

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

Reserved on: 30.12.2024
Pronounced on: 03.01.2025

LPA No. 314/2024

- 1. The State of J&K through Secretary
Department of Power Development
(PDD), Civil Secretariat Srinagar/
Jammu.**
- 2. The Chief Engineer EM&RE Wing,
Kashmir, Srinagar.**
- 3. The Executive Engineer ED-Kulgam,
Kashmir.**
- 4. The Superintending Engineer, Electric
M&RE Circle, Bijbehara, Kashmir.**

.....Appellant(s)

Through: Mr. Alla Ud Din Ganai, AAG with
Ms. Shaila Shameem, Assisting Counsel.

V/s

- 1. Abrar Ahmad Tantray
S/O Fayaz Ahmad Tantray
R/O Kujar, Kulgam, Kashmir (J&K),
Aged about 21 years**

.....Respondent(s)

- 2. The Deputy Commissioner, Kulgam.**

.....Proforma Respondent(s)

Through: Mr. Ateeb Kanth, Advocate for R-1.

CORAM:

**HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE.
HON'BLE MR. JUSTICE MOHD. YOUSUF WANI, JUDGE.**

JUDGMENT

Per Rajnesh Oswal: (J)

1. This intra-court appeal is directed against the judgment dated 22.07.2024 passed by the learned Writ Court in OWP No. 1759/2018 titled "Abrar Ahmad Tantray vs State of J&K and Ors", whereby the learned writ Court has directed the respondents/appellants herein to pay a sum of Rs. 20.00 lacs to the petitioner/respondent No.1 herein along with interest @ 6% per annum from the date of presentation of the writ petition till final realization.

2. The appellants have challenged the judgment dated 22.07.2024 on the following grounds:

- i. That there was neither any fault nor negligence on the part of the appellants, but despite that, the appellants have been directed to pay compensation to the respondent No.1.
- ii. That the learned writ Court has granted un-just and excessive compensation to the respondent No.1, particularly when he on his own had come in to contact with the electric wire/electric transformer.
- iii. That the Government of Jammu and Kashmir has issued an Order No. 454-F of 2019 dated 24.10.2019, which provides compensation of Rs. 7.5 lacs in case of total disability and Rs. 2.00 lacs in case of partial disability, but the learned writ Court has passed the impugned judgment without taking into consideration the said order.

3. Mr. Alla-Ud-Din Ganai, learned Additional Advocate General appearing on behalf of the appellants besides reiterating the averments made in the memo of appeal, has also submitted that the respondent No.1 suffered electrocution in the year 2007 and filed the writ petition only in the year 2018, therefore, the writ petition was required to be dismissed on the ground of delay and laches only.

4. *Per contra*, Mr. Ateeb Kanth, learned counsel appearing on behalf of respondent No. 1 has submitted that the learned writ Court has passed the judgment dated 22.07.2024 in accordance with law and the order dated 24.10.2019 issued by the Government of Jammu and Kashmir, does not bar the constitutional courts to grant compensation in accordance with law to the victims of electrocution, due to fault of the Power Development Department.

5. **Heard learned counsel for the parties and perused the record.**

6. The respondent No.1/writ petitioner had filed the writ petition for grant of compensation of Rs. 20.00 lacs and for directing the appellants/respondents therein to consider the petitioner/respondent No.1 herein for a suitable job in their department as per his qualification, on the ground that on 09.03.2007 when he was of eight years of age and was playing with other children, he suffered electrocution due to snapped 11 KV line at village Kujjar Kulgam, as it was open, un-covered/un-insulated electric wire, which resulted in severe burn injuries to him on the left side of his head, arm and other parts of the body. He was taken to SKIMS, Soura, Srinagar, and the police from Police Station Yaripora, Kulgam entered the report bearing No.

4 of 11.03.2007, in respect of that incident. FIR was also registered in that regard.

7. It was stated by the petitioner that his left arm was amputated and he suffered serious injuries on the left side of his head and the Medical Board of Kulgam had declared him 75% disabled. It was also stated that the Superintendent of Police, Kulgam, submitted a report to the Deputy Commissioner, Kulgam, stating therein that it was found that there was no fault of anyone, but the child had struck with the electric wire/transformer while playing with other children. It was further submitted by the petitioner that his father despite having limited resources, continued his treatment and the Department of Plastic Surgery, Burns, Reconstructive and Micro Surgery, SKIMS, Srinagar, issued a certificate dated 17.07.2012, wherein it was stated that the writ petitioner has undergone multiple surgical procedures in the past, which include left mid arm amputation and debridement of left parietal bone. It was also stated that the petitioner was having alopecia left parietal area with loss of bone and needs expansion of scalp followed by Cranioplasty.

8. It was also pleaded by the petitioner that his parents were illiterate and as soon as the petitioner attained the majority, he started prosecuting his claim and in the year 2017, the Executive Engineer, ED, Kulgam, ordered the Assisting Executive Engineer, Kulgam, to submit a report with regard to the representation submitted by the petitioner and the Junior Engineer submitted the report after spot verification. Thereafter, Superintendent Engineer, EM&RE Circle, Bijbehara, sent another communication dated 28.06.2017 to the Chief Engineer, EM&RE Wing, Kashmir, for necessary action.

9. In nutshell, it was pleaded by the petitioner that despite representations and various *inter se* communications between the officials of the appellants, his claim for grant of compensation and providing suitable job, was not considered, which prompted him to file the writ petition.

10. The appellants objected the writ petition by stating that on 09.03.2007, the writ petitioner was playing near electric transformer installed in the village and while playing, he abruptly got struck with the electric transformer/electric wire, resulting in serious burn injuries on hand, arm and other parts of the body. He was taken to the hospital by the family members and locals for medical treatment. As per the communication dated 15.12.2009 of the Superintendent of Police, Kulgam, it was found that there was no fault of anyone, but the child got struck with the electric transformer/electric wire while playing with the other kids.

11. The first contention of the appellants is that the learned writ Court has not taken note of the order dated 24.10.2019, which provides for grant of ex-gratia relief to the victims of electrocution. This is true that the learned writ Court has not taken note of the Government Order dated 24.10.2019, but we are of the considered view that mere non-consideration of the order dated 24.10.2019, would not have any effect on the merits of the claim of the respondent. The expression 'ex-gratia' means out of grace or gratuitous. The ex-gratia relief in fact is the amount which the Government has volunteered to pay to the victims of electrocution due to negligence of the Power Development Department. The policy for grant of ex-gratia relief cannot come in the way of Courts to compensate the victims for the electrocution in

an appropriate manner. Thus, this contention of the appellant is accordingly rejected.

12. The second contention raised by the appellants is that there was no negligence on part of the appellants and the respondent No. 1 on his own had come in to contact with the electric wire/transformer, but despite that unjust and excessive compensation has been awarded by the learned writ Court. There is admission on part of appellants that on 09.03.2007, the respondent No. 1 came in contact with electric transformer/electric wire, resulting in serious burn injuries. Mere admission on part of the appellants is sufficient to establish that the electric wire/electric transformer was not covered/insulated. It is also borne from the record that the respondent was eight years of age when the incident of electrocution took place. Once the appellants had installed electric transformer in the village, it was their bounden duty to ensure it to be properly covered/insulated, so that no human being comes in contact with the same. The fact that a child of merely eight years of age has come into contact with the electric transformer/wire, is sufficient to establish beyond doubt that the appellants were negligent in not keeping the electric wire/transformer in a safe and secured manner to prevent the minor child from coming in direct contact with the live wire/transformer. Otherwise also, the appellants cannot impute any negligence to the minor child. Even under Bharatiya Nayaya Sanhita, the child below seven years of age is incapable of committing any crime (Sec 20 B.N.S). Though the respondent No.1 was 8 years of age, but the immunity granted to the respondent No.1 shall remain same except under the conditions contained in Section 21 of B.N.S. Likewise, the principle of 'Violenti non-fit Injuria' is

not applicable to the children. Under Indian Contract Act, an agreement with minor is void. When the law has granted absolute immunity to the minor child of 7-8 years of age in respect of civil and criminal liability, the appellants cannot raise the plea of negligence of the minor to deny their liability to compensate the respondent No.1. A perusal of the record depicts that the respondent No.1 had filed supplementary affidavit and had placed on record Inpatient estimate dated 31.01.2024 issued by Plus Medicare Hospital Private Limited, Durganag, Dalgate, Srinagar. As per the said estimate, an amount of Rs. 1,66,598/- is required by the respondent No.1 for neurological surgery and amount of Rs. 7.40 lacs is required for artificial arm.

13. Vide order dated 17.10.2023, the learned writ Court had directed the Principal Government Medical College, Srinagar, to constitute a Medical Board for determining the disability of the respondent No.1. The respondent No.1 appeared before the Board and the Standing Medical Board has opined as under:

“Orthopaedic Opinion:- “Patient has trans-elbow amputation left side with scarring/puckering of over lung skin. The percentage of disability is around 75% from orthopaedic side.

Plastic Surgery Opinion: “HT Electric Burn injury involving (L) side with absent underlying bone, Patient has scars in B/L thighs. Deformity disability amounts to 15%.”

14. The learned writ Court has determined 78% disability suffered by the respondent No. 1, which is not disputed by the appellants. The learned writ Court has granted Rs. 20 lacs in lumpsum as compensation to the

respondent No. 1, without specifying the various heads under which the same has been granted. It is no more *res integra* that the principles applied for determination of compensation in Motor Accident Claim cases, can be applied for determining the compensation in electrocution cases as well. In ***Kajal v. Jagdish Chand, (2020) 4 SCC 413***, the Hon'ble Supreme Court considered the notional income of a girl of 12 years of the age, on the basis of minimum wages payable to skilled workman, while granting compensation to her in motor vehicle accident case and if the same principle is applied in this case and compensation under the various conventional heads such as for loss of amenities, pain and suffering, future medical expenses including the cost and maintenance of artificial limb etc. is also considered, then the respondent No.1 would be entitled to more compensation than the one granted by the learned writ Court. Therefore, this contention of the appellants also fails.

15. It was lastly contended by the appellants that there was delay in filing the writ petition by the respondent No.1, as the incident took place on 09.03.2007, whereas he filed the writ petition in the year 2018. This Court cannot lose the sight of the fact that the respondent No.1 was eight years of age when the incident of electrocution took place. He has specifically pleaded that his parents were illiterate and it was only when he attained the age of majority, the petitioner/respondent No. 1 herein started prosecuting his claim. Merely because of delay and laches, the writ petition cannot be dismissed, particularly when the respondent No.1 has explained the delay and laches. In view of the fact that the respondent No.1 was suffering from the legal disability of minority, when the incident of electrocution took place and filed

the writ petition himself after attaining majority, the petition cannot be dismissed on this ground. Therefore, there is no force in this contention as well and the same is also rejected.

16. In view of the above, we do not find any legal infirmity in the judgment passed by the learned writ Court and the same is accordingly upheld. The present appeal being devoid of any merit, is accordingly *dismissed*. However, no order as to costs.

(Mohd. Yousuf Wani)
Judge

(Rajnish Oswal)
Judge

SRINAGAR:
03.01.2025
"HAMID"

- | | | |
|---|-------------------------------------|-----|
| ❖ | Whether the Judgment is Speaking? | Yes |
| ❖ | Whether the Judgment is Reportable? | Yes |

