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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

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W.P. (C) 4291/2020

Between: -

SHAGUFTA ALI

W/o LATE SHRI AFZAL ALI

R/o 607 E, MASJID LANE-1,

BABARPUR, SHAHDARA,

DELHI-110032

.....PETITIONER NO.1

*(Through: Mr. Saeed Qadri, Mr. Saahil Gupta, Mr. Mohd. Shakil,
Advocates)*

AND

GOVERNMENT OF NCT OF DELHI

THROUGH ITS SECRETARY

SACHIVALYA RD, IG INDOOR STADIUM, ITO,

VIKRAM NAGAR,

NEW DELHI-110002

.....RESPONDENT NO.1

BSES YAMUNA POWER LTD.

THROUGH ITS DIRECTOR

SHAKTI KIRAN BUILDING

KARKARDOOMA DELHI-110092

.....RESPONDENT NO.2

THE DELHI POLICE

THROUGH ITS COMMISSIONER

PHQ, ITO, NEW DELHI

.....RESPONDENT NO.3

*(Through: Mr. Anuj Aggarwal, ASC, GNCTD with Ms. Arshya Singh,
Mr. Yash Upadhyay & Mr. Siddhant Dutt, Adv for R-1 & R-3.*

Mr. Manish Srivastava, Mr. Moksh Arora, Mr. Santosh Ramdurg and Mr. Yash Srivastava, Advs. for R-2.)

% Reserved on: 26.07.2024
Pronounced on: 05.09.2024

JUDGMENT

In the instant writ petition, the Court is called upon to adjudicate the dispute pertaining to the claim for compensation on account of unfortunate death of the petitioner's husband due to electrocution. The petitioner is a widow of late Mr. Afzal Ali, who died due to electrocution on 21.05.2017. She is, therefore, seeking compensation amounting to Rs.50 lakhs from the official respondents.

2. The facts of the case would exhibit that the husband of the petitioner, namely Mr. Afzal Ali (hereinafter "*deceased*") was working as a Sub-Inspector since 1990 in Delhi Police (Traffic). The marriage of the petitioner with the deceased was solemnized in the year 1991 and three children were born out of the wedlock.

3. On the fateful day of 21.05.2017, when the deceased had gone to the cycle market to buy a gift for his youngest child, it started raining. He ran to find shelter and while endeavouring to protect himself from rain, he came in contact with a channel gate located near Shop No.330 in New Lajpat Rai Market and got electrocuted. He was then taken to Aruna Asaf Ali Hospital, where, he was unfortunately declared dead on arrival.

4. After the post-mortem was conducted, the dead body of the deceased was sent to the mortuary. Thereafter, FIR No. 133/2017 was registered at Police Station (Kotwali), Delhi under Section 304A of the Indian Penal Code, 1860. The petitioner, however, came to know

about the incident on the following day i.e., on 22.05.2017 and thereafter, she conducted the last rites of the deceased.

5. Subsequently, the petitioner appears to have filed an application under Section 156(3) of the Code of Criminal Procedure, 1973 before the concerned magistrate. However, it appears that on 09.10.2019, charge sheet was filed against one Jai Gopal Grover, who happened to be the shopkeeper from whose shop the current was allegedly flowing to the channel gate. The petitioner, thereafter, made representation to respondent no.1-Government of National Capital Territory of Delhi and respondent no.2-BSES Yamuna Power Limited (hereinafter “BSES”) seeking compensation of Rs.50 lakhs for the negligence of statutory duty as prescribed under Section 42 and 53 of the Electricity Act, 2003 read with Regulations 13, 30 and 34 of the Central Electricity Authority (Measures Relating to Safety and Electricity Supply) Regulations, 2010 (hereinafter “CEA Regulations, 2010”).

6. BSES, which is a distribution licensee (DISCOM) defined under Section 2(17) of the Electricity Act, 2003, replied to the abovementioned representation and stated that upon inspection, it was determined that while the BSES network remained intact, an exposed wire emanating from the shop’s meter was found to be in contact with the shutter resulting in the leakage of current and the said leakage was fixed by BSES. It was also stated that the matter is currently under investigation and the Electrical Inspector’s report indicated that no negligence could be attributed on the part of BSES.

7. Being dissatisfied with the aforementioned response, the petitioner has subsequently filed the instant writ petition.

8. Mr. Saeed Qadri, learned counsel for the petitioner submits that the deceased died on account of electrocution, consequential to a

breach of duty and non-feasance by BSES. He places reliance on Regulation 13(1) of the CEA Regulations, 2010, which according to him, obligates the supplier to ensure that all the electric supply lines, wires, fittings and apparatus belonging to it or under its control, which are on a consumer's premises, are in a safe condition. It is further contended that DERC (Supply Code and Performance Standards) Regulations, 2017 (hereinafter "*DERC Supply Code, 2017*") may be referred to understand the meaning of "point of supply" and "distribution system" indicating that responsibility is *qua* the whole system of electricity distribution.

9. It is alleged that Regulations 30 and 34 of CEA Regulations, 2010 have not been adhered to which mandate periodic inspection and sending of inspection notice to the consumer/shopkeeper, respectively. He primarily relies on provisions of Section 53 of the Electricity Act, 2003 to state that it is obligatory on the part of DISCOM to adhere to the mandate of the said provision to eliminate and reduce the risk of personal injury to any person or damage to property of any person or interference with use of such property etc.

10. He substantiates his prayer while placing reliance on the decision of the Supreme Court in the case of *M.P. Electricity Board v. Shail Kumari*¹ and decisions of this Court in the cases of *Om Prakash v. Govt. of NCT Delhi & Ors*² and *Lauv Kumar v. Union of India*³.

11. Mr. Manish Srivastava, learned standing counsel appearing for BSES has opposed the submissions and he submits that in the absence of there being clear findings of negligence and as to who is at fault for electrocution, the said respondent cannot be held responsible to

¹ (2002) 2 SCC 162

² (2013) SCC OnLine Del 3983

³ W.P.(C) 5765/2014 dated 05.12.2016

compensate the petitioner. According to him, the facts are highly disputed and therefore, the remedy of writ jurisdiction under Article 226 of the Constitution of India (hereinafter "*Constitution*") would not be available to the petitioner herein. According to him, no criminal case against BSES and its officials alluding to any culpability is established and therefore, no dereliction of duty can be ascribed to BSES. As per learned counsel, even in an internal enquiry conducted by BSES, no negligence on its part has been noticed. He, therefore, submits that there is no violation of any of the provisions of the Electricity Act, 2003 or the CEA Regulations, 2010. He instead contends that the duty to maintain safety of the installation as per Regulation 13(4) of the CEA Regulations, 2010 is cast upon the consumer. According to him, the consumer in the instant case was the shopkeeper who was statutorily required to maintain and certify the electrical installation within his control.

12. In addition, BSES also submits that the petition also suffers from non-joinder of necessary parties as the responsibility to maintain the electrical system was also lying on M/s Manjeet Electric Works, who was awarded contract of maintenance of the electrical apparatus in the locality. He then submits that the DERC Supply Code, 2017, relied upon by the petitioner, were not in force and rather DERC (Supply Code and Performance Standards) Regulations, 2007 (hereinafter "*DERC Supply Code, 2007*") were in force, which rules out any violation of DERC Supply Code, 2017.

13. Learned counsel for BSES placed reliance on the decisions of the Supreme Court in the cases of *Grid Corporation of Orissa Ltd. (GRIDCO) & Ors v. Sukamani Das (Smt) & Anr*⁴, *Tamil Nadu*

⁴ (1999) 7 SCC 298.

*Electricity Board v. Sumathi and Ors*⁵, *SDO, Grid Corporation of Orissa Ltd. & Ors. v. Timudu Oram*⁶ and a decision of this Court in the case of *Ram Wati v. Government of NCT*⁷.

14. Respondent No.3-Delhi Police has also placed the Status Report on record, which states that “a sum of Rs.27,97,496/- has already been paid to the petitioner by the Transport Department GNCTD (employer)”. In addition to the amount so paid, a family pension to the tune of Rs.17,150/- is also being paid on a monthly basis as per the said status report.

15. I have considered the submissions made by learned counsel for the parties and perused the record.

Compensation for Violation of Article 21

16. In view of the rival submissions advanced by learned counsel for the parties, the principal issue which falls for consideration is whether the extraordinary jurisdiction of this Court under Article 226 of the Constitution could be invoked by a dependent of the deceased for seeking compensation on account of death due to electrocution?

17. One of the most remarkable features of the Constitution is that it provides an enforceable guarantee of the protection of fundamental rights incorporated in Part-III of the Constitution. The jurisprudence on fundamental rights has evolved tremendously during the life of the Constitution and the Constitutional Courts have not looked away when the peculiar needs of a case necessitated a deviation from the traditional understanding of the principles. It would be apposite to take note of the pertinent observations of the Supreme Court, made

⁵ (2000) 4 SCC 543.

⁶ (2005) 6 SCC 156.

⁷ W.P. (C). No, 5016/2002.

way back in 1952 in the case of *State of Madras v. V.G. Row*⁸, where the Court recognised itself as the sentinel on the *qui vive* i.e., a watchful guardian of fundamental rights.

18. The Supreme Court, in the case of *Nilabati Behara v. State of Orissa*⁹, evolved the concept of invoking public law remedy in cases of violation of human rights and fundamental rights. The Supreme Court held that the State could not plead the defence of sovereign immunity available to it in private tort. It has been held that the Constitutional Courts, while exercising powers under Article 32 and Article 226 of the Constitution, are justified and are obligated to pass an order directing compensation in case of proven violation of fundamental rights, which amounts to a constitutional tort. In the said case, the Court was dealing with a prayer for compensation, wherein, the petitioner had alleged the death of her son in the custody of Orissa Police. It was held therein that a claim for compensation for the contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution, is an acknowledged remedy for the enforcement and protection of such rights in public law. Moreover, such a claim based on strict liability made by resorting to a constitutional remedy envisaged for the enforcement of a fundamental right has been held to be distinct from, and in addition to, the remedy in private law for damages for the tort resulting from the contravention of the fundamental right. Since the defence of sovereign immunity is inapplicable and alien to the concept of guarantee of fundamental rights, there could be no question of such a defence being available in the enforcement of a constitutional remedy.

⁸ (1952) 1 SCC 410.

⁹ (1993) 2 SCC 746.

19. The Supreme Court in another decision in the case of ***MCD v. Uphaar Tragedy Victims Assn.***¹⁰, after surveying a long line of decisions including the case of ***D.K. Basu v. Union of India***¹¹, has held that “*the claim made for compensation in public law is for compensating the claimants for deprivation of life and per se liberty which has nothing to do with a claim in private law claim in tort in an ordinary civil court.*”

20. The observations of the Supreme Court in the abovementioned cases discuss the concept of public law wrong, emanating from the violation of fundamental rights. However, in the case of ***Hindustan Paper Corpn. Ltd. v. Ananta Bhattacharjee***¹², the Supreme Court has held that public law remedy for the purpose of grant of compensation can be resorted to only when the fundamental right of the citizens under Article 21 of the Constitution is violated and not otherwise. The Court further held that “*it is not every violation of the provisions of the Constitution or a Statute which would enable the Court to direct for grant of compensation*”.

21. Undeniably, human life is considered to be an edifice on which all the societal structures stand and therefore, preservation of the same is both, a fundamental duty of the State as well as the moral imperative of the society. The said inviolable duty is even more onerous on the part of the State by virtue of an implicit Social Contract between the State and its subjects. This duty not only exhibits moral values but also brings about stability, certitude and tranquillity in the society. However, if the State fails to adhere to the practical necessity of preserving human life, it leads to a tragic loss of

¹⁰ (2011) 14 SCC 481.

¹¹ (1997) 1 SCC 416.

¹² (2004) 6 SCC 213.

human dignity. After all, sanctity of life is a binding thread of a vibrant democratic civilizational setup and a due recognition of the same is evinced from Article 21 of the Constitution, which guarantees to its citizens the fundamental right to life.

22. The horizon of this constitutional guarantee, with the passage of time and dynamism of law, has expanded to not only mean protection against arbitrary deprivation of life but also to ensure a minimum threshold standard of living, which predominantly includes safe shelter. The negative and protective connotation attached with the right envisaged under Article 21 has undergone a substantial shift and has been evolved to cast a positive obligation upon the State to ensure a life of dignity. It is not only a protection against life depraving actions of the State, rather, it is a promise of dignified life which necessitates positive State intervention for ensuring basic needs. It is, therefore, significant that the State must be vigilant and committed in adapting myriad strategies to safeguard the most precious of all resources i.e., human life. Put otherwise, if the State is unable to adequately address the requisite safety of its citizens, the same would amount to dereliction of a paramount duty and consequential infraction of one's fundamental right to life. The lapses on the part of the State i.e., negligence, certainly represent a failure to abide by the constitutional and statutory duty. In order to uphold the constitutional duties and values imposed upon the State, redressal through legal channels is essential. The loss of lives on account of State's haphazardness is not an individual loss, rather the same involves an element of larger public interest as it strikes at the root of the promise of safe and dignified living conditions to the citizens.

23. Therefore, in view of the foregoing series of decisions by the Supreme Court, it is held that public law remedy can be resorted to and monetary compensation can also be awarded in cases of violation of Article 21 of the Constitution of India.

Standard of Proof for invoking Writ Jurisdiction

24. The ancillary question which stands posited before this Court at this juncture relates to the standard of proof essential for seeking compensation under public law remedy.

25. The Supreme Court in the case of *Sukamani Das (supra)*, which was relied upon by BSES, was considering whether the High Court was correct to award compensation in a case of death on account of electrocution. It was held that where disputed questions of fact are involved, a petition under Article 226 of the Constitution is not an appropriate remedy. In cases where an action in tort and negligence is connoted, the same has to be established primarily by the claimants. The mere fact that the wire of the electric transmission line belonging to the electricity company had snapped and the deceased had come in contact with it, which resulted in death, was not by itself sufficient for awarding compensation. The standard of proof would require whether the wire had snapped as a result of any negligence of the electricity company as also the circumstances under which the deceased had come in contact with the wire. It was further held that the electricity company deserved an opportunity to prove that despite proper care and precautions were taken in maintaining the transmission lines, yet the wire had snapped because of circumstances beyond its control or due to unauthorised intervention of third parties or that the deceased had not died in the manner stated by the claimant.

26. In *Sukamani Das (supra)*, the following stand of the appellant therein i.e., Grid Corporation of Orissa, needs to be taken note of and is recited in paragraph no.3 as under:-

“In their counter-affidavit the appellants stated that because of the thunderbolt and lightning one of the conductors of the 12 W LT line had snapped even though proper guarding was provided. As soon as the information regarding the snapping of line was received from the line-helper residing at Village Amara the power was disconnected. The officers of the appellant had thereafter rushed to that spot and had noticed that one shackle insulator had broken due to lightning and the conductor had also snapped from that shackle insulator along with the guarding and the sub-station fuse had also blown out. It was further stated in their counter-affidavit that on enquiry the officers had learnt that Pratap Chandra Das had died due to lightning and not because he had come in contact with the snapped live wire. It was stated by way of defence that the 12 W LT line had snapped because of an act of God and not because of any negligence on the part of the appellant and its officers. Thus, the appellants had denied the fact that Pratap Chandra Das had died as a result of coming in contact with the live electric wire and also raised a defence that even if Pratap Chandra Das had died as a result of coming into contact with the live electric wire it was a pure case of accident arising out of an act of God and his death was not because of any negligence on the part of the appellant and its officers in maintaining the transmission line. It was also contended before the High Court on behalf of the appellants that the writ petition was not a proper remedy as the facts stated by the writ petitioner were disputed by them and the dispute between the parties could not be decided without evidence being led by both the sides.”

(emphasis supplied)

It is clear from a perusal of the above paragraph that the very factum of death, being electrocution, was in dispute in the case before the High Court.

27. The Supreme Court in the case of *Timudu Oram (supra)* has also taken a similar view. The Court in the said case has held that the decision in the case of *M.P. Electricity Board (supra)* had fastened the liability on the electricity board finding therein that live wire

snapped and fell on the public road which was partially inundated with rainwater. The case of *M.P. Electricity Board (supra)* has been held to be inapplicable in the case of *Timudu Oram (supra)* and the Supreme Court set aside the decision of the High Court granting monetary compensation relying upon the principle laid down in *Sukamani Das (supra)*. The Supreme Court not only distinguished *M.P. Electricity (supra)* but also considered another decision in the case of *H.S.E.B. v. Ram Nath*¹³ and held as under:

“8. As against this counsel for the respondent cited a later judgment of this Court in M.P. Electricity Board v. Shail Kumari [(2002) 2 SCC 162 : 2002 SCC (Cri) 315] wherein this Court has taken the view that the Electricity Board could be fastened with the liability in a case in which the live wire snapped and fell on the public road which was partially inundated with rainwater. The observation made by this Court in the aforesaid case would not be applicable to the facts of the present case as in the said case a suit had been filed in which a finding of negligence was recorded by the trial court against the Board. The trial court after coming to the conclusion that the respondents were entitled to a compensation of Rs 4.34 lakhs non-suited the respondents solely on the premise that the claimants had failed to prove their liability for such compensation. The High Court in the said case had recorded a finding:

“Therefore, the defences put up by MPEB are absolutely without any basis and do not reflect the real position at the spot, rather attempt has been made to conceal the real position in order to avoid responsibility and liability for payment of compensation.”

On these facts, this Court came to the conclusion that the claimants were entitled to the compensation. Counsel for the appellants also cited a judgment in H.S.E.B. v. Ram Nath [(2004) 5 SCC 793] in which a similar view was taken. In the said case it was observed by the Bench that where disputed questions of fact were involved writ petition would not be the proper remedy but since there was no denial in the written statement that wires were loose and drooping and the claimant had asked the Board to tighten the wires, the Board was held liable to pay the compensation. This finding was recorded because the supplier of electricity did not controvert the facts alleged by the respondent writ petitioner. Disputed questions of

¹³ (2004) 5 SCC 793.

facts were not involved and as a result of which the finding recorded by the High Court was upheld.”

*“9. In the present case, the appellants had disputed the negligence attributed to it and no finding has been recorded by the High Court that GRIDCO was in any way negligent in the performance of its duty. The present case is squarely covered by the decision of this Court in *Chairman, Grid Corpn. of Orissa Ltd. (GRIDCO) [(1999) 7 SCC 298]* . The High Court has also erred in awarding compensation in Civil Appeal No. 4552 of 2005 [*@ SLP (C) No. 9788 of 1998*]. The subsequent suit or writ petition would not be maintainable in view of the dismissal of the suit. The writ petition was filed after a lapse of 10 years. No reasons have been given for such an inordinate delay. The High Court erred in entertaining the writ petition after a lapse of 10 years. In such a case, awarding of compensation in exercise of its jurisdiction under Article 226 of the Constitution cannot be justified.*

10. As the High Court had exercised its power under Article 226 of the Constitution without properly appreciating the nature of its jurisdiction, the impugned judgments deserve to be set aside. However, in view of the long lapse of time the appellants will not recover the amounts already paid to the respondents. The civil appeals are disposed of accordingly. No costs”

28. The relief of compensation was also denied by this Court in the case of *Abdul Haque and Ors. v. BSES Yamuna Power Ltd and Ors.*¹⁴ holding therein that in cases involving claim for compensation on account of death due to electrocution where the facts are disputed, a writ petition for payment of compensation is not maintainable. The remedy in such cases will only be before the Civil Court, where evidence could be led and appreciated in accordance with the principles of the law of evidence.

29. In the case of *Dharampal v. Delhi Transport Corporation*¹⁵, a Coordinate Bench of this Court took note of the earlier decisions in a case seeking compensation on account of death due to electrocution and held that if the facts are disputed, the High Court will not be justified in awarding the compensation. Essentially, the Court

¹⁴ 2007 SCC OnLine Del 1001.

¹⁵ 2008 SCC OnLine Del 35.

distinguished the decision in the case of *Ram Nath (supra)* on the ground that in that case, the plea raised therein was not denied in the counter affidavit and in the absence of the facts being disputed *per se*, the Supreme Court granted compensation.

30. In the case of *K.K Mehta & Anr v. Delhi Vidyut Board*¹⁶, another Coordinate Bench of this Court was considering the relief for grant of compensation on account of burn injuries sustained by the claimant due to a huge blast in the respondent's sub-station adjoining the park of the colony. The Court took note of the decision in the case of *Sukamani Das (supra)* and *Abdul Haque (supra)* and relegated the claimant to avail civil law remedy.

31. In most of these cases, the Supreme Court and this Court have mainly relied on the decisions in the cases of *Sukamani Das (supra)*, *Timudu Oram (supra)* and *Abdul Haque (supra)* to hold that in view of the disputed facts involved in these cases, award of compensation under Article 226 is not the appropriate remedy and thus, relegated the claimants to the Civil Court.

32. In another case titled as *T.N Electricity Board (supra)*, the Supreme Court was considering the prayer for compensation on account of electrocution at the instance of the legal heirs of the deceased therein. The deceased had allegedly died due to improper maintenance of electric wires or equipment by the Tamil Nadu Electricity Board. While relying on *Sukamani Das (supra)*, it was held that the writ petition would not be maintainable if the facts were disputed. The Court further clarified that where there is negligence on the face of the matter and the body or authority concerned fails to discharge public duty resulting in violation of Article 21 of the

¹⁶ W.P.(C) 4140/2001.

Constitution, there is no bar to exercise the power under Article 226 of the Constitution for grant of compensation.

33. This Court also takes note of the cases where the Supreme Court and this Court have exercised power under Articles 32 or 226 of the Constitution, as the case may be, and awarded compensation

34. In the case of ***Ram Nath (supra)***, the Supreme Court was considering a case wherein a five year old child died as a result of coming into contact with a high-tension wire which passed over the roof of the claimant's house. In that case, the High Court applied the maxim of *res ipsa loquitur* and granted compensation. On a challenge being laid to the High Court order, the Supreme Court held that there was no denial in the written statement to the allegations of the petitioner therein that the wires were loose and dropping and that the respondent-claimant had asked the appellant therein to tighten the wires and therefore, in the facts of that case, no disputed questions of facts were found. The Court also held that carrying on the business of electricity supply is inherently dangerous and therefore, the supplier ought to ensure that no injury results from such activities.

35. A similar view has also been taken by this Court in ***Om Prakash (supra)***, wherein, a case of death on account of electrocution and on account of breach of statutory duty was set up. The Court found that it was obligatory on the part of the respondent therein to ensure proper safety and the maxim of *res ipsa loquitur* was applied to grant compensation. It was held that the judgement in ***Sukamani Das (supra)*** will have no applicability as BSES had not come out with its own version of the incident and had also not made any attempt to explain in what manner the deceased got electrocuted. The relevant

facts and dicta as upheld in this case are reproduced herein for reference:-

“On 12.07.2010, there was heavy downpour, coupled with storm in Delhi resulting in water logging on various roads, including a narrow lane (patli gali) at Nickolson Road, Kashmiri Gate. Late Lokesh Kumar, son of the petitioner, who at that time, was aged about 18 years and was pursuing his graduation with Delhi University, had on the fateful day gone out for some work. The case of the petitioner is that when Lokesh was passing through the above-referred narrow lane (patli gali), he came into contact with the iron grill gate installed there and got electrocuted since electricity current at that time was flowing in the said iron gate. Lokesh Kumar, at the time he came into contact with the iron grill gate, was in knee-deep water, which had collected near the gate and was fully drenched. He was taken to St. Stephen's Hospital, where he was declared brought dead and cause of death was reported to be electrocution, comatose (state of coma), etc. A post mortem of his dead body was also conducted at Aruna Asaf Ali Hospital and it was confirmed. The petitioner vide a criminal complaint before CMM, Delhi, which resulted in FIR being FIR No. 129/2011 being registered by the police.

..7. It is an undisputed position that Lokesh died on account electrocution in the narrow lane at Nickolson Road, Kashmiri Gate, Delhi on 10.07.2010. It is also not in dispute that it was respondent-BSES Yamuna Power Limited which at that time was entrusted with the responsibility of supplying electricity in the said locality. It is also not in dispute that it was the duty of BSES Yamuna Power Limited to install and maintain wires in the said locality. Thus, the management, control and maintenance of electricity wires, in the lane in which Lokesh died due to electrocution, was sole responsibility of respondent-BSES Yamuna Power Limited. Therefore, the doctrine of res ipsa loquitur applies to the case, as the cause of electrocution which resulted in death of Lokesh is primarily in the knowledge of respondent No. 3 alone.”

36. The decisions in the case of ***Sukamani Das (supra)*** and ***Timudu Oram (supra)*** have also been considered in detail by a Coordinate Bench of this Court in the case of ***Munni Devi v. State of NCT of Delhi & Anr***¹⁷. The Court, in the said case, was seized of a matter concerning an incident, wherein, the petitioner's son, while

¹⁷ 2021 SCC OnLine Del 46.

riding his bicycle, was fatally struck by an exposed live electric wire that fell onto the bicycle. In paragraph no.34 of the decision in ***Munni Devi (supra)***, it has been held that in the said two decisions, the relief was denied to the family of the victims as there was no finding recorded in the impugned orders therein, holding the electricity company as negligent. Both the decisions were held to have no application on the facts of the case in ***Munni Devi (supra)***, and the Court found that the facts in the case of ***M.P. Electricity Board (supra)*** were closer to the facts of the cases therein and accordingly, the company supplying the electricity was held liable for damages, without the proof of negligence, based on the principle of strict liability. The Court, while discussing the extent of culpability and negligence, held as under:-

“16. Clearly, the cause of death of deceased son of the petitioner is shock due to electrocution. All injuries are ante-mortem in nature. The death took place due to an electric wire that fell due to storm and rain, which took place before the incident. It clearly follows that on account of the falling of electric wire the deceased got electrocuted and has expired. Admittedly, Respondent 2 BSES RPL is the distribution company of the area in question.

17. I may now see the relevant pleadings of the petition. In para 2 of the writ petition, it is clearly stated that the deceased Mintu Kumar Jha while passing through a particular flat in Kalkaji on his cycle lost his life due to electrocution when an exposed live electric wire fell down upon him which action is totally attributable to the negligence of the respondents.

18. In the counter-affidavit filed by Respondent 2 BSES RPL, the response to Para 2 of the writ petition reads as follows:

“11. That the contents of Paras 2 to 6 need no reply since the same are either matter of facts or of record. It is respectfully submitted that the answering respondent company is sympathetic to the petitioner, however, the answering respondent company is not in any manner responsible or liable for the loss suffered by the petitioner.”

19. Clearly, the specific averments of the petitioner about the negligence of the respondents have evoked a vague response.

20. In my opinion, facts speak for themselves and the principle of res ipsa loquitur will clearly apply in these facts...”

37. The Division Bench of this Court in another case of **Rajeev Singhal and Anr v. MCD (East Delhi Municipal Corporation) & Anr**¹⁸ was considering a claim for compensation on account of death due to electrocution where a 14 year old boy got in contact with an electric cable which was lying on the ground. The Court considered various decisions including the decision in the case of **Sukamani Das (supra)** and held that once it is established that the incident actually resulted into the death of the child and the incident was a consequence of negligence, the writ court would be well within its jurisdiction to award necessary compensation irrespective of the dispute, if any, between the respondents therein. The factual particulars of the case are reproduced herein:-

“2. Appellants herein are the parents of Master Akshat Singhal, a 14 year old boy, who was victim of an unfortunate incident that occurred in the evening of 05.07.2014 when Akshat with his father (appellant No. 1 herein) had gone to Sanjay Park, New Govind Puri to play with his friends. While Akshat was playing with his friends, his father went off for a walk around the park. The children were playing cricket and in the course of playing, Akshat was required to fetch the ball when it went to a place in one corner of the park under a high mast light pole. While picking up the ball, hands of Akshat touched an electric cable which was lying there. Consequently, he was electrocuted and died on the spot. Even though he was removed to the hospital, he was declared dead on reaching the hospital. An FIR bearing No. 414/2014 was lodged with the local police station. An autopsy report was prepared and in the course of investigation it was revealed that the cause of the death was ventricular fibrillation as a result of electrocution.”

38. The Court further takes notes of several cases in which the petitioners alleged that the deaths of the deceased were attributable to

¹⁸ 2018 SCC OnLine Del 11518.

negligence, although these cases did not involve incidents of electrocution.

39. In the case of *Ram Kishore v. Municipal Corporation of Delhi*¹⁹, a batch of writ petitions came to be allowed by this Court, where the petitioners were parents who tragically lost their young children. Ram Kishore, a vegetable vendor, had filed Writ Petition (C) No. 4328 of 2001 claiming compensation from the Municipal Corporation of Delhi for the death of his 11 year old son Mahesh, who died when a wall of a municipal lavatory collapsed while he was using it. The second petition being W.P. (C) No. 6360 of 2002 is by Mohd. Yasheen, a tailor, claiming compensation from the Delhi Development Authority (DDA) for the death of his 15 year old son Beeru, who became entangled in an uncovered outlet drain pipe and was swept away by a sudden current of water. The third and fourth petitions were by Bhagwan and his wife Rajwanti, claiming compensation from the DDA for the death of their son Vineet Pawar aged 7 years who died on the spot when a heavy iron grill gate at the entrance of a DDA park fell on him while he and his friends were entering the park to play there. By a common judgment, this Court held the respective agencies liable for the deaths of the young children and directed them to pay compensation to the petitioners. The Court also noted that in all these cases, the incidents themselves were undisputed. The Court relied on the principle laid down in the case of *Shyam Sunder v. State of Rajasthan*²⁰ and held that there can be no question that under Article 226 of the Constitution, this Court can grant the relief of compensation based on the strict liability principle in a situation where there is a breach of a public duty. It was also held that in the facts of

¹⁹ 2007 SCC OnLine Del 992.

²⁰ (1974) 1 SCC 690.

the given case, liability would lie with the State if the claimant is able to show that the State acted negligently or that the "*State or its instrumentality failed to discharge the duty of care casted upon it, resulting in deprivation of life or limb of a person.*" In discharging the burden of proving negligence, it would be open to the claimant, if the facts and circumstances so permit, to invoke the *res ipsa loquitur maxim*.

40. In the case of *Varinder Prasad v. BSES Rajdhani Power limited & Ors*²¹, a Coordinate Bench of this Court has considered the decision in the case of *Sukamani Das (supra)* and while applying the principle laid down in the case of *Shyam Sunder (supra)*, has held as under:-

"29. Now coming to present case, the incident in question has not been disputed by the respondents, nor the factum of death of Master Ajay Kumar due to the falling of the chajja upon him is in dispute. The occurrence of the said incidence has been recorded in the FIR and the cause of the death has also been verified by the post mortem report. Though respondent nos. 1 and 2 are shifting the liability for the maintenance of the said flat on each other, they do not dispute that one or the other of them is indeed responsible for acting negligently in not maintaining the said flat. There can be no dispute or denying the fact that one of them, if not both the respondents, owed a duty of care to the general public, so that no action or inaction of theirs causes harm to the public at large. There can be no quarrel that the flat should have been maintained, so that no part of it fell suddenly on its own, only on account of some rain. The falling of the shed (chajja) is prima facie evidence of negligence. Nothing has been brought out by the respondents, to suggest that the shed fell despite the respondents taking proper care of the flat, or for some other cogent reason. Therefore, in my view, the principle of strict liability will be squarely applicable in this case, and the irresistible conclusion is that the respondent nos. 1 and 2 were negligent in the maintenance of the said flat, due to which the chajja fell on the deceased, and he died.

30. As far as the two cases Grid Corporation of Orissa Ltd. are concerned, in those cases the negligence on the part of the corporation had still to be proved - whether the wire snapped

²¹ 2012 SCC Online Del 339.

due to the negligence of the corporation, or due to some other reason, such as lightening, was required to be established. Thus, those cases are distinguishable on facts. Also the cases of Munna Singh (supra) and Duli Chand (supra) are distinguished from the present case, as they are not the cases of Res ipsa Loquiter, as is evident from the facts of those cases.

*31. Consequently, I have no hesitation in concluding that the present being a case of glaring and evident negligence, to which the maxim Res Ipsa Loquitor applies, the present writ petition under Article 226 of the Constitution of India is maintainable as the said negligence has led to complete infraction of the fundamental right to life of the deceased. The inter se dispute between the two respondents, i.e. respondent Nos. 1 and 2, would not come in the way of the petitioners for claiming compensation for breach of the fundamental rights of the deceased Ajay Kumar. The tendency of the public authorities, when more than one of them is involved, to shift the burden on each other is not new. Same was the position in Darshan (supra), and Ram Kishore (supra) and Swarn Singh (supra). The said inter se dispute was held, not be disentitle the petitioner from claiming relief under Article 226 of the Constitution of India, as negligence, resulting in breach of fundamental rights was held to have been established in each of these cases. **The Court shall, however, prima facie examine the aspect of responsibility, only with a view to fix the responsibility of one of the respondents to pay the awarded compensation, leaving it open to the respondents to battle out and settle their inter se liability in appropriate proceedings.***

(emphasis supplied)

41. In the case of ***Subramaniam and Anr v. DMRC and Ors.***²², this Court was considering a case of the death of eight-year-old child who died playing with his friends on account of asphyxia caused by drowning in a storm water drain. The Court held that the rigour of conservatism has been relaxed, not only in the field of civil wrongs, termed as tort, but also in the area of contracts where the State or its instrumentalities are parties. The following pertinent observations are reproduced as under:-

“11....As a matter of fact, the courts have gone to the extent of saying that it would be incorrect to state that where facts are disputed, a writ court would not have jurisdiction to entertain a

²² 2013 SCC OnLine Del 2363.

petition under Article 226 of the Constitution. It is one thing to say that the court in its discretion may not entertain a petition in which disputed questions of fact arise for consideration, it is another thing to contend that a court does not have jurisdiction to entertain a petition which raises disputed questions of fact. The latter proposition is now discarded by the Supreme Court. [See. Smt. Gunwant Kaur v. Municipal Committee Bhatinda (1969) 3 SCC 769 and ABL International Ltd. v. Export Credit Guarantee Corporation of India Ltd. (2004) 3 SCC 553

11.1 The approach, with regard to civil wrongs committed by officers of the State or the instrumentalities of the State are on no different footing where claims are based on strict liability. While there is no gainsaying that, an affected person could vindicate his right qua a civil wrong committed on him, by instituting a civil suit, a claim in public law for compensation, for unconstitutional deprivation of the fundamental right to life, would also be available to him. This claim would be in addition to the claim available in private law for damages caused on account of tortious acts of the public servants. Compensation, if any, would be paid by constitutional courts for 'established infringement of rights granted under Article 21 of the Constitution'.

11.3 Most of the aforementioned cases were reviewed by the Supreme Court in the case of MCD v. Association of Victims of Uphar Tragedy; AIR 2012 SC 100, where the court sustained the grant of compensation, with some modification, to the families of the victims and those who were injured in the fire, which occurred in the Uphar Cinema Theatre at Delhi. A Division Bench of the Supreme Court after reviewing its own previous precedents pushed the envelope a little further by observing that: - "...what can be awarded as compensation by way of public law remedy need not only be nominal palliative but something more. It can be by way of making monetary amounts for the wrong done or by way of exemplary damages, exclusive of any amount recoverable in a civil action based on tortious liability..."

(emphasis supplied)

42. In the case of *Varsha Mendiratta and Ors v. Delhi Transport Corporation*²³, a Coordinate Bench of this Court was considering a claim for compensation for the unfortunate death of a person due to falling of bus queue shelter where he took shelter due to rain and

²³2023 SCC OnLine Del 8194.

heavy storm on the date of the incident. The deceased therein sustained injuries and he unfortunately died. In this case, the Court mainly relied upon the principle laid down in *Subramaniam (supra)* and granted a lump sum compensation of Rs 50,00,000/-.

43. Upon consideration of the aforementioned judicial precedents, it is evident that the High Court, ordinarily while exercising its jurisdiction under Article 226 of the Constitution of India, should refrain from awarding compensation, a remedy primarily available within the civil law domain, when the case involves disputed questions of fact. However, if the State's liability for a tortuous act, committed by itself or its servants, is undisputed, the maxim *res ipsa loquitur* may be applied to overcome any factual controversy. The absence of concrete proof does not preclude the claimant from recovering compensation, provided a reasonable inference can be drawn from the known facts that the harm was caused by the negligence of the State or its servants. In such circumstances, the facts must enable the Court to draw an unequivocal inference and must speak for themselves.

44. At this stage, to thoroughly understand the applicability of the maxim *res ipsa loquitur*, pertinent observations of the Supreme Court in the case of *Shyam Sunder (supra)* need to be considered. In the said case, the controversy was with respect to recovery of damages under the Fatal Accidents Act, 1855, where the deceased, a storekeeper for the PWD, died after jumping from a truck that caught fire due to frequent radiator overheating. The widow of the deceased filed a Civil Suit against the State of Rajasthan for damages, alleging that the driver's negligence in operating an unroadworthy truck, caused her husband's death. The trial court found the act of the driver

in putting the truck on the road, when it was not roadworthy, as negligent and the State was held vicariously liable for the act of its employee. The State appealed in the High Court where it was held that the plaintiff was not successful in proving negligence and the mere fact that the truck caught fire was not enough evidence to prove negligence. The Supreme Court has explicated the principle of *res ipsa loquitur* by stating that the maxim is resorted to when an accident is shown to have occurred and the cause of accident is primarily within the knowledge of the defendant. The fact that the cause of the accident is unknown does not prevent the plaintiff from recovering the damages, if proper inference could be drawn from the known circumstances that it was caused by the negligence of the defendant. The fact of the accident may, sometimes, constitute evidence of negligence and then only the maxim *res ipsa loquitur* applies.

45. The Supreme Court in paragraph Nos.9, 15, 16 and 20 has held as under:-

“9. The main point for consideration in this appeal is, whether the fact that the truck caught fire is evidence of negligence on the part of the driver in the course of his employment. The maxim res ipsa loquitur is resorted to when an accident is shown to have occurred and the cause of the accident is primarily within the knowledge of the defendant. The mere fact that the cause of the accident is unknown does not prevent the plaintiff from recovering the damages, if the proper inference to be drawn from the circumstances which are known is that it was caused by the negligence of the defendant. The fact of the accident may, sometimes, constitute evidence of negligence and then the maxim res ipsa loquitur applies.

15. Res ipsa loquitur is an immensely important vehicle for importing strict liability into negligence cases. In practice, there are many cases where res ipsa loquitur is properly invoked in which the defendant is unable to show affirmatively either that he took all reasonable precautions to avoid injury or that the particular cause of the injury was not associated with negligence on his part. Industrial and traffic accidents and injuries caused by defective merchandise are so frequently of

this type that the theoretical limitations of the maxim are quite overshadowed by its practical significance [Millner: "Negligence in Modern Law", 92] .

16. Over the years, the general trend in the application of the maxim has undoubtedly become more sympathetic to plaintiffs. Concomitant with the rise in safety standards and expanding knowledge of the mechanical devices of our age, less hesitation is felt in concluding that the miscarriage of a familiar activity is so unusual that it is most probably the result of some fault on the part of whoever is responsible for its safe performance (see John G. Fleming, The Law of Torts, 4th Edn., p.260).

*20. It was, however, argued on behalf of the respondent that the State was engaged in performing a function appertaining to its character as sovereign as the driver was acting in the course of his employment in connection with famine relief work and therefore, even if the driver was negligent, the State would not be liable for damages. Reliance was placed on the ruling of this Court in *Kasturilal Ralia Ram Jain v. State of Uttar Pradesh* [(1965) 1 SCR 375 : AIR 1965 SC 1039 : (1965) 2 SCJ 318] where this Court said that the liability of the State for a tort committed by its servant in the course of his employment would depend upon the question whether the employment was of the category which could claim the special characteristic of sovereign power. We do not pause to consider the question whether the immunity of the State for injuries on its citizens committed in the exercise of what are called sovereign functions has any moral justification today. Its historic and jurisprudential support lies in the oft-quoted words of Blackstone: [Blackstone, Commentaries (10th Edn. 1887)]*

"The king can do no wrong ... The king, moreover, is not only incapable of doing wrong, but even of thinking wrong; he can never mean to do an improper thing; in him is no folly or weakness."

*In modern times, the chief proponent of the sovereign immunity doctrine has been Mr Justice Holmes who, in 1907, declared for a unanimous Supreme Court [*Kawananakoa v. Polyblank*, 205 US 349, 353.] :*

"A sovereign is exempt from suit, not because of any formal conception or obsolete theory, but on the logical and practical ground that there can be no legal right as against the authority that makes the law on which the right depends."

Today, hardly anyone agrees that the stated ground for exempting the sovereign from suit is either logical or practical. We do not also think it necessary to consider whether there is any rational dividing line between the so-called sovereign and proprietary or commercial functions for determining the liability of the State."

46. In light of the aforesaid, this Court has no hesitation in concluding that where the negligence and breach of duty by the State are manifestly evident, the maxim *res ipsa loquitur* shall apply. When the State is under a statutory duty of care and fails to fulfil such duty, the presumption of liability without proof will also arise. In such cases, it is practically not possible for the aggrieved persons to gather positive evidence of negligence and therefore, the doctrine of *res ipsa loquitur* comes to the rescue and helps in overcoming the formal evidentiary burden. However, the same is subject to the proof of foundational facts and manifest negligence.

Factual Analysis

47. If the facts of the instant case are perused in the context of the aforesaid legal position, the same would explicate that BSES received a complaint on 21.05.2017 at 06.15 PM, regarding leakage of current in LTACB from the Substation. Admittedly, the deceased came in contact with this current leakage flowing to the channel gate and got electrocuted while entering the *gali*. The local residents then called the PCR and the police took the deceased to the hospital. Subsequent thereto, the leakage was fixed by isolating the service cable of the said meter from the pole. The aforesaid position is recorded in the brief description of the accident in accident committee report, placed on record by BSES itself, which is extracted as under:-

“BRIEF DESCRIPTION OF THE ACCIDENT:

As per the information given by Sh. R. Patchiyappan, Asst Mgr, Div-CCK (in the attached electrical accident reporting, Form A) and the statements attached-

On dt 21.05.17, at 06.15 PM, a complaint regarding leakage of current in shutter of shops and channel of gate at the entrance of gali in cycle market was received through the system by the GNIIT, Md. Kausar. Immediately, Sh. Ram Janam, lineman, was deputed to attend it. He reached the site and put off the LT ACE from the substation at 06.20 PM. Further he checked the

entire network and found it intact. There was no current leakage from our network but an outgoing wire from meter no 11984872 at 386/4, New Lajpat Rai Market was found in naked condition which was touching the shutter of the shop due to which leakage current was flowing through shutters to channel gate. The victim got electrocuted due to coming in contact with this current leakage while he was trying to enter the said gali. Local residents called the PCR and then the police took him to Aruna Asaf Ali hospital where he was declared dead. Subsequently the leakage was removed by isolating the service cable of the said meter from the pole.

ROOT CAUSE & FINDINGS

The current leakage in the shutter of the shop and the channel gate was due to the leakage from the outgoing of the meter and it was not due to the BSES network.

RESPONSIBILITIES:

BSES is not responsible for the accident. The accident occurred because of the current leakage from the outgoing cable of the meter and was not from BSES network.”

48. The first and foremost aspect which emerges from the aforesaid position by BSES is that the death of the petitioner's husband was caused due to flowing of electricity current as a result of a leakage from an outgoing exposed wire of the shop meter, spreading over to the channel gate of the gali. The mere fact that there was a leakage from the said wire of the private-consumer/shopkeeper cannot allude culpability or any negligence on the part of BSES. Despite the known general risks associated with electricity transmission, there still remains a contingency that the incident could not have been prevented without a prior complaint made to BSES. Nothing has been placed on record to satisfy the Court that a prior complaint was made to BSES by anyone either from the locality or by the private-consumer/shopkeeper itself. Therefore, there is insufficient evidence to prove that the negligence in the instant case is directly and solely attributable to BSES.

49. However, the Court also deems it fit to examine the pertinent statutory provisions to delineate the obligations imposed upon BSES for managing a hazardous enterprise such as electricity supply.

50. Section 53 of the Electricity Act, 2003 mandates Central Electricity Authority (CEA) to specify suitable measures *inter alia* for protecting the public (including the persons engaged in the generation, transmission or distribution or trading) from dangers arising from the generation, transmission or distribution or trading of electricity, or use of electricity supplied or installation, maintenance or use of any electric line or electrical plant.

51. In accordance with the abovementioned provision, Regulation 13 (1) of CEA Regulations, 2010 requires the supplier to ensure that all electric supply lines, wires, fittings and apparatus belonging to him or under his control, installed on a consumer's premises, are in a safe condition and in all aspects, fit for supplying electricity. The supplier is also enjoined to take precaution to avoid danger arising on such premises from such supply lines, wires, fittings and apparatus. The relevant excerpt from the regulations is reproduced herein:-

“13. Service lines and apparatus on consumer's premises: -(1) The supplier shall ensure that all electric supply lines, wires, Fittings and apparatus belonging to him or under his control, which are on a consumer's premises, are in a safe-condition and in all respects fit for supplying electricity and the supplier shall take precautions to avoid danger arising on such premise from such supply lines, wires, fittings and apparatus.

(2) Service lines placed by the supplier on the premises of a consumer which are underground or which are accessible shall be so insulated and protected by the supplier as to be secured under all ordinary conditions against electrical, mechanical, chemical or other injury to the insulation.

(3) The consumer shall, as far as circumstances permit, take precautions for the safe custody of the equipment on his premises belonging to the supplier.

(4) The consumer shall also ensure that the installation under his control is, maintained in a safe condition”

(emphasis supplied)

52. Regulation 30 of the said regulations, lays down the provisions mandating the supplier/DISCOM to inspect the installations connected to a supply system and test the same at least every five years, as directed by the relevant Government authority. Regulation 34 also enshrines provisions with respect to a leakage on consumer premises and states that if a consumer's installation has a suspected leakage, that poses a danger or affects others, the supplier may disconnect the electricity supply after providing 48 hours' notice until the issue is resolved.

53. The contention of BSES, however, that it was only responsible *qua* the meter which was installed by it on the consumer's premises and not the outgoing wires which ultimately led to the unfortunate incident, is sustainable in view of the Regulation 2(s) of the DERC Supply Code, 2007, which is the applicable Regulation as on the date of the incident. The said Regulations which defines 'distribution system' as "*the system of wires and associated facilities used for distribution/supply of electricity between the delivery points on the transmission lines of the generating station connection and the point of connection to the installation of the consumers*".

54. The provisions of the Electricity Act, 2003 and the extant regulations establish that the responsibility for electricity transmission, maintenance, and safety generally rests with the DISCOM, who in the capacity of power supplier, ensure safe and proper maintenance of the electricity current with due diligence and care. The provisions also highlight that the consumer is also obligated to maintain safety of the installation under his control.

55. Ordinarily, to prove negligence, it is generally required to establish that the consequence was foreseeable by the alleged entity. However, when the activity in question is inherently hazardous, foreseeability is presumed through the maxim of *res ipsa loquitur* and strict liability as has been held in *MP electricity Board (supra)*.

56. The Constitutional Courts have invoked the powers under Article 226 in various instances, as demonstrated by the judicial precedents discussed above. In the case of *Ram Nath (supra)*, the Supreme Court addressed an incident where the deceased came into contact with a high-tension wire passing over her house. In *Om Prakash (supra)*, the Court dealt with a situation where the deceased died after touching an iron grill gate that was electrified. Similarly, in *Rajeev Singhal (supra)* and *Munni Devi (supra)*, the Court adjudicated cases where the deceased came into contact with an electric cable under a high mast light pole and a live electric wire that fell on his bicycle, respectively. In all these cases, the Court presumed negligence because the electrical apparatus causing electrocution was found to be under the direct and immediate control of the DISCOM and a result of its manifest negligence.

57. Similarly in cases of *Ram Kishore (supra)*, *Subramaniam (supra)*, *Varsha Mendiratta (supra)* and *Varinder Prasad (supra)*, this Court applied the maxim of *res ipsa loquitur* as the facts in those cases exhibited that the responsibility and duty to maintain various public facilities was solely and directly vested upon the State and its different instrumentalities. Therefore, the Court came to the conclusion that the negligence of the State was writ large from the mere occurrence of the incident that resulted in the death of the deceased.

58. In the present case, the facts and contentions made by the parties indicate that the negligence which led to the leakage of current is attributable to an outgoing wire, leading to its flow to the shutter gate and subsequently to the channel gate, *prima facie*, cannot solely be attributed to BSES, at this stage. The regulations and the provisions of the Electricity Act, 2003 also do not conclusively establish that it was only the DISCOM i.e., BSES herein, who had the sole and direct responsibility to prevent such a leakage. Admittedly, the consumer-shopkeeper is the main accused in the chargesheet and BSES has not been named. In the absence of any material evidence on record which definitively demonstrates a lapse on the part of BSES, the Court cannot conclusively establish negligence on the part of BSES and therefore, the principle of *res ipsa loquitur* becomes inapplicable. The said position, however, can only be established by the parties while leading evidence in a competent Civil Court.

59. Consequently, what prevents this Court from exercising the discretionary writ jurisdiction under Article 226 of the Constitution, in the instant case, to hold BSES negligent are *inter alia* the following disputed facts which require further adjudication:

- a. Whether the current, flowing from the shutter of the shop to channel gate, was attributable to a leakage in the consumer apparatus under his control or the control of BSES?
- b. Whether BSES took due care and diligence so as to minimize the risk and danger to life?
- c. Whether the duty to maintain the said installation was cast upon the contractor, namely M/s Manjeet Electric works?

60. This Court does not find it appropriate to adjudicate upon the aforementioned issues, as the present case does not justify the

application of the maxim *res ipsa loquitur* and there is no conclusive evidence on record to suggest otherwise. The said maxim applies in cases where the facts clearly and unequivocally indicate that responsibility for the incident can directly be attributed to statutory authorities, rather than to private parties or a combination of private and public entities.

61. However, at this juncture, this Court deems it appropriate to refer to the decision in the case of *Satish Kumar v. BSES Yamuna Power Limited and Anr*²⁴, wherein, the Court had acknowledged that there existed no dispute regarding the severe burn injuries suffered by the petitioner's son therein, which led to the amputation of his leg and ultimately, his death. Recognizing that no monetary compensation can truly address such a profound loss, the Court empathised that the tragedy has caused significant mental anguish and trauma. Holding that the petitioner may have incurred considerable expenses and that the trial in the Civil and Criminal Court may be prolonged, the Court, in light of the unique/special circumstances of that case and without prejudice to the positions of respondents, directed BSES to pay an *ex-gratia* amount of Rs. 2,00,000/- to the petitioner.

62. Therefore, in light of the circumstances of the present case, the Court deems it appropriate to issue almost similar directions to ameliorate the petitioner's suffering following the tragic loss of her husband.

63. Following the sympathetic view taken by this Court, the next question which needs to be considered is the quantum of *ex gratia* compensation which may be payable to the petitioner.

²⁴ W.P.(C) No. 9947/2016.

64. The petitioner herein has prayed for Rs 50,00,000/- to be paid as compensation. It is also pertinent to note here that in accordance with the status report filed by respondent No.3-Delhi Police, the deceased's family has already been given Rs. 27,96,496/- in family pensionary benefits and is also receiving monthly pension of Rs.17,150/- till 21.05.2027 and shall receive Rs. 10,290 with effect from 22.05.2027.

65. In light of the benefits already extended to the petitioner, the Court, in its discretion, deems it appropriate to grant an *ex-gratia* lump sum compensation of ₹10,00,000/-, to be paid by BSES to the petitioner. This payment shall be made to the petitioner within three months from the date of passing of this judgment. Any failure to comply with the aforesaid direction shall result in the petitioner being entitled for payment of simple interest at the rate of 6% per annum, accruing from the date of this judgment.

66. The petitioner is also at liberty to pursue appropriate legal remedies in the Civil Court. The competent Civil Court is directed to adjudicate the matter within a period of one year from the date of institution of any such suit. BSES is also directed to not cause any undue delay in the proceedings by seeking unwarranted adjournments. It is further clarified that the *ex-gratia* amount awarded by this Court is independent of, and in addition to, any compensation that may be awarded by the Civil Court.

67. With the above directions, the present petition is disposed of along with pending application(s), if any. No order as to costs.

68. Needless to state that nothing stated in this judgment shall be construed to be an expression on merit and if the petitioner approaches the Civil Court, the same shall decide the case being uninfluenced by the observations made in the present case. This Court has only

examined the case keeping in view the scope of relief which may be granted under Article 226 of the Constitution.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

SEPTEMBER 05, 2024/MJ/p