

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

OWP No. 306/2012

Pronounced on: 24.11.2021

Ajay Kumar

.... Petitioner(s)

Through:- Mr. Sachin Sharma, Advocate.

V/s

State of J&K and others

.....Respondent(s)

Through:- Mr. F. A. Natnoo, AAG.
Mr. Ayjaz Lone, Dy. AG.

CORAM : HON'BLE MR. JUSTICE PUNEET GUPTA, JUDGE

JUDGMENT

1. The present Writ Petition filed by the petitioner-Ajay Kumar through his father under Article 226 of the Constitution of India read with Section 103 of the Constitution of Jammu and Kashmir seeks direction to the respondents to compensate the petitioner to the tune of Rs.20 lakhs on account of 90% physical disability suffered by him due to the negligence of the respondents.
2. It is averred in the petition that in the month of March-April 2009, the father of the petitioner was engaged as labourer by respondent No.3 for construction of the office building of District Soil Conservation Officer, Sambal, Udhampur and just above the entrance/gate of the said building, there existed an 11 KV High Tension double circuit line. Since there was a grave threat to lives of all labourers including their family members accompanying them, the labourers objected to respondent No.3 of construction but respondent No.3 did not pay any heed to the same and constructed the premises. On 01.04.2009, the petitioner had accompanied his father to the premises of District Soil Conservation Office, Sambal,

Udhampur and at about 3.45 p.m. when the petitioner was just sitting below the said 11 KV High Tension wire a high flash occurred in the said wire and petitioner came into its contact, as a result, he suffered a severe shock in his body causing severe burn injuries including his right arm, chest and legs. Immediately after the accident, the petitioner was taken to the Command Hospital (North Comd.) C/o 56 APO Udhampur, wherefrom the petitioner was referred to GMC Jammu. Petitioner was admitted in GMC Jammu and was treated for high voltage electric burn. Due to the severity of the said shock, the right shoulder of the petitioner was disarticulated. All the fingers of the feet of the petitioner also got damaged and as per the certificate of disability issued by the Chief Medical Officer, Udhampur, the petitioner is suffering from 90% permanent physical disability.

3. Objections filed on behalf of the respondents are treated as counter to the petition. The respondent Nos.1, 2 & 4 state that the terrace of District Soil Conservation Office had been extended near the entrance of the said office and new portion so raised was almost touching the 11 KV double circuit line existing at site. The petitioner who was minor inadvertently came in contact with the said 11 KV line and received severe electric shock. It is further stated that the construction raised by respondent No.3 under 11 KV line was being raised without obtaining NOC from the answering respondents. No person is authorized to make any construction under high voltage/high tension line and any adverse consequence of such unauthorized construction has to be borne by the person violating the said norm. It is denied that the petitioner was working in a shop from where

he used to earn Rs.2000/- per month in addition to being a student of 9th class in Govt. High School. The respondent No.3 has averred that in 2007 after inspection of the office building electric connection was formally given. At the time of granting electric connection, the Executive Engineer M&RE Division Udhampur assured change of alignment of 11KV Transmission line since the same was adjacent to the office building but was not done. As there was no response from the M&RE Division, a request was made in the year 2008 for realignment of HT line from its existing position to avoid any major catastrophe. It is only after the accident as alleged in the petition occurred that the said department realigned the transmission line in the year 2009 to a safer distance. The negligence of the respondent is denied in the reply.

4. Heard learned counsel for the parties at length and perused the file. The petitioner seeks compensation to the tune of Rs.20 lacs on account of negligence on the part of respondents as the 11 KV High Tension wire which emitted a high flash and came into contact with the petitioner and resulted into 90% permanent physical disability. The petitioner is entitled to the relief in the present petition, if the Court is satisfied that the petitioner suffered the injury due to the negligence of the respondents. It may be noticed while going through the reply filed by PDD department and the District Soil Conservation Udhampur that both the department have only tried to shift the responsibility on each other qua the injury received by the petitioner due to malfunctioning of High Tension wire which was passing through the premises of the Soil Conservation Department. The stand taken by the PDD is that the construction was

being raised by the Soil Conservation Office Udhampur without requisite permission from the Municipal Authorities and that is why the accident took place whereas the Soil Conservation Department has taken the stand that despite making request to the PDD that the High Tension wire should be removed from its existing place the same was not heeded to by the PDD and therefore, the department is not negligent and responsible for the incident in question. It is evident from the material on record including the reply of the official respondents that the incident of 01.04.2009 in which the petitioner Ajay Kumar received injuries was due to the fact that the petitioner came in contact with the 11 KV High Tension wire for no fault of his own. All the respondents are govt. departments and therefore blaming each other cannot absolve the State of its responsibility and duty to compensate the petitioner in terms of 'Strict Liability Rule' which can be safely applied in the case in hand. It is the paramount duty of the respondents and particularly PDD that the High Tension wire laid is properly taken care of and in case any incident takes place due to its malfunctioning the department cannot escape the liability. For the purpose of deciding the present case the construction was being carried out by the Soil Conservation Office, Udhampur in violation of some Municipal Laws or not is not relevant so far as the injury received by the petitioner is concerned. There is no specific stand taken by the respondents that the petitioner suffered the injury was due to his own negligence.

5. The perusal of the file reveals that the petitioner was immediately admitted to the Military Hospital, Udhampur on 01.04.2009 and thereafter he received treatment in GMC Jammu where he remained admitted in the

said Hospital from 02.04.2009 to 05.08.2009. The injury resulted due to electric burn has unfortunately resulted into disarticulation of right shoulder of the petitioner. The disability certificate issued by the board of doctors of district hospital Udhampur vide order dated 30.10.2009 records 90% permanent disability of the petitioner due to the injury suffered by him. However, the court is of the view that the permanent disability shown in the certificate is not in tune with the injury suffered by the petitioner and is assessed at 70%.

6. In Raman Vs. Uttar Haryana Bijli Vitran Nigam Ltd. and others (Civil Appeal No.11466 of 2014 (Arising out of SLP (C) No.8113 of 2014) decided on 17.12.2014 wherein a boy aged 4 years electrocuted by live High Tension wire of Bijli Vitran Nigam and lost both his legs and one arm, the Hon'ble Apex Court maintained order of the Single Bench of the High Court whereby the petitioner was held entitled to compensation of Rs.60 lacs.
8. The next question which comes for consideration is the amount to which the petitioner is entitled to by way of compensation in the present petition. In this regard the age of the petitioner, the expected earning loss and the extent of the injury suffered by the petitioner are the prime considerations while assessing the compensation. The petitioner was of about 13 years of age at the time of incident and was a student at the time of incident and even continued with his studies despite disability as is evident from the certificate dated 29.09.2011 issued by the Head Master of Government High School Nallah Ghoran. The petitioner is also stated to be working in a shop and getting salary of Rs.2000/- per month at the time of

occurrence, however, there is nothing on record to substantiate this assertion.

9. The court can infuse some guess work while assessing the future earning of the petitioner had the petitioner not suffered disarticulation of right arm. Taking in account the age of the petitioner as 13 and the expected earning as Rs.6,000/- per month the multiplier of 18 can be taken for assessing the compensation on account of loss of earning which comes to (6000 x 12 x 18) Rs.12,96,000/-. The court further awards Rs.7 lacs as lump sum on account of the pain and suffering, loss of amenities and the expenses on medical treatment. The total amount to which the petitioner is held entitled to comes to Rs.19,96,000/- rounding to Rs.20,00,000/-. The petitioner is also held entitled to interest @ 6% per annum from the respondents on the aforesaid amount from the date of filing of the writ petition till its realization. The court trusts that the respondents keeping in view the disability suffered by the victim shall not cause any delay in making the payment to the petitioner. The petition is disposed of.

(Puneet Gupta)
Judge

JAMMU
24.11.2021
Narinder

Whether the order is speaking : Yes/No
Whether the order is reportable : Yes/No