



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 3505 of 2007

With

CIVIL APPLICATION (FOR STAY) NO. 1 of 2007

In R/FIRST APPEAL NO. 3505 of 2007

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PASCHIM GUJARAT VIJ.CO.LTD

Versus

HASAM MAMAD SAMA & ANR.

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Appearance:

MS RV ACHARYA(1124) for the Appellant(s) No. 1

MR EE SAIYED(725) for the Defendant(s) No. 1,2

MR NASIR SAIYED(6145) for the Defendant(s) No. 1,2

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CORAM:HONOURABLE MR. JUSTICE J. C. DOSHI

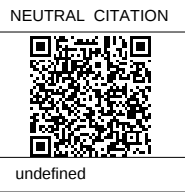
Date : 10/03/2026

JUDGMENT

1. By way of filing present First Appeal u/s 96 of the Code of Civil Procedure, 1908 (in short "the Code"), the appellant - PGVCL challenges judgment and decree dated 13.11.2006 passed by the learned 4th Addl. Senior Civil Judge, Bhuj, whereby the learned trial Court has decreed Special Civil Suit NO.64 of 2003 and directed the PGVCL to pay Rs.3,38,000/- with interest at the rate of 9% per annum from the date of filing of the suit till realization for the death of Abdul Hasam.

2. For the sake of convenience and brevity, parties are referred to as per their original status before the learned trial Court.

3. Briefly states facts of the case are that plaintiffs are parents of deceased Abdul Hasam. The deceased was working as plumber at the daily wages of Rs.150/- and was the



only bread-earner of the family. That on an unfortunate day of 6.12.2001, when the deceased was passing through the ages of lake situated at village Bharasar, he came in contact with the live wire of the PGVCL and died on the spot.

3.1 Claiming the aforesaid incident as absolute negligency on the part of the PGVCL, the plaintiffs have prayed for compensation for his son to the tune of Rs.5,62,000/- with interest.

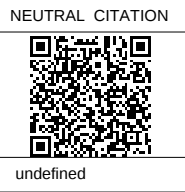
3.2 The defendant PGVCL having been served, appeared through learned advocate and mainly submitted that the incident took place due to sole negligency of the deceased. It is the deceased who is required to take necessary care to avoid the mishap. Rest of the pleadings are also denied by the PGVCL.

3.3 The learned trial Court decreed the suit to the aforesaid extent.

3.4 Being aggrieved, the PGVCL has preferred present First Appeal.

4. Heard learned advocate Ms. RV Acharya for the PGVCL. None remained present for the plaintiffs.

5. Learned advocate Ms. Acharya having referred to the contention raised in the written statement, copy of the panchnama of the spot at Exh.23, inquest panchnama at Exh.22 so also oral evidence of Ashok Premjibhai at Exh.42



and Babubhai Damor at Exh.44, would submit that it is a clear case where deceased was negligent and had he taken proper care, the mishap would have been avoided and therefore, in the facts and circumstances of the case, she would submit that the learned trial Court has committed serious error in deciding the issue of negligence against the PGVCL. Upon above submissions, she prays to allow this First Appeal.

6. Considering the aforesaid submissions, this Court has been called to decide as to whether the deceased was negligent and due to his negligency, the incident occurred?

The learned trial Court framed following issues at Exh.13:-

“1 Whether the statement prove that on 6-12-2001, Abdul Hasam Sama, son of the plaintiffs, died due to electric shock due to the breaking of the wire of the defendant's pillar while he was passing over the embankment of the Khaliya Lake in Bharasar village, Bhuj taluka?

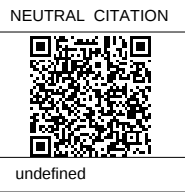
2). Whether the plaintiffs prove that the incident in dispute was caused by the defendant's negligence?

3). Whether the plaintiffs prove that the plaintiffs are entitled to compensation for damages from the defendants as per the details of para-7 of the plaint?

4). Whether the plaintiffs prove that the plaintiffs are entitled to interest on the amount due from the defendant until it is recovered? If yes, at what rate?

5) Whether the claim barred by any legal provision?

6). Whether the plaintiffs entitled to the compensation sought?



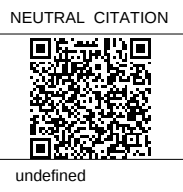
7). *What is the order and decree?*

7. The issue Nos.1,2 and 6 are answered in affirmative, issue no.3 in partly affirmative, for issue No.4, it is answered that the plaintiffs are entitled for the interest at the rate of 9% per annum on the decretal amount and lastly, vide answering issue No.7, the suit was partly decreed. The other evidence produced by the plaintiffs are of no importance and therefore, it does not require re-assessment of the First Appeal.

8. It is the case where the deceased while walking and passing on the age of pond situated at village Bharasar, he came in contact with the hanging live electric wire and died due to electrocution.

9. In this factual background, if we refer the judgment of the Hon'ble Apex Court in case of **M.C. Mehta v/s. Union of India [AIR 1987 SC 1086]**, whereby the Hon'ble Apex Court extended principles of strict liability involved in case of Rylands v. Fletcher, 1868 3 HL 330 and held it to be absolute liability. In that case, claim for compensation was sought on behalf of persons who had suffered consequent to escape of oleum gas from the units of Sriram Foods & Fertilizers Industries. The Honble Apex Court has laid down the law as regards consequences of accidents where inherently dangerous activities are carried on, which reads as under:-

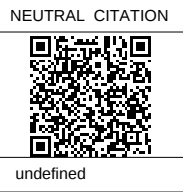
“The principle of absolute liability was laid down whereby liability was made absolute i.e., strict liability sans defences. The observations of the Apex Court at Para 31 is self-explanatory and reads as



follows: "...We would therefore hold that where an 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-avis the tortious principle of strict liability under the rule in Rylands v. Fletcher."

10. In **H.S.E.B. v/s. Ram Nath [2004 (5) SCC 793]**, the Honble Apex Court again reiterated extension of principle of absolute liability in case where liability was sought to be disowned by the Power Supply Company by contending that the unauthorized structure near the electric line had contributed to the accident. In para 6, the Honble Apex Court held as under:-

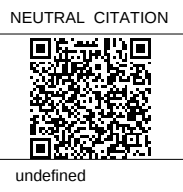
"6. The appellants are carrying on a business which is inherently dangerous. If a person were to come into contact with a high-tension wire, he is bound to receive serious injury and/or die. As they are carrying on a business which is inherently dangerous, the appellants would have to ensure that no injury results from their activities. If they find that unauthorised constructions have been put up close to their wires it is their duty to ensure that that (2004) 5 SCC 793 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 unauthorised. In this case we do not find any disputed question of fact."



11. Recently, this Court in case of **PGVCL v/s. Heirs of Chandrikaben Harpalsinh [AIR 2017 Gujarat 177]**, discussed the issue relying upon the judgment in case of **M.P. Electricity Board v. Shailkumar and Ors., reported in (2002) 2 SCC 162** in para 6, observed thus:-

“6. The submissions have been made by learned Advocate Shri S.P. Hasurkar referring to the judgment of both the courts below and also the material and evidence particularly Exh.35 to support his contention about the negligence.

Therefore, the moot question is whether any negligence could be attributed to the deceased and whether any such contentions could be entertained to avoid the liability for the incident and the compensation as a result thereof. The aspect of negligence has been considered by both the courts below. Though the submissions have been made by learned Advocate Shri S.P.Hasurkar that from the pole the wire was brought to the premises which was passing from a pipe to the meter and that the pipe was fitted with the angle. Therefore the wire for spreading the clothes could not have been fitted with the angle and therefore it is the negligence of the consumer, is thoroughly misconceived. The installation and maintenance is the responsibility and obligation of the licensee like the Appellants herein. When the line is taken from the pole right up to the premises, it is their obligation to see that it is in such a manner covered and the wire is fitted with the pipe that it does not result in any accident and it is safe. These precautions are required to be taken by the supplier as they have installed the line and they have to maintain the line. There is a periodical supervision and when there is a checking for Regular Civil Appeal No. 15/2017 Page 19 the meter, the representative would also visit the premises. Therefore the submission that because the wire for spreading the



*clothes was attached to the angle, it was the main cause for the accident and attributed the negligence to the consumer, is misconceived. The trial court has referred to and relied upon the judgment of the Hon'ble Apex Court in case of **M.P. Electricity Board v. Shailkumar and Ors., reported in (2002) 2 SCC 162** and made the observations which has been quoted referring to the "principal of strict liability". The concept of strict liability assumes its different dimension that the liability is strict once the accident has occurred and in any case the onus is on the licensee who is obliged to take precaution at the time of installation and maintenance of line to see that no accident occurs or the chances are minimized. Therefore the submissions which have been made referring to the aspect of negligence has a reference to the negligence in Law of Torts where a person could show that reasonable precautions were taken. However, once the "principal of strict liability" is attributed, the liability would be incurred irrespective of the fact that whether the precautions were taken or not. It is in these circumstances, the concurrent findings of facts arrived at by both the courts below cannot be said to be perverse or erroneous. The substantial questions of law posed as stated above are only referring to the aspect of Regular Civil Appeal No. 15/2017 Page 20 appreciation of evidence. The first question refers to the statutory provision in regard to liability of accident which again is vague as there are specific rules qua the Electricity Supply Rules and the Electricity Supply Code, which again referred to the statutory provisions and the obligation of the licensee to take precaution for installation and maintenance of such line. The reference and reliance on Exh. 35 would not justify any such submission which are sought to be made by learned Advocate Shri S.P. Hasurkar for the Appellants. Therefore it can hardly be said that there is any substantial question of law is involved."*



12. One more judgment which was pressed into service is in case of **Paschim Gujarat Vij Company Limited Thru Deputy Engineer Versus L/h Of Deceased Jignesh Jamanbhai Gohil**, 2024 (0) JX(Guj) 898.

13. In view of above and in extension of principles of strict liability or absolute liability, the PGVCL would not be at privilege to claim negligence of the deceased, more particularly, when the fact suggests that live wire is hanging loose enough and was on lower height to come in contact with the person passing through the age of the lake of village Bharasar. Thus, the present First Appeal requires fate of only dismissal.

14. Resultantly, present First Appeal fails and stands dismissed.

15. Consequently, CA does not survive and stands disposed of accordingly.

16. If any amount is deposited with the learned trial Court, the same shall be disbursed to the plaintiffs along with interest accrued thereon.

17. Registry is directed to return back the R & P, if any, to the concerned Court forthwith.

(J. C. DOSHI,J)

SHEKHAR P. BARVE