

Smt. Mamta Devi and ors. Vs. Bses and ors.

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Court : Delhi

Decided On : Dec-05-2005

Reported in : I(2006)ACC425; 2006ACJ1257; 126(2006)DLT663

Judge : Pradeep Nandrajog, J.

Acts : Workmen's Compensation Act, 1923; [Constitution of India](#) - Article 21

Appeal No. : WP(C) No. 2084/2000

Appellant : Smt. Mamta Devi and ors.

Respondent : Bses and ors.

Advocate for Def. : N.S. Dalal, Adv. for R-1 and R-2, ; G.P. Upman, Adv. for R-3 and R-4 and ;

Advocate for Pet/Ap. : Sumati Anand, Adv

Judgement :

Pradeep Nandrajog, J.

1. First petitioner, Mamta Devi is the wife of late Harish Chandra Jha. Second to fourth petitioners are the minor sons and daughters of late Harish Chandra Jha. Fifth petitioner is the mother of late Harish Chandra Jha. First respondent is BSES Rajdhani Power Limited, the successor in interest of Delhi vidyut Board. Second

respondent was functioning as the site in charge at sub-station (33 KVA, Bhikaji Cama Place, New Delhi) and was an employee of Delhi Vidyut Board when the unfortunate incident took place in which Harish Chandra Jha died. Third respondent is the proprietor of the fourth respondent. It is pleaded that Harish Chandra Jha was employed by respondent No. 3. Fifth respondent is M/s. Crompton Greaves Ltd., the stated manufacturer of the panel which was being installed in the sub-station when the unfortunate incident took place.

2. Late Shri Harish Chandra Jha died on 15.7.99 when, during repair work, an explosion took place at the Bhikaji Cama Place, Sub-station, then maintained by the Delhi Vidyut Board.

3. It is stated in the petition that in the month of June, 1999, DVB awarded a contract to respondent No. 4 to erect and commission five numbers of 11 KVA switch gear panels at the sub-station. It is stated in the petition that vide letter dated 16.7.1999, the concerned engineer of DVB directed the staff of the sub-station to allow the persons named therein, stating that they were employees of respondent No. 4, to carry out the work. As stated in the petition, when the work commenced, site in charge of the sub-station, respondent No. 2, told that there was no current in the grid. When work was on, there was a flash and a bang. Harish Chandra Jha, died as a result of the fire.

4. Claim is made for compensation on the allegation that Harish Chandra Jha, aged 30 years, was getting a salary of Rs. 2,500/- per month from respondent No. 4. Needless to state, petitioners claim to be dependent on Harish Chandra Jha.

5. Response of respondents 3 and 4 is one of denial. It is stated that the work in question was never awarded to M/s. Sharma Traders (R-4). It is stated the work was awarded to M/s. R.S.Engineers. Reliance has been placed by respondents 3 and 4 on DVB's letter of award bearing No. XCSC/7/154. Respondents 3 and 4 have denied that any officer of DVB ever wrote letter dated 16.7.1999.

6. Response filed by DVB, which needless to state binds BSES Rajdhani Power Ltd. is that the petitioners have filed a civil suit for damages which is pending before an Additional District Judge. Stating that the work in question was awarded

to M/s. R.S.Engineering vide letter No. XCSC/7/154 dated 26.7.1999 reliance is placed upon the letter of award which states as under:-

'Safety

The contractor shall make all the arrangements for the safety of his staff. The undertaking/vote shall not be responsible for any injury/disablement, accident to any workman in this account and will be free from any legal binding in this regard. The DESU/DVB will not be responsible to pay any damage to the workers of the contractor or any outside agency.

(a) The contractor will take necessary steps to ensure that all the electrical installations of the undertaking/board, any other service like water connecting pipelines, sewer pipelines, open drains, telephone cables etc. are not damaged by his workers in any way....

(b) Before carrying out the work, it shall be the entire responsibility of the contractor to take all the safety precautions and shut down, if required, during the execution of the work. All shut down will be taken by his representative in writing and one week prior intimation should be given.

7. Counter affidavit does not deny that Harish Chandra Jha died as a result of the accident. One more fact in the pleading of DVB may be noted. Though DVB has stated that it had awarded the contract to M/s. R.S.Engineering, there is no denial to the letter dated 16.7.1999. Further, it has been pleaded by DVB that Harish Chandra Jha was employed by respondent No. 4. It has not been explained by DVB as to under what authority, employees of R-4 were permitted to carry out the work.

8. Response of respondent No. 5 is that it was a supplier of the panel and had not concern whatsoever with the installation thereof.

9. Learned counsel for the petitioners argued that in view of the decisions reported as : AIR1999 Delhi291 Col. Dharamvir Kataria v. UOI and Ors. and : 104(2003)DLT234 Association of Victims of Uphar Tragedy v. UOI, not only was the present petition maintainable but even relief had to flow, notwithstanding the

civil suit filed by the petitioners.

10. Shri N.S.Dalal, learned counsel for respondent No. 1 and 2 submitted that no statutory breach of obligation by respondent No. 1 was brought out and no negligence by respondent No. 1 or 2 was brought out. Accordingly, counsel urged that no relief could be granted against respondent No. 1 and 2. Learned counsel for respondents 3 and 4 submitted that since no work was assigned to them, nothing is attributable to them and therefore, petitioners cannot have any claim against respondents 3 and 4. Shri Amitabh Narayan, counsel for respondent No. 5 urged that respondent No. 5 was a supplier of the panels. He urged that case pleaded by the petitioners was that during welding, due to current flowing, explosion took place. That was the cause of the accident. It was not the case of the petitioners that there was any manufacturing defect in the panel. Accordingly counsel urged that no claim could be made, much less sustained against respondent No. 5.

11. Issue of tortious liability is not new to jurisprudence. However, whether the liability can be enforced in a writ jurisdiction, being of recent origin is not free from the rigmarole of law. In the report published as : [1984]2SCR67 Bandhua Mukti Morcha v. UOI the Hon'ble Supreme Court appointed commissioners to ascertain facts and determine compensation in exercise of writ jurisdiction. But the said decision was in the context of bonded labour where the issue of life and liberty under Article 21 of the [Constitution of India](#) was involved. In the report published as : [1987]1SCR819 M.C.Mehta v. UOI, their Lordships of the Supreme Court expanded the horizon of the [Constitution of India](#) to inject respect for human rights and social conscience in the corporate structure. Private corporations were subjected to the discipline of Article 21 where activities of the private corporations had the potential of affecting the life and health of the people.

12. Expanding the frontiers of respect for human rights and social obligations of corporates, a Division Bench of this Court in Uphar Tragedy Case (Supra) held that wherever, on the basis of admitted facts on record, negligence was established, recompense could be granted in writ proceedings where the enterprise was engaged in a hazardous or inherently dangerous industry which

posed a potential threat to the safety of persons working in the premises or vicinity. It was held that these enterprises are under an obligation to ensure that their activities are conducted with the highest standards of safety and if any harm results on account of such activity, the enterprise must be held liable to compensate for such harm and it would be no answer for the enterprise to say that the harm has not been caused because of any negligence on its part. The rule in the celebrated decision in *Rylands v. Fletcher* (1886) LRI Ex 265 of strict liability was relied upon. The decision further expanded the law by apportioning liability between municipal authorities and the private undertakings, considering the negligence attributable to them. Needless to state, Uphar Tragedy Case was a class action brought by the association representing the victims of Uphar tragedy.

13. An unfortunate incident took place at Uphar cinema when there was a fire in the DVB transformer installed in the basement of the cinema. The fire which broke out and the resultant smoke engulfed the hall, resulting in death of 59 persons and injury to 103 persons. Vis-a-vis DVB, the Division Bench found that DVB was responsible for the installation and maintenance of the transformer and could not escape liability. On the principles of contributory negligence, compensation awarded was directed to be paid by the respondents, which included a private individual.

14. The issue of strict liability was the subject matter of a recent pronouncement of a Division Bench of this Court, in LPA No. 2451/05 *DJB v. Raj Kumar and Ors.* Taking note of various judicial pronouncements on the issue, the Division Bench noted as under:-

'10. It is well settled that when a power is given to a public authority that power is often coupled with a duty. In the classic observation of Lord Cairns in *Julius v. Lord Bishop of Oxford*, (1874-80) All ER Rep 43, p.47 (HL) it was stated:

There may be something in the nature of the thing empowered to be done, something in the object for which it is to be done, something in the conditions under which it is to be done, something in the title of the person or persons for whose benefit the power is to be exercised, which may couple the power with a duty and make it the duty of the person in whom the power is reposed to exercise

the power when called upon to do so'.¹¹ The same view was taken by the Supreme Court in *State (Delhi Administration) v. I.K. Nangia*, : 1980 CriLJ834 ; *Tara Prasad Singh v. UOI*, : [1980]3SCR1042 ; *Ambica Quarry Works v. State of Gujarat*, : [1987]1SCR562 ; *Superintending Engineer, Public Health v. Kuldeep Singh*, : [1997]1SCR454 ..

13. The theory of strict liability for hazardous activities can be said to have originated from the historic judgment of Blackburn, J. in. *Rylands v. Fletcher* (1866) LRI Ex 265.

14. Before this decision the accepted legal position in England was that fault, whether by an intentional act or negligence, was the basis of all liability (see Salmond on 'tort', 6th Edn P. 12) and this principle was in consonance with the then prevailing *Laissez Faire* Theory.

15. With the advance of industrialization the *Laissez Faire* Theory was gradually replaced by the theory of the Welfare State, and in legal parlance there was a corresponding shift from positivism to sociological jurisprudence.

16. It was realized that there are certain industrial activities which though lawful are so fraught with possibility of harm to others that the law has to treat them as allowable only on the term of insuring the public against injury (vide *American Jurisprudence*, 2nd Edn. Vol. 74 P. 632). As stated above, the origin of this concept of liability without fault can be traced back to Blackburn, J's historic decision in *Rylands v. Fletcher* (supra)..

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

22. As pointed out by Clerk and Lindsell (see 'torts', 14th Edn.) 'The fault principle has shortcomings. The very idea suggests that compensation is a form of punishment for wrong doing, which not only has the tendency to make tort overlap with criminal law, but also, and more regrettably, implies that a wrongdoer should only be answerable to the extent of his fault. This is unjust when a wholly innocent victim sustains catastrophic harm through some trivial fault, and is left virtually without compensation.'

24. The Rule in *Rylands v. Fletcher* 1868 LR 3 Ex 330 was subsequently interpreted to cover a variety of things 'likely to do mischief' on escape, irrespective of whether they were dangerous per se e.g. water, electricity, explosions, oil, vibrational, noxious fumes, colliery spoil, poisonous vegetation, a flagpole, etc. (see 'Winfield and Jolowicz on 'tort', 13th Edn. P. 425) vide *National Telephone Co. v. Baker* (1893) 2 Ch 186, *Eastern and South African Telegraph Co. Ltd. v. Cape Town Tramways Co. Ltd.* (1902) AC 381 ; *Hillier v. Air Ministry* (1962) CLY 2084, etc. In America the rule was adapted and expressed in the following words 'one who carries on an ultra hazardous activity is liable to another whose person, land or chattels the actor should recognize as likely to be harmed by the unpreventable miscarriage of the activity for harm resulting thereto from that which makes the activity ultra hazardous, although the utmost care is exercised to prevent the harm' (vide 'Restatement of the Law of torts, Vol. 3, P. 41).

25. *Rylands v. Fletcher* 1868 LR 3 Ex 330 gave English Law one of its most creative generalizations which, for a long time, looked destined to have a successful future. Yet, after a welcome start given to it by Victorian Judges the rule was progressively emasculated, until today it has almost become obsolete in England. According to Dias and Markesins (see 'tort Law' 2nd Edn. P. 355) one reason for this may well be that as a generalization justifying a shift from fault to strict liability it may have come prematurely. The 19th Century had not yet fully got over *laissez faire*, and it was only in the 20th Century that the concepts of social justice and social security, as integral parts of the general theory of the Welfare State, were firmly established. As already mentioned above, the rule of strict liability laid down by Blackburn J. in *Rylands v. Fletcher* was restricted in appeal by Lord Cairns to non-natural users, the word 'natural' meaning 'that which exists

in or by nature, and is not artificial', and that was the sense in which it was used by Lord Cairns. However, later it acquired an entirely different meaning i.e. that which is ordinary and usual, even though it may be artificial' vide *Rickards v. Lothian* (1913) AC 263 followed in *Read v. Lyons* (1947) AC 156. Thus the expression 'non-natural' was later interpreted to mean 'abnormal', and since in an industrial society industries can certainly not be called 'abnormal' the rule in *Rylands v. Fletcher* was totally emasculated in these subsequent rulings. Such an interpretation, as Prof. Newark writes, 'would have surprised Lord Cairns and astounded Blackburn, J. (see article entitled 'Non-natural User and *Rylands v. Fletcher*,' published in *Modern Law Review*, 1961, Vol. 24, P. 557).

26. In *Read v. Lyons* (1947 AC 156) (supra), which was a case of injury due to a shell explosion in an ammunitions factory, Lord Macmillan while rejecting the claim of the plaintiff made further restrictions to the rule in *Rylands v. Fletcher* by holding that the rule 'derives from a conception of mutual duties of neighbouring landowners', and was therefore inapplicable to personal injuries. He also held that to make the defendant liable there should be escape from a place under the defendant's control and occupation to a place outside his occupation, and since the plaintiff was within the premises at the time of the accident the injury was not due to escape there from. In this way *Read v. Lyons* destroyed the very spirit of the decision in *Rylands v. Fletcher* by restricting its principle to the facts of that particular case, instead of seeing its underlying juristic philosophy..

29. As Winfield remarks, because of the various limitations and exceptions to the rule 'we have virtually reached the position where a defendant will not be considered liable when he would not be liable according to the ordinary principles of negligence' (see Winfield on tort, 13th Edn. P. 443).

30. This repudiation of the principle in *Rylands v. Fletcher* is contrary to the modern judicial philosophy of social justice. The injustice may clearly be illustrated by the case of *Pearson v. North Western Gas Board* (1968) 2 All ER 669. In that case the plaintiff was seriously injured and her husband killed by an explosion of gas, which also destroyed their home. Her action in Court failed, in view of the decision in *Dunne v. North Western Gas Board* 1964 (2) QB 806 (supra). Thus the

decline of the rule in Rylands v. Fletcher left the individual injured by the activities of industrial society virtually without adequate protection.

15. A perusal of the decision of the Division Bench of this Court in Delhi Jal Board's Case (Supra) shows that the rule in Rylands v. Fletcher as read down in Read v. Lyons as being inapplicable to personal injuries was not followed by the Division Bench and the Division Bench preferred to give full force to the rule of strict liability laid down in Rylands v. Fletcher.

16. Question therefore arises in the present case whether the petitioners have brought their case within the rule of strict liability and whether in view of the suit filed, present proceedings are maintainable.

17. The suit filed by the plaintiffs is still stuck at the preliminary stage as the plaintiffs have sued as indigent persons and inquiry qua the means of the petitioners to pay court fees is on. Deceased died in the year 1999. We are in the year 2005. The suit filed by the petitioners is not proving an efficacious remedy. The minor children need money today. What would they do with the money later on, when childhood is lost and in all probability the children become vagabonds. If money is provided today, the children may get some decent education. In my opinion, the civil proceeding which as of today is still registered as an 'Indigent Person Application' and has yet to be registered as a suit, is no bar to the maintainability of the writ petition.

18. That relief is claimed, apart from a statutory authority and its employee, against private individuals is also not a bar to the maintainability of the writ petition. Private individuals engaged in hazardous activities have been burdened with liability in writ proceedings as in the case of Uphar Cinema tragedy and M.C. Mehta's case(Supra).

19. Annexure P-1 to the writ petition, a document not denied by DVB and not explained by respondents 3 and 4 reads as under:-

'Delhi Electric Supply Undertaking

Reference No. 692652 Dated 16.7.1999

Shift staff of 33/11/KV/AEE

Grid S/V, Bhikaji Cama Place

Please allow to carry out the erection commissioning of 5 Nos. 11 KVS/G Panel including S/G board by the person of M/s. Sharma Traders. The detail of the persons is as under:-

1. Shri U.C.Jha Supervisor
2. Shri Hem Chandra Jha Supervisor
3. Shri Harish Chandra Jha Welder
4. Shri Pradeep Kumar Cutter
5. Shri Sunil, Labour
6. Shri Munna, Labour
7. Shri Bir Lal, Labour
8. Shri Ajay Lal, Labour

Sd/-

Shri Kishan'

20. DVB has not denied the said document. DVB has not explained as to how respondents 3 and 4 were permitted to carry out the work when admittedly the work was assigned to M/s. R.S.Engineers. therefore, respondent No. 1 cannot take any refuge behind the work order issued to M/s. R.S.Engineers. Response of respondents 3 and 4 that they did not carry out any work is obviously false. It has been admitted by all that the explosion took place when work was on.

21. As pleaded in the writ petition accident took place as under:-

'9. That accordingly, the said staff started work on the site on or about 16.7.99. The staff erected 5 Nos. of Switch Gear Board and Panels at the site. On 13.8.99

Respondent No. 2 was present at the site. At about 3.00-3.30 P.M., respondent No. 2, Site In-charge, instructed one Shri Hem Chandra Jha, brother of late Shri Harish Chandra Jha, that the cover on the back side of one of the Switch Gear Panels was having some gap and was giving rise to leakage of current and therefore Hem Chandra Jha should go and open the cover and re-fix it, so that there would be no leakage of current. It was represented that there was no current in the panel. However, Hem Chandra Jha informed the Shift in charge, Respondent No.,2 that it was not the job of Hem Chandra Jha as the cover on the back of the panel was smaller in size and was required to be replaced by the supplier company M/s. Crompton Greaves Ltd., Respondent No. 5. Hem Chandra Jha was working as a Technical Hand and he understood the problem and had conveyed to Respondent No. 2 in clear terms that since the cover was small, there was no solution except replacement of the cover by the company. After conveying this to Respondent No. 2, Hem Chandra Jha went outside the room to do other pending jobs.

10. The Petitioners submit that Respondent No. 2 was not satisfied with the response of Hem Chandra Jha and was bent upon getting rectified the said defect which, as already explained, according to Hem Chandra Jha, could not be rectified except by replacement of the panel cover by the Respondent No. 5 company. It seems that Respondent No. 2 then called late Shri Harish Chandra Jha who was only a Welder and Sunil Jha, a labourer and ordered them that they should remove the cover from the back of the Switch Gear Panel and re-fix it so that there was no gap left. Respondent No. 2 told them that there was no electricity current and there was no risk in doing this job.

11. It was not the job of late Shri Harish Chandra Jha and Sunil Jha to do the work as ordered by Respondent No. 2. However, since they were simple, illiterate and non-technical persons and could not have known the implications of complying with the order, they proceeded towards the Switch Gear Panel to open the back cover which Respondent No. 2 had ordered them to re-open and re-fix.

12. That as soon as late Harish Chandra Jha started to open the panel cover, there was a flash and a bang and he was instantly engulfed in flames and his

clothes caught fire. Similarly, Sunil Jha's clothes also caught fire, even though he was standing a little away.'

22. As noted above, response of respondents 3 and 4 is that they had no concern as the work was not awarded to them. thereforee, qua the pleadings afore-noted in the petition, there is a complete denial. However, as regards respondent No. 1, it is stated that the work was to be performed by the contractor. Contractor was to ensure safety. It is denied that respondent No. 2 issued any instructions as pleaded. Response of respondent No. 5 is one of denial as according to it, it was only a supplier of the panel.

23. No case is made out against respondent No. 5 as it had no concern with the work, save and except it was the vendor of the panel and there is no evidence that the panel was not of the requisite specifications. Pleadings in the writ petition of mismatch in the equipment have not been substantiated by any document on record.

24. From the pleadings of the petitioners, it is evident, if correct, that the unfortunate accident took place because of the cover on the back panel being of a smaller size and rather than get replacement, the deceased and Sunil Jha were forced to remove the cover from the back and re-fix it, probably by welding so that no gap was left. If correct, and on proof that the said procedure was directed to be followed under the instructions of respondent No. 2 and on further proof that this was not the standard procedure to be followed, petitioners may have a case.

25. It is not a case where negligence of a kind is writ large on the facts brought before me. Of course, every accident has an element of negligence. But to award compensatory damages in writ jurisdiction would require negligence to be inferred from admitted facts and not negligence to be inferred from basic facts which require to be proved. Further, the facts of the case establish, if correct, a case of contributory negligence, to be apportioned between the contractor and respondents 1 and 2. Respondents 1 and 2 would have to explain as to how respondents 3 and 4 got their labour to the site when admittedly the contract was assigned to M/s. R.S.Engineers. Further, evidence may be required as to what actually happened at site. Similarly, qua respondents 3 and 4 evidence would be

required as to what job they assigned to the deceased and to others. Evidence would also be required on the issue whether the panel caught fire due to current leaking or due to any other reason. It is possible that welding may be on and the work was being carried out in a slip shod manner when the accident took place.

26. In Uphar Tragedy Case (Supra), the Division Bench of this Court, while awarding damages in writ jurisdiction had held that there was breach of statutory obligations by the statutory authorities due to which it was held that liability had to be fastened. In the said case the offending transformer caught fire on its own.

27. In my opinion, a case of the kind where accident took place when some operations were on at site, cannot be acquainted with a case where the rule of strict liability stands attracted.

28. However, one fact stands out. That the deceased died due to an accident while performing some work at the sub-station. That the deceased was technically unqualified has not been denied by the respondents. In my opinion, respondents 3 and 4 are at least guilty of getting technical work done from a non-technical person and respondent No. 1 is guilty of not taking proper care. Unfortunately, none guided the petitioners that they could lay a claim under the Workmen's Compensation Act, 1923. In my opinion, since the deceased died while discharging duties for respondents 3 and 4 and for a work, benefit whereof would have accrued to respondent No. 1, also considering the fact that suit filed by the petitioners is making no meaningful headway, some succour must flow to the petitioners and through respondent No. 1 and respondents 3 and 4.

29. Leaving the issues to be decided at the trial, in the facts and circumstances of the present case, to do justice to the petitioners, I award a sum of Rs. 1,00,000/- as compensation. Needless to state this amount would be taken note of at the civil trial. While awarding the sum I have taken into consideration the fact that the deceased was an employee of respondents No. 3 and 4 and he died while on duty at the sub-station belonging to respondent No. 1 and that no amount has been paid to the petitioners by way of compensation under the Workmen's Compensation Act.

30. I apportion the blame between respondent No. 1 and respondent No. 3 (who is the sole proprietor of respondent No. 4) in the ratio 40:60 keeping in view the role of the two.

31. The amount of Rs. 1,00,000/- would be paid by respondent No. 1 and respondent No. 3 by preparing pay orders in the name of petitioner No. 1 and these would be deposited with the Registrar of this court within 30 days from today who would hand over the drafts to the advocate on record appearing for the petitioners.

32. No costs.

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