Due to the death of her husband, the petitioner has not only lost her husband, but also his companionship and has suffered loss of financial support inasmuch as the said deceased was the only earning member of the whole family. In such circumstances, the petitioner, who is barely aged about 38 years, has sought for compensation of Rs. 10,00,000/-.

53. The respondents have resisted the writ petition by filing an affidavit, wherein they have submitted, inter alia, thus: On 02.02.2002, at about 2.20 a.m., due to severe storm and high speed wind, one betel-nut tree, unable to bear the storm, fell on the single phase Low Tension (LT) line, at Lakhimi Nagar area, resulting into snapping of one conductor. One telephone call was received by the SDO, who was on duty at 33/11 KV Zoo Road sub-station at about 5.30 a.m. and, immediately, communicated through VHF (Communication Set) to the party engaged in resorting two numbers of 11KV line, namely, Bamunimaidan and Gita Nagar Feeder. At that moment, the party was busy in clearing the trees, which had fallen, in the HT line, near Bhangagarh, when D.N. Sharma, Junior Engineer, ASEB, Distribution (Transformer), was informed about the snapping of the conductor D.N. Sharma rushed to the transformer and isolated the same at 6.13 a.m. (as per record of Control Room interruption register) and he confirmed the isolation through VHF (Communication Set), Thus, according to the respondents, it is evident from the above facts that in approximately four hours from the time of snapping of the Low Tension wire, in question, the respondents had taken necessary action and they deny that the electric wire was lying on the ground for a considerable period of time.

54. What, now, needs to be noted is that notwithstanding the fact that the respondents have taken a specific defence seeking to get themselves exonerated completely from their being held responsible for the death of the petitioner''s husband, the fact of the matter remains that it is not disputed that the petitioner''s husband died due to electrocution as a result of having come in contact with an electrical wire lying on the road. The respondents have not pleaded that the death of the petitioner''s husband was on account of his own fault or because of an act of God or an act of a stranger. In fact, petitioner''s husband died, because the electric wire was lying on the road without his having any knowledge or information that the wire, so lying, was live.

55. In view of the fact that Nazruk Ali has, admittedly, died due to electrocution and in view also "of the fact that the responsibility to supply electrical energy, in the locality concerned, was of the respondents, it is clear that the liability, cast on the

respondents, is, in law, ''strict liability'' and it is the duty of the respondents to show that their defence falls within the recognized exceptions to the application of the doctrine of ''strict liability''. In this regard, it is clear, as discussed above, that the respondents have not been able to show that the petitioner''s husband''s death was due to his own fault or due to any other recognized defences available to a case of ''strict liability''. Situated thus, it is clear that the respondents are liable to pay compensation to the petitioner.

56. Coming to the question as to what the just and appropriate compensation for the petitioner would be, it needs to be noted that the petitioner''s husband, as reflected from the writ petition, was a daily wage earner. The monthly income of the said deceased can be safely assessed @ Rs. 2000/- per month. If l/3rd of this amount is kept out as personal expenses of the said deceased, the amount of money, which the said deceased can be safely held to have been spending on his family, would come to the tune of Rs. 1,500/-. Thus, the annual expenses, which the petitioner''s husband used to incur for his family, was to the tune of Rs. 1,500/-. As the petitioner''s age, according to the writ petition, is about 45 years, it can be safely inferred that the said deceased would also be around the age of 45 years; hence, if the amount of Rs. 1,500/- is multiplied by 15, which would be the appropriate multiplier, the total compensation would work out to the tune of Rs. 1,500 ⬩ 12 ⬩ 15 = 2,70,000/-.

57. In view of the above and in the interest of justice, the respondents are hereby directed to pay a sum of Rs. 2,70,000/-, as compensation, with interest @6% per annum from the date of filing of this writ petition, i.e., 16.12.2002, until realization of the entire amount.

WP(C) No. 8733 of 2004

58. In this writ petition, made under Article 226 of the Constitution of India, the petitioner has sought for issuance of appropriate Writ(s) commanding the respondents to pay a sum of Rs. 3,00,000/- (three lakhs), as compensation, for the severe burn injury and fracture of right patella suffered by his son, aged about 15 years, due to electrocution, the case of the petitioner being, in brief, thus: On 13.06.2004, at about 6.30 a.m., while the petitioner''s son was coming, on foot, towards his house, a live electrical wire of 11000 KVA, suddenly, fell on his body and as a result of electric shock, the petitioner''s son suffered not only bum injuries on his body, but also fracture of left patella. The injured was treated at Sessa PHC and, then, shifted to Gauhati Medical College Hospital, Guwahati, for under treatment. The injured was discharged from the hospital, at Guwahati, on 13.08.2004, with a discharged certificate given to the effect that he had suffered burn injury and sustained fracture of his left patella as a result of fall. At the time of discharge, the injured was advised to attend Departments of Plastic Surgery and Orthopedic, in the hospital; but due to financial stringency, the petitioner has not been able to provide adequate and necessary treatment to his said injured son. The injured had studied

up to class-VIII and he had, thereafter, opened a pan shop near Sessa Bus Stop and with his earnings, he used to maintain himself and his parents.

59. The respondents have not filed any affidavit and resisted the writ petition. The admitted fact is that the injured suffered fracture of his patella along with sloughing as a result of the electrocution. This apart, the petitioner''s son had also suffered burn injuries. Thus, the accident, having taken place, due to carelessness and improper maintenance of the live electrical wire, the respondents are, in the facts and circumstances of the present case, liable to pay compensation.

60. As regards the quantum of compensation, it needs to be noted that the injured has suffered severe burn injuries and has accordingly been advised plastic surgery, but he has not been able to undertake requisite treatment due to his poor financial condition. In such circumstances, an amount of Rs. 1,00,000/- (one lakh) would be the requisite compensation for the burn injuries, which the petitioner''s son has suffered. This apart, the fracture of the right patella has adversely affected the petitioner''s son''s future. Hence, the petitioner needs to be given an amount of Rs. 35,000/-, as compensation, for the fracture suffered by the petitioner''s son.

61. Coupled with the above, the petitioner also needs to be given an amount of Rs. 50,000/-, as compensation, for the loss of income suffered by his son.

62. In view of the above and in the interest of justice, the respondents are hereby directed to pay a sum of Rs. 1,85,000/- as compensation with interest @6% per annum from the date of filing of this writ petition, i.e., 25.11.2004, until realization of the entire amount.

WP(C) No. 1290 of 2005

63. In this writ petition, made under Article 226 of the Constitution of India, the petitioners, who are the unfortunate parents of two school going children, the son being 13 year old and the daughter being 14 year old, have sought for issuance of appropriate Writ(s) commanding the respondents to pay a sum of Rs. 5,00,000/- (five lakhs), as compensation, for the death of each of their children, who died due to electrocution their case being, in brief, thus: On 06.10.2004, at about 9.30 a.m., while the petitioner''s said to children were going to their school, both of them came in contact with a live electrical wire lying on the road, got electrocuted and met with instantaneous death.

64. For the death of the said two persons, the petitioners could not have made one writ petition. Be that as it may, the fact remains that the respondents have not filed any affidavit resisting the writ petition. In such circumstances, what remains to be determined, in the present case, is the amount of compensation payable to the petitioners.

65. Moreover, when, in the facts and circumstances of the present case, the petitioners have lost their only children, their shock and suffering can very well be

appreciated. Some amount of guesswork would enter into the realm of assessment of compensation in such a case.

66. In the light of the decision in State of Tripura and Others Vs. Jharna Rani Pal and Another, it is clear that the principles governing granting of compensation in the Motor Vehicles Act, 1988, are also applicable to cases arising out of the Fatal Accident Act too. Bearing this aspect of law in mind, when one turns to the facts of the present case, it becomes clear that the notional income of each of the deceased child of the petitioners must be taken to be, at least. Rs. 15,000/- per annum. If, in the case of one of the two children, 1/3rd amount of the notional income of Rs. 15,000/- per annum is kept excluded and the remaining amount is multiplied by 15, which is the appropriate multiplier, the total compensation works out to the tune of Rs. 10,000 ⊗ 15 = 1,50,000/-. Since the present case involves death of two children, the said amount of Rs. 1,50,000/-needs to be doubled. Viewed thus, it is clear that the petitioners are entitled to receive, in law, an amount of Rs. 3,00,000/-, as compensation, for the death of their said two children. This apart, the claimants shall also be given, in the tragic circumstances of the present case, a sum of, at least, Rs. 50,000/-, as compensation, in each case, for their mental agony.

67. In view of the above and in the interest of justice, the respondents are hereby directed to pay a sum of Rs. 4,00,000/- as compensation, with interest @6% per annum from the date of filing of this writ petition, i.e., 18.08.2005, until realization of the entire amount.

WP(C) No. 2328 of 2005

68. By making this application, under Article 226 of the Constitution of India, the petitioners have sought for issuance of appropriate Writ(s) commanding the respondents to pay a sum of Rs. 10,00,000/- (ten lakhs), as compensation, for the death of Golap Saikia @ Golai Saikia.

69. The case of the petitioners is that on 25.07.2004, at about 9 a.m., when Golap Saikia@ Golai Saikia was taking his cows to his paddy field for the purpose of grazing, he came in contact with a live electrical wire, having high electric voltage, hanging down on the PWD road and got electrocuted; he was, immediately, shifted to a local health center, where he was declared dead. The postmortem examination, conducted on his body, revealed that he had died as a result of electric shock.

70. The respondents have resisted the writ petition by filing an affidavit, wherein they have submitted, inter alia, thus: About two months back, a 63 KVA Tansformer (Sub-Station) had developed some defects and it had to be shifted to the Sub-Divisional Store. The LT Line, which was passing through the transformer, was kept in completely uncharged condition, but due to the damage caused to the LT line during a storm, one span of the dead conductors fell out and it had to be kept on the top of the pole by earthing the same. This arrangement was done to save the conductors from being stolen away. There was no electricity being supplied to these

conductors and, hence, there was no scope of the conductors getting charged. In order to commit theft of electricity, Golap Saikia used this conductor by connecting the same from the nearby transformer and it was for this reason that the accident had occured. Thus, it was due to unauthorized and unlawful drawing of electricity by Golap Saikia that he got electrocuted and died; hence it was not because of lapse or negligence, in the maintenance of the electrical lines, by the respondents that Golap Saikia got electrocuted and died.

71. In view of the fact that the respondents have taken specific defence seeking to get themselves exonerated completely from their being held responsible, it is clear that this writ petition involves disputed questions of fact.

72. As this writ petition involves disputed questions of fact, a proceeding under Article 226 cannot, ordinarily, be treated as an appropriate proceeding for determining the liability of the respondents to pay compensation, if any, to the petitioners. When the facts are disputed in a writ application, made under Article 226, seeking compensation for tortuous acts, a writ proceeding is, in the light of the decision in Timudu Oram (supra), not an appropriate proceeding and, in such cases, the remedy of the party, who suffers the wrong, lies in instituting appropriate suit.

73. It may, now, be pointed out that a suit for damages, arising out of tortious liability, is required to be instituted, in terms of the provisions of Article 82 of the Limitation Act, 1963, within a period of two years from the date, when the cause of action arises. In the present case, cause of action, admittedly, arose on 25.07.2004. This writ petition was filed on 18/03.2005 and the same was admitted on 21.03.2005; but has, unfortunately, remained pending till date. In the meanwhile, the rights, if any, of the present petitioners to seek compensation by instituting a suit may be claimed to have elapsed by efflux of time. It needs to be, however, pointed out that u/s 14 of the Limitation Act, 1963, when a person has been prosecuting, bona fide and with due diligence, another civil proceeding, the time, during which the person has been so prosecuting the civil proceeding, shall be excluded, while computing the period of limitation for the purpose of institution of suit. Such a civil proceeding will include a proceeding under Article 226 and the time, during which a person had been bona fide prosecuting a writ proceeding, shall be excluded, while computing the period of limitation for the purpose of institution of suit by him. Reference, in this regard, may be made to the cases of Rameshwarlal Vs. Municipal Council, Tonk and Others, ; Union of India (UOI) and Others Vs. West Coast Paper Mills Ltd. and Another, ; and Union of India (UOI) and Others Vs. West Coast Paper Mills Ltd. and Another, .

74. In view of the fact that the petitioner''s appear to have,-under bona fide belief that this Court has jurisdiction to decide the petitioners case, approached this Court and since this Court has, now, on the ground that this writ petition involves disputed questions of fact, decided not to determine the correctness or veracity of the disputed questions of fact, the petitioners cannot be left remedy less. The

petitioners shall, therefore, remain at liberty to institute appropriate suit seeking compensation for Golap Saikia''s death, which was caused due to electrocution. If such a suit is instituted, the civil court shall bear in mind the provisions of Section 14 of the Limitation Act, 1963.

WP(C) No. 3417 of 2003

75. In this writ petition, made under Article 226 of the Constitution of India, the petitioner has sought for issuance of appropriate Writ(s) commanding the respondents to pay a sum of Rs. 6,00,000/- (six lakhs), as compensation, for the death of the petitioner''s husband, Bibek Das, the case of the petitioner being, in brief, thus: On 10.12.2002, at about 3 p.m., Bibek Das, while looking after the construction work of a drainage system, in Dhemaji Town, suddenly, came in contact with a cable, which was being used by the respondents for the purpose of providing support to an electrical post, one end of this cable being embedded into earth. As Bibek Das was unaware of the fact that the said cable was live and electricity was passing through the same, he, having come in contact thereof, got electrocuted and died on the spot. Her husband''s death, according to the petitioner, was due to the fact that supporting wires of the electrical pole had not been insulated and it was, thus, on account of failure of the respondents to ensure that no electricity would pass through the supporting wire fixed to the ground that her husband died.

76. By filing their affidavit, the respondents have resisted the writ petition, their case being, in brief, thus: Bibek Das had engaged some labourers for construction of a culvert by the side of National Highway near Nalanipam. While the labourers were digging the drain near a 250 KVA Sub-Station, one stray wire, which was used by the respondents to provide support to the electrical post, was removed from the ground. As the stray wire was hanging over the drain causing inconvenience to the construction work, Bibek Das took the hanging stray wire in his hand and tried to put the same aside. In the process, the said wire touched 11000 KV DO Fuse of the Sub-Station and Bibek Das got electrocuted. The accident, according to the respondents, thus, took place due to the victim''s own unauthorized negligent act inasmuch as he did not obtain permission from the respondents before removing the stray wire, in question, for the purpose of convenience of the job, which he was carrying out.

77. In view of the fact that the respondents have denied their liability to pay the compensation by disputing the fact that the accident had taken place due to their fault, it becomes clear that for the determination of the question as to whether the respondents shall be held liable for the death of Bibek Das having been caused as a result of electrocution, this writ proceeding is not the appropriate remedy. It is pertinent to point out that the case, which the respondents have set up, may or may not be true; but in view of the fact that this writ petition involves disputed questions of fact and such disputed questions of fact should not be decided in a writ petition,

this writ petition cannot be sustained.

78. It bears repeatation that a suit for damages, arising out of tortious liability, is required to be instituted, in terms of the provisions of Article 82 of the Limitation Act, 1963, within a period of two years from the date, when the cause of action arises. In the present case, cause of action, admittedly, arose on 10.12.2002. This writ petition was filed on 08.05.2003 and the same has, unfortunately, remained pending till date. In the meanwhile, the rights, if any, of the present petitioner to seek compensation by instituting a suit may be claimed to have elapsed by efflux of time. It needs to be, however, pointed out, as already indicated above, that u/s 14 of the Limitation Act, 1963, when a person has been prosecuting, bona fide and with due diligence, another civil proceeding, the time, during which the person has been so prosecuting the civil proceeding, shall be excluded, while computing the period of limitation for the purpose of institution of suit by him.

79. In view of the fact that the petitioner appears to have, under bona fide belief that this Court has jurisdiction to decide the petitioner''s case, approached this Court and since this Court has, now, on the ground that this writ petition involves disputed questions of fact, decided not to determine the correctness or veracity of the disputed questions of fact, the petitioner cannot be left without any remedy. The petitioner shall, therefore, remain at liberty to institute appropriate suit seeking compensation for her husband''s death, which was caused due to electrocution. If such a suit is instituted, the civil court shall bear in mind the provisions of Section 14 of the Limitation Act. 1963.

80. With the above observations and directions, these writ petitions shall stand disposed of.

81. No order as to costs.