

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

**WP(C) No. 2362/2019
CM No. 4733/2019
CM No. 7650/2019
CM No. 5161/2019**

Vaishno Devi and ors.

.....Appellant(s)/Petitioner(s)

Through: Mr. Vilakshana Singh, Advocate

Vs

..... Respondent(s)

Commissioner Secy. to P.D.D. Department
and ors.

Through: Mr. Ravinder Gupta, AAG

Coram: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

ORDER

(ORAL)

10.12.2024

1. In the instant petition filed under Article 226 of the Constitution, the petitioners have prayed for the following relief:-

“Mandamus directing the respondents to pay compensation amounting to Rupees Thirty Lakhs to the petitioners who are legal heirs of Lt. Sh. Shail Singh who died due to negligence of the respondents, as Sh. Shail Singh was electrocuted and ultimately died due to negligence of the respondents”

2. The facts under cover of which the aforesaid relief has been prayed are that one Shail Singh, the husband of petitioner 1 and father of petitioners 2 and 3 herein, being an agriculturist as also working as private electrician was engaged on 29.08.2017 by the employees of the respondent Electric Department for conducting electric repair works in 11 KV electric line in Kathar District Dansal Tehsil Jammu during the course of which repairs, the said Shail Singh (For short ‘the deceased’) received an electric shock and sustained serious injuries and consequently died on 24.09.2017 at PGI, Chandigarh even after his one arm was amputated. The petitioners

have contended that the deceased died on account of the negligence of the respondents and as such, the petitioners become entitled to claim compensation thereof from the respondents having lost their earning hand being dependent on him. The FIR No. 0101/2017 is also stated to have been got registered by the petitioners in this regard with Police Station, Jhajjar Kotli, Jammu. The deceased is stated to have been earning Rs. 15,000/- per month besides making earning as an agriculturist, stating further that though repeated demands of justice came to be made by them before the respondents for payment of compensation, the respondents failed to provide the same to the petitioners thus, necessitating the filing of the instant petition.

3. **Objections** to the petition have been filed by the respondents accompanied with consideration order dated 11.08.2021 in which order it is being admitted that the deceased was accompanied with the line man of the area on the date of incident and was entrusted with a job to repair the fault in the transmission line and during the course of repair work undertaken by the deceased, the deceased received severe electric shock, whereafter he came to be shifted to GMC, Jammu and later died in PGI, Chandigarh on 24.09.2017 and as per medical certificate, cause of death of the deceased was indicated to be Septic Shock and High Voltage Electric Shock.

Heard learned counsels for the parties and perused the record.

4. The moot point for consideration in the instant petition would be as to whether under Article 226 of the Constitution, the petitioners herein will be entitled to the compensation from the respondents qua the death of the

deceased having indisputably died due to electric mishap while rendering services to the respondents.

5. It is not in dispute that the deceased had been engaged by the respondents herein in connection with the repair work of the electric line and had in the said process died after receiving severe electric shock. In view of the aforesaid admitted position, even though the primary liability is to be fastened upon the respondents 4 and 5 herein being employees of the respondent department, yet law is settled on the principle of Law of Torts that master is answerable for a wrong of his servant as is committed in the course of his service. The said doctrine of liability of master for the acts of his servant is based on the maxim **respondent superior** meaning, “**let the principal be liable**” and it puts the master in the same position as if he has done the act himself and the doctrine of “Sovereign Immunity” based on common law principle that the king commits no wrong has been held by the Apex Court in case titled as “**State of Rajasthan Vs. Mst. Vidyawati**” reported in **AIR 1962 SC 933** to be not applicable in principle or public interest that the State should not be held liable vicariously for the tortuous acts of the servants and that the State like any other employer is vicariously liable for the wrong of its servants.

It is also significant to note here that the liability cast upon the State under Law of Torts to compensate for the wrongs done on account of negligence and carelessness would lie within the “**principles of strict liability**” and though there are exceptions provided to the said Rule of strict liability, yet Apex Court in case titled as “**MC Mehta Vs. Union of India**” reported in **1987(1) SCC 395** has held that where an enterprise is engaged in a hazardous or inherently dangerous activity and harm is caused to any

one on account of the accident in the operation of such activity, the enterprise is strictly and absolutely liable to compensate those who are affected by such accident and that such activity is not subject to any of the exceptions to the principle of strict liability under the Rule laid down in **Rylands Vs. Fletcher**.

6. Keeping in mind the aforesaid position and principles of law and coming back to the case in hand, since the deceased indisputably has died on account of negligence of the official respondents herein while rendering service to the respondents, the petitioners in law would be entitled to invoke extraordinary writ jurisdiction of this Court under Article 226 of the Constitution for violation of their fundamental right to their life which right includes right to livelihood as well having been deprived by the respondents owing to death of the deceased.
7. Having held the petitioners entitled to claim compensation from the respondents for the death of the deceased, the next question that would beg consideration of this Court would be as to what amount of compensation, the petitioners would be entitled thereto. In this regard, the principles governing the grant of compensation under the provisions of Motor Vehicles Act, 1988 can be borrowed for the purpose including the law laid down by the Apex Court under the said Act in case titled as **‘National Insurance Co. Ltd. vs. Pranay Sethi’** reported in **AIR 2017 SC 5157**.
8. Accordingly, on the basis of aforesaid provisions of the Act of 1988 supra and the principles of law laid down by the Apex Court in the judgment supra, the petitioners are found entitled to the compensation computed as follows:-

(a) Monthly Income	=Rs. 15000/-
(b) Future Prospects (10% as per age and self employed as per 2017 AIR (SC) 5157)	=Rs. 1500/-
(c) Total Income	=Rs. 16500/- per month
(d) Deduction (one half)	=Rs. 8250/-
(e) Net Income	=Rs. 8250/-
(f) Multiplier (8250x12x11) (as per Sarla verma judgment (2009) AIR SC 3104)	=Rs. 1089000/-
(g) Funeral expenses	=Rs. 15000/-
(h) Loss of consortium	=Rs. 44000/-
(i) Loss of Estate	=Rs. 15000/-
Total	=Rs. 11,63,000/-

9. Viewed thus, for what has been observed, considered and analyzed hereinabove, the petition succeeds and by issuance of writ of mandamus, the respondents are commanded to pay an amount of Rs. 11,63,000/- along with interest @7.5% per annum in favour of the petitioners from the date of filing of instant petition till the date of its actual payment.

10. **Disposed of.**

(Javed Iqbal Wani)
Judge

Jammu
10.12.2024
Neha-II

Whether the order is speaking: Yes
Whether the order is reportable: Yes