Before Rajiv Narain Raina, J.

RUBI AND OTHERS—*Petitioners*

versus

STATE OF HARYANA AND OTHERS—*Respondents*

CWP No.8105 of 2017

September 26, 2019

A. ***Constitution of India, 1950—Art. 21—Right to life—Indian Electricity Act, 2003 — S.68 and Rules 29, 44,45,45,46,59 and 91—Res ipsa loquitur—Death of sole bread winner/husband due to electrocution—Claim for compensation by wife and other dependents—Principles of strict and vicarious liability—Some compensation already paid by the distribution company/DHBVN for the accident in terms of 'Out of Court Settlement Scheme' as per provisions of Employees' Compensation Act, 1923—Held, the principles of 1923 Act are wholly improper and inadequate indices for fair and reasonable compensation — In exercise of extra ordinary jurisdiction writ Court can draw concepts and principles from every relevant branch of law to strike a just balance of justice figuring out troublesome issue of what appears, to a reasonable person, to be neither over nor under—Compensation—Judicial reflex and past precedents is the only thing we can hold on to and guided by to measure just and fair compensation—Assessment by writ Court is not final determination of compensation, unless the order says so—Further held, civil remedies are notorious for protracted litigation and in case of survival compensation aggrieved party cannot be left to law's delays in a civil proceeding and thereafter in appeals — Shortest cut to just and quick relief is summary proceedings under Article 226 in cases like the instant one where facts are not disputed and the incident is res ipsa loquitur admitting of no doubt — Writ Court is not bound by award of compensation by DHBVN and is bound to give effect to Article 21 on which electrocution cases rest—Fundamental Rights cannot be waived— Therefore, Petitioner No.1 is to be relieved of the settlement.***

B. ***Constitution of India, 1950—Art. 21—Right to life—Indian Electricity Act, 2003—S.68 and Rules 29, 44, 45, 45, 46, 59 and 91—Res ipsa loquitur— Death of sole bread winner/husband due to electrocution—Claim for compensation by wife and other dependents—Held, tight—Fisted justice is itself injustice in a good***

cause—In a fit case for compensation it is better to err on the higher than on the lower side—Court must make room for unforeseen expenses and future education of children, their nurturing with a widowed mother incapable of finding gainful employment—Payment already made under the settlement found wholly inadequate—Rupees Thirty Five lakh awarded as proper and befitting compensation payable to the petitioners, except Petitioner No.1, who entered into out of Court settlement under the compensation policy.

Held that, in my considered view, the principles of compensation in the Employees' Compensation Act, 1923 are wholly improper and inappropriate indices to apply as adequate, just, fair and reasonable compensation, in a case of death by electrocution in which cases even the principles of law in motor accident claim cases have been ruled out. The element and extent of human suffering, the future of children and the family are not factors enshrined in the cold Schedule to the Employees' Compensation Act. Verily, by analogy the writ court can draw concepts and principles from every relevant branch of the law to strike a just balance of justice in exercise of extraordinary writ jurisdiction figuring out the hairline distinction and the troublesome issue of assessment of what appears, to a reasonable person, to be neither over—compensation nor under compensation. Here the judicial reflex gained by life's experience and past precedents is the only thing which we can hold on to and be guided by, to attempt to measure just, fair, adequate and reasonable compensation in a case. Even in the writ jurisdiction in cases of electrocution and other fatal accidents for which compensation is not formalized by statutory law for assessing and directing payment of compensation I would say, still leave the victim and the aggrieved party open to quantification in their remedy seeking even higher compensation in a civil court, but then, based on principles of tortuous liability and proof of negligence etc. on the evidence produced by parties before the civil court for it to balance the preponderance of probabilities reconstructing as much as possible the fatal accident. Assessment by the writ court is not a final determination of compensation, unless the order says so. Civil remedies are notorious for protracted litigation and in a case of survival compensation aggrieved party cannot be readily left to law's delays in a civil proceeding and thereafter in appeals etc. The shortest cut to just and quick relief undoubtedly is in summary proceedings under Article 226 in cases where facts are not disputed and the incident is *res ipsa loquitur* admitting of no doubt. In this case, the facts are not disputed for the simple reason that the DHBVN has already paid some

compensation by applying principles of Employees Compensation Act introduced in their scheme. Liability to compensate for actionable wrong is admitted. Though the DHBVN has not per se committed any illegality in assessing compensation in its wisdom based on a labour law, but the writ court is not bound by that award of compensation in the presence of the defaulting Nigam, whereas the writ court is bound to give effect to Article 21 of the Constitution on which electrocution cases rest. It is trite to say that fundamental rights cannot be waived. There can be no contracting out of fundamental rights or the law. Therefore, petitioner No.1 is to be relieved of the settlement, which settlement in any case, the minor children are not bound by as they have not yet attained the age of majority. Neither could petitioner No.1 have bound down respondent No.6 in the Out of Court Settlement Scheme though she has passed away. The mother's signatures are not available on record of the Nigam.

(Para 8)

Further held that, no amount of money is sufficient to compensate sudden death as I said in the beginning, but in the common law it is the only solace which the court can give to the hapless having regard to all the relevant factors available and the legal principles of strict liability, including the circumstances in which the family is left facing; the need to settle children; who must be now about 17 and 15 years of age. Of which one is a girl child, who has to be married one day and a son to settle in a vocation or even traditional farming; the permanent loss of the bread earner and tiller of land even though aged 55 years at the time of death, compensation in this case has to be increased substantially as payment already made is wholly inadequate to meet the exigencies of life. The court must make adequate room for unforeseen expenses and the future education of the children and their nurturing and equip them with the daily needs of survival with a widowed mother incapable of finding gainful employment.

(Para 11)

Further held that, therefore, in the totality of facts and circumstances of the case I believe to the best of my judgment that the proper and befitting compensation payable in this case should be Rs.35 lakhs, which includes the amount already paid by rounding off. The settlement under the compensation policy dated 22.02.2017 is restricted to petitioner No.1 only in addition to sums awarded by this order and the same is declared not binding on the rights of minor petitioners No.2

& 3 and the heirs of respondent No.6, if any. In case they have not litigated, they will have none.

(Para 12)

Further held that, tight-fisted justice is itself injustice in a good cause. Sympathy, though, alone has no place in the court room. In a fit case for compensation it is better to err on the higher than the lower side and far safer too but the dispensation should not appear to be a windfall. For instance, in Raman I awarded Rs 60 lakhs in 2013 to a triple amputee child of about 5 years injured by electrocution suffering one hundred percent permanent disability. In intra court appeal the amount was reduced to half by recording an ad idem order. In further appeal to the Supreme Court at the instance of Raman successfully wriggling out of the consent given by counsel beyond instructions to compromise the matter, the judgment was restored and one of the telling observations made by their Lordships was…

(Para 13)

Bhupinder Ghanghas, Advocate
for the petitioners.

Saurabh Mohunta, DAG, Haryana.

Anil Chawla, Advocate
for respondents No.2 to 5.

RAJIV NARAIN RAINA, J.

(1) Human life has no price in terms of money. If it is extinguished by electrocution due to the negligence and carelessness of the managers of the power supply, cases of compensation arise. The conduct of the agents of the supplier of electrical energy in their duty to maintain harmless, the supply of potentially dangerous energy and especially through high voltage transmission lines in areas where there is greater probability of humans living in and around habitation is statutorily prescribed in Section 68 of the Indian Electricity Act, 2003 and Rules 29, 44, 45, 46, 59 & 91 of the Indian Electricity Rules, 1956. To these provisions, there is no need of further elaboration since they have been discussed in some depth by this court in a case of injury by electrocution in **Raman** versus **State of Haryana & others**[1], as affirmed by the Supreme Court in ***Raman*** versus ***Uttar Haryana Bijli***

[1] 2013 (3) ACC 570

Vitran Nigam[2] based on principles of strict and vicarious liability of the tortfeasor for which no special proof of negligence and carelessness is demanded by court by way of evidence, evidence of the kind associated with the civil court gathered for years together. Among other things in *Raman*, the Supreme Court held that the principle of multiplier and multiplicand in cases of motor accidents do not apply *stricto sensu* to cases of injury and death by electrocution. The Court is yet again called upon to consider the case of compensation sought by the petitioners for the death of their bread winner, the husband of petitioner No.1 and father of petitioners No.2 & 3, who are the minor daughter and son, aged about 15 and 13 years respectively. Respondent No.6, Sukhma – mother of the deceased Mahabir has been arrayed as proforma respondent. She died of old age sometime back according to Rubi, an Oriyan married to the deceased. The three petitioners have approached this Court directly in a writ petition filed under Article 226 of the Constitution praying for compensation on account of death of Mahabir due to electrocution. The widow was 41 years in 2017, when the petition was filed. The children must be 17 and 15.

(2) The family lives in a village in District Bhiwani. A 440 KV transmission line crosses over the village strung to metal Electric Poles. Mahabir met his unfortunate death on 13.08.2013 in the late afternoon when he along with his brother was going to tend their farmland, when suddenly a buffalo appeared aggressively and in order to save himself his hand came into contact with an electric pole through which current was passing. He fell down electrocuted. His brother raised alarm as a result many persons from the village gathered. Unconscious Mahabir was taken to General Hospital, Bhiwani by his brother and other villagers, where he was declared dead. Post mortem was conducted on 14.08.2013, which confirms 'the cause of death was heart failure due to electrocution' recorded in the column of remarks by the Medical Officer. The injuries were ante mortem in nature and sufficient to cause death in the opinion of the Doctor. Death certificate is attached with the petition. The matter was also reported to the Police by the Doctors and the news of the accident was also published in the newspapers. Police report and the news items are attached with the petition as Annex P-3&P-4. The statement of Rajbir, brother of the deceased was recorded by the police as well as all and sundry who reached the spot where the body collapsed state that the cause of the accident was due to coming into contact with an electric pole standing on the village path. There

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[2] (2014) 15 SCC 1

was leakage of electricity. Inquest proceedings were conducted under Section 173 Cr.P.C.

(3) It is the contention of the learned counsel for the petitioners by citing the settled position of law that the rule of strict liability and the theory of foreseeable risk make the electricity authorities primarily liable to compensate the sufferer. So long as the voltage of electricity transmitted through the wires is potentially of dangerous dimensions, the managers of its supply have the duty to take all precautionary measures to prevent escape of such energy which causes electrocution. Section 68 of the Act and the Rules referred to enjoin a statutory obligation, duty and responsibility of the electricity suppliers to provide safety and protective devices for rendering safeguards and failure to do so entails vicarious liability and the distinct possibility of award of compensation on account of any mishap which occurs by lack of such safeguards. Constant vigil of poles and power lines by the agents of the licencee power distributor is a statutory obligation.

(4) Following the death, petitioner No.1 submitted representations to the official respondents for grant of compensation, but no action was taken by them. The petitioners also approached the District Consumer Disputes Redressal Forum, Bhiwani by way of filing complaint No.165 of 2014 seeking compensation on account of death of Mahabir due to electrocution. It is averred that the petition was dismissed on the ground of want of maintainability. However, the petitioners were given liberty to take legal remedy before the competent court/authority as per the provisions of law. The order was passed on 08.02.2017 wasting three precious years of the petitioners on a bad legal advice given to the family. Now the petitioners have approached this Court, inter alia, for enforcement of their fundamental rights under Article 21 of the Constitution which commands the State and its instrumentalities to protect the life and liberty of citizens contending that the State and the DHBVNL ought to be called upon to repair the damage done by its officers to the fundamental rights of the aggrieved person notwithstanding the right of the citizen to the remedy by way of civil suit or criminal proceedings. It is, therefore, reiterated in law and in principle that monetary relief deserves to be awarded in writ jurisdiction to the aggrieved party for loss of life in a tragic incident in the facts of the case. The wrongdoer must be penalized and liability fixed on those who neglected to perform their duties to keep the electric pole safe to human touch and the only way to restitute the wrong is in terms of money for failure to perform public duty.

(5) The petitioners assert that the deceased was the only earning member of the family. The legal principles being in favour of the petitioners are beyond doubt. It is also the admitted position that an amount of Rs.5,42,240/- has been paid to the petitioners for the fatal accident of Mahabir by the DHBVNL in terms of an Out of Court Settlement Scheme for pending court cases of compensation in respect of FA/NFA accidents in DHBVN circulated Office Memo dated 15.12.2017 and the scheme further extended up to 28.02.2018 vide memo dated 30.01.2018. The decision dated 19.03.2018 is appended with the written statement at Annex R-2/2 calculating compensation as per the provisions of Employees Compensation Act, 1923 and the schedule attached thereto. The scheme of the Nigam is fashioned on the pattern of the 1923 Act. The compensation is calculated taking the age of the deceased as per voter ID card as 55 years; the date of accident as 13.08.2013, age factor as 135.56 as per the Schedule to the Act, 1923. Taking an average of 50% of the assumed monthly income of Rs.8000/- multiplied by the age factor, the amount comes to Rs.5,42,240/-by the statutory formula. The amount includes Rs.5 lakhs paid under ad interim directions of this Court subject to final decision of the case. Of this amount, Rs.4 lakhs were ordered to be paid to petitioners No.1 to 3 and Rs.1 lakh to respondent No.6-mother of the deceased by the interim order of this Court.

(6) Learned counsel for respondents No.2 to 5 submits that petitioner No.1 having come forward to settle the dispute by filing an affidavit dated 18.01.2018 at Annex R-2/1 is estopped from claiming further compensation. The recitals in the affidavit dated 18.01.2018 signed by the 1st petitioner read as follows:

> "1.That the death of my husband was caused due to electrocution on 13.08.2013.
>
> 2. That I have filed a case for compensation on account of death of my husband in the Punjab & Haryana High Court.
>
> 3. That I want to avail the benefit of Out of Court Settlement of the Nigam.
>
> 4. That my claim case be settled as a Out of Court settlement.
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> 5. That if our claim is settled, we shall be bound to withdraw the case from the Hon'ble Punjab & Haryana High Court. Our claim be settled."

(7) To delve deeper into the circumstances leading to the filing of this affidavit on promise of payment of compensation in case the writ petition was withdrawn, I summoned petitioner No.1 to appear in court to support of or to deny and explain the circumstances in which the settlement was arrived at by my order dated 09.09.2019, while adjourning the case to 26.09.2019. She appeared in Court. To match her signatures on the photocopy of affidavit Annex R-2/1, vakalatnama and the petition (at pp.26 of the paper-book), to make doubly sure I asked the Court Secretary to supply a piece of paper to her for putting her signatures thereon. She has signed on two places of the sheet, which is retained on record as Mark-A. I have no doubt that the signatures on the judicial file match with that of the affidavit submitted to the Nigam. In answer to the queries of the court, the court was informed by the petitioner No.1 that she hails from Orissa and got married in Haryana by reason of poverty. She is completely illiterate and has only learnt how to sign her name mechanically. She cannot read or write Hindi or her own language. She says that she was called to office and made to sign papers without making her understand the import of such signatures. Her husband, as one knows, died in 2013 and she had waited for over 4 years for money to sustain herself. Her mother-in-law (respondent No.6) has also passed away. In these circumstances, she signed the affidavit without understanding or being made to understand the legal repercussions o her act. The affidavit is in Hindi and on a proforma for the settlement scheme.

(8) In my considered view, the principles of compensation in the Employees' Compensation Act, 1923 are wholly improper and inappropriate indices to apply as adequate, just, fair and reasonable compensation, in a case of death by electrocution in which cases even the principles of law in motor accident claim cases have been ruled out. The element and extent of human suffering, the future of children and the family are not factors enshrined in the cold Schedule to the Employees' Compensation Act. Verily, by analogy the writ court can draw concepts and principles from every relevant branch of the law to strike a just balance of justice in exercise of extraordinary writ jurisdiction figuring out the hairline distinction and the troublesome issue of assessment of what appears, to a reasonable person, to be neither over-compensation nor under compensation. Here the judicial reflex gained by life's experience and past precedents is the only thing which we can hold on to and be guided by, to attempt to measure just, fair, adequate and reasonable compensation in a case. Even in the writ jurisdiction in cases of electrocution and other fatal accidents for which

compensation is not formalized by statutory law for assessing and directing payment of compensation I would say, still leave the victim and the aggrieved party open to quantification in their remedy seeking even higher compensation in a civil court, but then, based on principles of tortuous liability and proof of negligence etc. on the evidence produced by parties before the civil court for it to balance the preponderance of probabilities reconstructing as much as possible the fatal accident. Assessment by the writ court is not a final determination of compensation, unless the order says so. Civil remedies are notorious for protracted litigation and in a case of survival compensation aggrieved party cannot be readily left to law's delays in a civil proceeding and thereafter in appeals etc. The shortest cut to just and quick relief undoubtedly is in summary proceedings under Article 226 in cases where facts are not disputed and the incident is *res ipsa loquitur*-admitting of no doubt. In this case, the facts are not disputed for the simple reason that the DHBVN has already paid some compensation by applying principles of Employees Compensation Act introduced in their scheme. Liability to compensate for actionable wrong is admitted. Though the DHBVN has not per se committed any illegality in assessing compensation in its wisdom based on a labour law, but the writ court is not bound by that award of compensation in the presence of the defaulting Nigam, whereas the writ court is bound to give effect to Article 21 of the Constitution on which electrocution cases rest. It is trite to say that fundamental rights cannot be waived. There can be no contracting out of fundamental rights or the law. Therefore, petitioner No.1 is to be relieved of the settlement, which settlement in any case, the minor children are not bound by as they have not yet attained the age of majority. Neither could petitioner No.1 have bound down respondent No.6 in the Out of Court Settlement Scheme though she has passed away. The mother's signatures are not available on record of the Nigam.

(9) The respondent – Nigam is the licensee of the State to supply energy to consumers. The State is ultimately responsible for compensation, but through the Nigam. The State of Haryana has not entered into any settlement with petitioner No.1, wife of late Mahabir.

(10) Having heard Mr. Bhupinder Ghanghas, learned counsel appearing for the petitioners; Mr. Saurabh Mohunta, DAG, Haryana and Mr. Anil Chawla, learned counsel representing DHBVNL, I have no doubt in my mind that this petition deserves to be accepted. Petitioners deserve to be compensated adequately for the loss of

Mahabir. The petitioners are not bound by the compensation policy of the DHBVNL. It can be only seen as an interim measure, as the Nigam is not the final arbitrator of just, fair and adequate compensation as defendant. Compensation has to be decided on the case-to-case basis and there can be no hard and fast rule laid down except guidance drawn from case law. Every compensation package awarded in writ proceedings has a degree of guess work by applying the rule of thumb. Quantification of just compensation is no easy task.

(11) No amount of money is sufficient to compensate sudden death as I said in the beginning, but in the common law it is the only solace which the court can give to the hapless having regard to all the relevant factors available and the legal principles of strict liability, including the circumstances in which the family is left facing; the need to settle children; who must be now about 17 and 15 years of age. Of which one is a girl child, who has to be married one day and a son to settle in a vocation or even traditional farming; the permanent loss of the bread earner and tiller of land even though aged 55 years at the time of death, compensation in this case has to be increased substantially as payment already made is wholly inadequate to meet the exigencies of life. The court must make adequate room for unforeseen expenses and the future education of the children and their nurturing and equip them with the daily needs of survival with a widowed mother incapable of finding gainful employment.

(12) Therefore, in the totality of facts and circumstances of the case I believe to the best of my judgment that the proper and befitting compensation payable in this case should be Rs.35 lakhs, which includes the amount already paid by rounding off. The settlement under the compensation policy dated 22.02.2017 is restricted to petitioner No.1 only in addition to sums awarded by this order and the same is declared not binding on the rights of minor petitioners No.2 & 3 and the heirs of respondent No.6, if any. In case they have not litigated, they will have none.

(13) Tight-fisted justice is itself injustice in a good cause. Sympathy, though, alone has no place in the court room. In a fit case for compensation it is better to err on the higher than the lower side and far safer too but the dispensation should not appear to be a windfall. For instance, in Raman I awarded Rs 60 lakhs in 2013 to a triple amputee child of about 5 years injured by electrocution suffering one hundred percent permanent disability. In intra court appeal the amount was reduced to half by recording an ad idem order. In further appeal to

the Supreme Court at the instance of Raman successfully wriggling out of the consent given by counsel beyond instructions to compromise the matter, the judgment was restored and one of the telling observations made by their Lordships was:

> "…the order passed by the learned Single Judge, [the amount] cannot be said to be on the higher side, but in our view, the said amount of compensation awarded is less and not reasonable…and should have been much higher…"

(14) The lesson is learnt.

(15) As a result, apart from the compensation already paid to petitioner No.1, a further sum of Rs.30 lakhs is directed to be paid by the Nigam to the petitioners in the following break-up:

Petitioner No.1:	Rs.10,00,000/- (Rupees Ten Lakhs) to be paid to her within a period of two months from the date of receipt of certified copy of this order.In case, the payment is not made within the period fixed,the compensation will run interest at the rate of 9% p.a. till payment.
Petitioner No.2:	Rs 10,00,000/- (Rupees Ten Lakh) to be deposited in her name in the shape of Fixed Deposit in the State Bank of India to earn maximum rate of interest, which shall be released to her on attaining the age of 18 years.The deposit shall be made by the respondent Nigam within the same time-frame as for petitioner No.1.
Petitioner No.3:	Rs.10,00,000/- (Rupees Ten Lakhs) to be deposited in his name in the shape of Fixed Deposit in the premier State Bank of India to earn the maximum rate of interest, which shall be released to him on attaining the age of21 years being renewed automatically till then. Period of deposit is the same as above.

(16) With these observation and directions, the petition stands allowed.

Tribhuvan Dahiya