



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 4942 of 2010

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE J. C. DOSHI

Sd/-

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Approved for Reporting	Yes	No
	Yes	

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PASCHIM GUJARAT VIJ COMPANY LIMITED, THROUGH CHIEF
ENGINEER

Versus

LEGAL HEIR OF MAHESH TRIKAMBHAI BHADRA, USHABEN
WD/O MAHESH

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Appearance:

MR DIPAK R DAVE(1232) for the Appellant(s) No. 1

MR PREMAL S RACHH(3297) for the Defendant(s) No. 1

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CORAM: HONOURABLE MR. JUSTICE J. C. DOSHI

Date : 12/08/2026

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 –Paschim Gujarat Vij Company Limited (in short “the PGVCL”) challenges judgment and decree dated 27.08.2010 passed by the learned 5th Additional Senior Civil Judge, Jamnagar, whereby the learned trial Court has partly decreed the Special Civil Suit No.64 of 2008 and directed the PGVCL to pay Rs.2,86,800/- with



interest at the rate of 9% per annum from the date of filing of the suit till realization.

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

3. Briefly stated facts of the case are that, on 28.06.2007, the deceased – Maheshbhai was going to work in the village and that time, the live wire of the defendant company, which was broken, fell on the deceased, due to which he was electrocuted and received serious injuries and later on, succumbed to the serious injuries.

3.1 Claiming the aforesaid incident as absolute negligency on the part of the PGVCL, the plaintiff has prayed for compensation for her husband to the tune of Rs.10,00,000/- 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 framed following issues at Exh.08:-

“1) Does the plaintiff prove that the death of Maheshbhai, husband of plaintiff no. 1 and son of plaintiff no. 2,



occurred on 28-6-2007 due to electrocution caused by the falling of an electric wire as a result of the defendant company's negligence?

(2) Does the plaintiff prove that the deceased Maheshbhai used to earn a monthly income of Rs. 6000/- to 7000/-?

3) Does the plaintiff prove that due to the death of Maheshbhai, considering the loss of their income, pain, grief and shock, as well as other expenses, etc., the plaintiffs are entitled to receive Rs. 10,00,000 or a proportionate amount as compensation?

(4) If the decision on issue no. 3 is "Yes", is the plaintiff entitled to get interest? If "Yes", from when? and how much?

(5) What order? What decree?"

3.4 Issue No.1 is answered in affirmative. Issue Nos. 2 & 3 are answered partly in affirmative and Issue Nos.4 & 5 are answered as per the final order. Answering aforesaid issues, learned trial Court partly decreed the suit to the aforesaid extent.

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

4. Heard learned advocates for the respective parties.

5. The solitary contention raised is that the deceased did not died due to electrocution, but the cause of death stated in the Post-mortem Report is related to electrocution related with head injury, which makes it evidently clear that the deceased died due to head injury and not by way of electrocution.

6. The contention would not sustain on the ground that in para 17 of the Post-mortem Report, following injuries are stated after Serial No.3 as under:-

“17. SURFACE WOUNDS AND INJURIES

xxx xxx xxx

(3) 15 x 4 cm irregular electric mark seen over the right forearm in ventral & outer aspect. Overlying skin is erode & blackening & reddening seen. Floor is hard & parchment like.

(4) 5 x 4 cm size irregular electric mark seen over the left forearm just below elbow in inner side. Skin is eroded. Blackening & reddening seen. Floor is hard parchment like.

(5) 5 x 4 cm size electric mark seen over the left flank region. Skin is burnt & reddening & blackening seen.

(6) 2 x 2 cm size black hard area seen over dorsum of left hand.”

7. The charge-sheet paper on the record at Exhibit-18 also indicates that though the deceased was walking on the road, live electric wire snapped from the electric pole and fell on the head, due to which deceased received the injuries as well as the electrocution.

8. Above two facts on the application of the Principle of *Res Ipsa Loquitur* establish that the deceased had died due to electrocution. The learned trial Court, in its comprehensive judgment, has discussed this issue candidly and vividly. Nonetheless, the learned trial Court has assessed the value of the death of a 40 years old person at less than Rs.3 Lakhs. This amount is meagre and small amount of compensation for the death of a person. In view of above, I find no substance in the appeal.



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 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 **P.G.V.C.L. 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 throughly 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 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 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. There is no cavil that the appellant is engaged in the business of selling hazardous product viz. Electricity. It is the liability of the appellant – PGVCL to maintain all the wires to have insulated them to prevent the incident. Moreover, electricity company engaged in selling hazardous goods, is required to periodically check electricity line, fixture, etc. If any incident occurs due to inaction, the principle of Strict liability shall be attracted. Thus, without touching the merits of the case considering the fact that the PGVCL is engaged in selling the hazardous substance, is required to pay compensation for death of the deceased applying the principles of strict liability.

14. Apt to note that if energy so transmitted through electricity line causes injury or death of a human being, who unknowingly come in contact with it, then it is primary liability of the Electricity Company to compensate the sufferer in view of

principle of strict liability. Electricity transmitted through the wires has potentiality of dangerous dimension. To add, it is the duty upon the Electricity Company to take all safety measures to prevent escape of such electricity or to see that such wire does not expose risk to human being. If undertaking like present appellant - PGVCL involved in the activity of supplying of electricity is undoubtedly involving in hazardous or risky exposure to human life, Law of torts, therefore, recognizes them to be liable for injury suffered by any other person, irrespective of any negligence or carelessness on the part of the Electricity Company. 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". Concept of strict liability or absolute liability differs from concept of fault liability which arises on account of 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 fault liability. However, such is not consideration or relevant in cases of strict liability where the defendant is held liable regardless of whether he could have avoided the particular harm by taking precautions.

15. Recent judgment of the Supreme Court in case of **Karnataka Power Transmission Corporation Limited v. Rekha & Ors.**, reported in **2026 INSC 847** has also discussed the issue of strict liability and its applicability to case of electrocution in para 12 to 14 as under:-



“12. Now let us look to the concept of strict liability. The general rule is that when a person collects or brings upon his land anything that is likely to cause mischief and if such thing escapes, then this person is liable for all natural consequences that follow. (See Rylands v. Fletcher [1868 LR 3 HL 330]) ; Rajkot Municipal Corpn. v. Manjulben Jayantilal Nakum [1997 9 SCC 552],). Relevant observations of the Privy Council in this regard made in Quebec Railway, Light, Heat & Power Co. Ltd. v. Vandry[1920 SCC OnLine PC 10], are reproduced as under:

“25. Two decisions which were pressed on their Lordships attention require particular examination namely Canadian Pacific Ry. Co. v. Roy [[1902] A.C. 220.] and Dumphy v. Montreal Light Heat and Power Co. [[1907] A.C. 454.] . The former is a case of damage by the escape of sparks from a locomotive engine and the decision in terms is in line with the well-known authorities of Vaughan v. Taff Vale Ry. Co. [[1860] 5 H. & N. 679.] and Hammersmith and City Ry. Co. v. Brand [L.R. 4 H.L. 171.] it is case of “plain words authorizing the doing of the very thing complained of”. Dumphy v. Montreal Light Heat and Power Co. [[1907] A.C. 454.] is a case of high-tension electricity released by the act of a third party's workman whom the jury acquitted of negligence. No specific article of the Code is mentioned and the presence of high tension current in the cable was only the causa sine qua non and the human action which released it was the causa causans of the accident. There was statutory authority to circulate high-tension electricity overhead but on the simple issue, whether the damage caused by the escape of that electricity was caused by the company's negligence it was held that no negligence had been proved and indeed but for the act of a stranger who himself was not careless, the company's electricity would have done no harm to anybody.

26. Whether in the present cases the evidence established affirmatively a case of negligence against the defendants is a question on which the Supreme Court arrived at no definite conclusion. Had it been necessary the respondents would have been entitled



to claim before their Lordships' Board that this issue should be decided now, since the terms imposed on the appellants under the special leave to appeal bound them to rely on points of law only, but did not preclude the respondents from meeting those points upon the facts in any way which the evidence warranted. In the view, however, above taken of the case no decision on this question is needed."

A subsequent decision in 2008 titled Union of India v. Prabhakaran Vijaya Kumar [(2008) 9 SCC 527], discussed this rule in the following terms:

"22. Strict liability focuses on the nature of the defendant's activity rather than, as in negligence, the way in which it is carried on (vide Torts by Michael Jones, 4th Edn., p. 247). There are many activities which are so hazardous that they may constitute a danger to the person or property of another. The principle of strict liability states that the undertakers of these activities have to compensate for the damage caused by them irrespective of any fault on their part. As Fleming says "permission to conduct such activity is in effect made conditional on its absorbing the cost of the accidents it causes, as an appropriate item of its overheads" (see Fleming on Torts, 6th Edn., p. 302).

...

24. The basis of the doctrine of strict liability is twofold: (i) The people who engage in particularly hazardous activities should bear the burden of the risk of damage that their activities generate, and (ii) it operates as a loss distribution mechanism, the person who does such hazardous activity (usually a corporation) being in the best position to spread the loss via insurance and higher prices for its products (vide Torts by Michael Jones, 4th Edn., p. 267).

...

27. The rule in Rylands v. Fletcher [(1868) LR 3 HL 330 : (1861-73) All ER Rep 1] was subsequently



interpreted to cover a variety of things likely to do mischief on escape, irrespective of whether they were dangerous per se e.g. water, electricity, explosions, oil, noxious fumes, colliery spoil, poisonous vegetation, a flagpole, etc. (see Winfield and Jolowicz on Tort, 13th Edn., p. 425) vide National Telephone Co. v. Baker [(1893) 2 Ch 186] , Eastern and South African Telegraph Co. Ltd. v. Cape Town Tramways Co. Ltd. [(1902) AC 381 : (1900-03) All ER Rep Ext 1316 (PC)] , Hillier v. Air Ministry [(1962) CLY 2084] , etc. In America, the rule was adapted and expressed in the following words “one who carried on an ultra-hazardous activity is liable to another whose person, land or chattels the actor should recognise as likely to be harmed by the unpreventable miscarriage of the activity for harm resulting thereto from that which makes the activity ultra-hazardous, although the utmost care is exercised to prevent the harm” (vide Restatement of the Law of Torts, Vol. 3, p. 41).

...

35. However, we are now witnessing a swing once again in favour of the principle of strict liability. The Bhopal Gas Tragedy, the Chernobyl nuclear disaster, the crude oil spill in 1988 on to the Alaska coastline from the oil tanker Exxon Valdez, and other similar incidents have shocked the conscience of people all over the world and have aroused thinkers to the dangers in industrial and other activities in modern society.

...

39. The decision in M.C. Mehta case [(1987) 1 SCC 395 : 1987 SCC (L&S) 37 : AIR 1987 SC 1086] related to a concern working for private profit. However, in our opinion the same principle will also apply to statutory authorities (like the Railways), public corporations or local bodies which may be social utility undertakings not working for private profit.



40. It is true that attempts to apply the principle of *Rylands v. Fletcher* against public bodies have not on the whole succeeded vide *Administrative Law* by P.P. Craig, 2nd Edn., p. 446, mainly because of the idea that a body which acts not for its own profit but for the benefit of the community should not be liable. However, in our opinion, this idea is based on a misconception. Strict liability has no element of moral censure. It is because such public bodies benefit the community that it is unfair to leave the result of a non-negligent accident to lie fortuitously on a particular individual rather than to spread it among the community generally.”

It has to be noted that the judgment in *M.P. Electricity Board v. Shail Kumari*¹ [(2002) 2 SC 162] which arose from a suit for damages filed in a case of electrocution, this court held the exception to the principle of strict liability not to be applicable. Since the present case is also dealing with a matter concerning electrocution, the discussion made therein is relevant for our purposes and accordingly reproduced below:

“7. It is an admitted fact that the responsibility to supply electric energy in the particular locality was statutorily conferred on the Board. If the energy so transmitted causes injury or death of a human being, who gets unknowingly trapped into it the primary liability to compensate the sufferer 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 no 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 lookout 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 duty 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 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.”

13. Exceptions to this rule have been recognised in numerous judgments. Among others, reference can be made to Kaushnuma Begum & Ors. vs New India Assurance Co. Ltd. [(2001) 2 SCC 9] where the principles of the exception were reiterated. The relevant portion of Para 14 thereof is extracted hereunder:

“14. ... They 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 recognise 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 infinitum, 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".

14. Now the question is whether in cases such as these i.e. electrocution of an individual, the standard of liability upon bodies such as the appellant is strict or absolute. We are of the considered view that to impose strict liability would be more appropriate, for not in all cases can it be said that the electricity boards are liable. The transmission of electricity is undoubtedly inherently dangerous. Those who carry out the inherently dangerous activity should bear the burden, and the State is no exception to that rule. Such enterprises operate on a loss distribution mechanism i.e. they are in the best position to spread the loss incurred through insurance or higher prices, as the case may be. It can also be said that they are expected to factor in these possibilities. It is for these reasons that they are liable to compensate the injured/deceased irrespective of any fault on their part, provided that none of the exceptions to the rule of strict liability apply to the case at hand. Granted that they would have taken all reasonable care to protect individuals from electrocution. We are supported in this view by the observations made in Prabhakaran Vijaya Kumar, where it



has been categorically held that the rule in Rylands (supra) applies to a number of different categories of cases inter alia, electricity also.”

16. In view of above and *in extenso* of principles of strict liability, the PGVCL would not be at privilege to claim negligence of the deceased in absence of proving any exceptions. Thus, the present First Appeal requires fate of dismissal.

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

18. Consequently, CA, if any, does not survive and stands disposed of accordingly.

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

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

Sd/-
(J.C. DOSHI, J.)

Raj