***via* Video-conferencing**

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

% **Date of decision: 25th August 2021**

\+ W.P.(C) 1043/2016 & CM APPL. Nos. 35413/2017, 24283/2019

SHRI KEHAR SINGH ..... Petitioner

Through: Ms. Prabhsahay Kaur, *Amicus Curiae*.
Ms. Saraswati Thakur, Advocate.

versus

GOVT. OF NCT OF DELHI & ORS. ..... Respondents

Through: Mr. Satyakam, Additional Standing Counsel for GNCTD/R1
Mr. Ravi Gupta, Senior Counsel with Mr. Sunil Fernandes, Standing Counsel for BRPL-RPL with Ms. Anju Thomas, Mr. Shubham Sharma and Mr. Sachin Jain, Advocates for R2.
Mr. A.K. Sharma, Advocate for R3.
Mr. Saurabh Sharma, Advocate for Indian Spinal Injuries Centre.
Ms. Sayli Petiwale, Advocate for Mr. Anil Mittal, Advocate for State of U.P.

CORAM:
HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

ANUP JAIRAM BHAMBHANI, J.

BRIEF FACTUAL BACKDROP

The petitioner's son Bharat Singh ("Bharat", for short), who is now about 28 years of age, was the victim of an accident at the age of about 21 years which has left him 100% permanently disabled. Respondent No. 1 : the Government of NCT of Delhi ("Delhi Government", for short) is a formal State respondent in this matter, in which the petitioner has essentially made claims against the other respondents, namely against M/s BSES Rajdhani Power Limited ("BRPL", for short) which is a power distribution company engaged in the distribution of electricity in certain parts of Delhi; and against M/s Bryn Construction Company ("Bryn", for short) which is a sole proprietorship concern engaged *inter-alia* in carrying-out assigned repair and maintenance works for BRPL in relation to the latter's electricity distribution networks. It was in connection with certain work performed by Bryn for BRPL that Bharat suffered an accident, which has led to the filing of the present petition. The petition has been filed by Bharat's father, Kehar Singh, since Bharat is stated to be

virtually bed-ridden, and therefore not in a position to file or pursue his claim against the respondents.

2. From the record it is gathered that on 25.04.2014, Bharat, who was then about 21 years of age, while working as an electrician with Bryn, was tasked with rectifying a fault in an electricity pole that was causing fluctuation in the electricity supply at a farmhouse in Bijwasan, New Delhi and suffered a fall while performing the task since the electricity pole that he had climbed on, snapped and fell.

3. To facilitate some measure of immediate relief, rehabilitation, care and welfare for Bharat, this court has in various orders made from time-to-time, and with due co-operation of counsel and parties, set-up the following mechanism whereby Bharat has been provided treatment and other facilities and benefits, to the extent possible, to make his daily living comfortable and to give him a source of livelihood and income to sustain himself:

   (a) AIIMS has conducted the required surgery, taking remedial measures for fixing a screw that had come unattached on the right pedicle, thereby completing the surgical intervention required for Bharat at that time;

   (b) The Indian Spinal Injuries Centre, New Delhi ("ISIC", for short) has prepared a regimen of physiotherapy and occupational therapy for Bharat, which he requires to regain

strength and skill to live as reasonably as he can, considering the permanent disability suffered;

(c) The State of Uttar Pradesh has provided to Bharat benefits under the Rights of Persons with Disabilities Act, 2016 and the Indira Gandhi National Disability Pension Scheme, which includes disability pension of Rs.500/- (Rupees Five Hundred Only) per month, to be paid quarterly; free bus and railway travel along with one attendant throughout his lifetime; free medicines and necessary equipment and other aid from the local community health centre; a wheel-chair free of cost; physiotherapy, to begin with at his residence, and subsequently at the community health centre; a lump-sum amount of Rs.20,000/- (Rupees Twenty Thousand Only) for construction of a shop for self-employment and a sum of Rs.10,000/- (Rupees Ten Thousand Only) for running the shop (since Bharat was found to qualified to receive such help), *subject of course* to the terms and conditions of such welfare measures;

(d) After hearing in the matter was closed on 23.07.2021, and before deciding the matter, this court considered it proper to interact with Bharat in-person in open court with a view to seeing Bharat's actual condition first-hand. To this end, at the court's request, Bharat physically appeared before this court on

30.07.2021. On that day, this court recorded the following observations in its order dated 30.07.2021:

> "*(a) Bharat Singh has been brought-in on a wheel chair and it is clear that it is impossible for him to stand on his own legs for any length of time at all;*
>
> *(b) Under his shirt, Bharat Singh is wearing an orthopaedic brace over his chest, to support and hold-up his upper body, evidently because his spine is damaged to a point that he cannot prop himself up or sit-up on the support of his own spine;*
>
> *(c) His legs appear to be almost skeletal and he is not able to raise his legs even while sitting on the wheelchair, nor does he appear to have any sensation in his legs;*
>
> *(d) He appears to have tremors in his hands, particularly in his right hand, which involuntarily trembles from time-to-time; and*
>
> *(e) He is also carrying a urinary catheter, evidently because he has no control over his bladder.*"

Bharat's dismal physical state apart, it was also evident to this court that Bharat was a psychological wreck, not least because in the course of interaction with this court, he broke-down on several occasions. On that day, Bharat's brother Amar Singh was also present along with his father, the petitioner; and in the presence of counsel for all parties, the petitioner and Amar Singh informed this court of the severe challenges that

Bharat faces in his day-to-day living. This court was informed that Bharat is unable to perform any of his daily chores on his own and requires to be physically supported for all daily routines, from the time he wakes-up till the time he goes to bed, since he is completely unable to stand-up or walk or even sit in a chair without support and assistance. This court was further informed that Bharat needs constant supervision even while sitting, since he is not stable and there is risk of him falling-over. The petitioner and Amar Singh further stated that ever since the time of the accident on 25.04.2014, *i.e.*, for the last about 07 (seven) years, Bharat just lies on a bed for the most part of the day; he can sit on a chair, with support and supervision, only for a short duration to have his meals; and that he has to be helped throughout, even in performing ablutions; and it is only occasionally that he is strolled-out on his wheelchair for some fresh air. The court was further informed that Bharat does not engage in any activity, whether physical or mental; and remains almost all the time in a state of depression. The petitioner further informed the court that since he was getting-on in years, almost the entire responsibility of attending to Bharat has been borne by his brother Amar Singh, who was earlier employed as a driver but cannot engage himself in any job now.

(e) While Bharat's physical state was self-evident to this court, in relation to his mental state, it was brought to the attention of the court that in its Case Summary dated 13.03.2016, the Indian Spinal Injury Centre had this to say:

> " * * * * *
>
> ***Psychological and peer counselor evaluation and management plan***
>
> *The patient scored* ***15 on the depression subscale*** *and* ***11 on the anxiety subscale*** *of the Hamilton anxiety and depression scale.* ***These both fall in the abnormal range****. Patient is unable to perform his basic activities of daily living resulting in his current mental health status and would benefit from further rehabilitation that would address his biopsychosocial and vocational needs.*"
>
> (emphasis supplied)

Evidently therefore, as per medical opinion in regard to Bharat's psychological state, his level of mental depression and anxiety fall in the "*abnormal range*".

4. Now, at the stage of final disposal of the writ petition, this court is faced with the following matters that remain to be dealt with:

(i) Given his medical condition, what course of action should be adopted for Bharat's further rehabilitation, continuing care and welfare?

(ii) Is Bharat entitled to receive any monetary compensation for the injury suffered by him as a result of the accident; and if so, from which of the respondent or respondents?

(iii) If the answer to (ii) above is in the affirmative, in what manner should the compensation be calculated?

PETITIONER'S CONTENTIONS

5. As per the petition, Bharat had requested that he be provided safety equipment and proper clothing before he climbed the electric pole to perform the assigned task. This, it is alleged by the petitioner, was not done. It is further alleged that Bharat was not even provided a ladder to climb the pole. It is also alleged that the officers of BRPL who were present at the site at that time insisted that the point-of-fault could be approached without disconnecting the electricity supply mains. Unfortunately, however, when Bharat climbed the electricity pole and while he was rectifying the fault, the electricity pole fell along with the live electricity cable; and as a result of the fall, Bharat's backbone suffered severe trauma. It is further alleged that despite the accident having occurred in their view and presence, the officers of BRPL did not come to Bharat's rescue and it was some passers-by who called the Police Control Room, and the police took him to the Jai Prakash Narayan Apex Trauma Centre at the All India Institute of Medical Sciences, New Delhi ("AIIMS", for short), whereafter his father, the petitioner, learned of the accident. It is

further stated that after Bharat was taken to AIIMS, intimation of the accident was sent to the Electrical Inspector by the designated authority *vidé* communication dated 25.04.2014.

6. As per the medical review report dated 03.09.2019 prepared by the Jai Prakash Narayan Apex Trauma Centre at AIIMS, Bharat was operated upon on 28.04.2014 for "*Posterior approach, decompression and Pedicle Screw and rod fixation*"; and was discharged on 05.09.2014, after spending almost 05 months in hospital.

7. It is the petitioner's contention that none of the respondents provided his son with due compensation and while Bryn gave him a small sum of money for medical aid, in lieu thereof Bryn got Bharat to write an undated declaration/statement disclaiming any grievance or further claim against Bryn.

8. As per medical records, Bharat has suffered 100% permanent disability inasmuch as he suffers from complete inability to move his lower limbs, with attendant consequences. The petitioner contends that after the accident and despite the surgery, his son is completely bed-ridden; and his family does not have the wherewithal or resources to provide effective treatment or even proper medicines or engage caregivers to look after Bharat. In these circumstances, the petitioner has made the following prayers in the writ petition:

"a) The Respondents be directed to take the ailing son of the Petitioner in a hospital where the proper equipments and medicines are given at the cost of the respondents;

b) The respondents be directed further to give financial assistance to the Petitioner so that the Petitioner and his family do not go on starvation and capable of bringing emergency medicines which are being required day to day keeping in view the seriousness of the son of the Petitioner.

c) The respondents be directed to provide adequate funds to the Petitioner so that the Petitioner will be meeting emergency requirement for his son in the facts and circumstances of the case and in the interest of justice.

d) Any other relief which this Hon'ble Court deem fit and proper may also kindly be granted to the petitioner and against the respondent in the interest of justice."

9. Respondents Nos. 2 and 3 have stoutly contested the petitioner's submissions and claims. In essence and substance, in the counter-affidavits filed in the matter, respondents Nos.2 and 3 have *firstly*, denied any responsibility for the accident suffered by Bharat and his consequent medical condition; and *secondly*, they have disclaimed any liability to pay compensation on any account to Bharat, contending *inter-alia* that it is the responsibility of the other respondent to do so. Bryn has also contended that BRPL ought to indemnify Bryn for the accident and its consequences, since, it is

stated, BRPL holds insurance policies that cover accidents such as this one; and that therefore, BRPL should pay adequate compensation to Bharat and recover the same from its insurance company.

10. For the record, in compliance with directions issued by this court *vidé* order dated 31.03.2016, BRPL had deposited a sum of Rs.5,00,000/- (Rupees Five Lacs Only) with UCO Bank, Delhi High Court Branch, to cover for Bharat's possible urgent needs during the pendency of the present matter, which amount was directed to be retained in an interest bearing fixed deposit; and the monthly interest earned was directed to be credited to the petitioner's account, who was permitted to withdraw the same for expenses incurred on Bharat's treatment and for other miscellaneous expenses. As per directions issued by this court from time-to-time, from this sum of Rs. 5,00,000/- (Rupees Five Lacs Only) a sum of Rs. 1,00,000/- (Rupees One Lac Only) was released to the petitioner on 15.11.2017; a further sum of Rs. 1,50,000/- (Rupees One Lac Fifty Thousand) was released on 08.04.2019; and yet another sum of Rs. 50,000/- (Rupees Fifty Thousand) was released on 11.10.2019; and a sum of about Rs. 1,96,055/- (Rupees One Lac Ninety-six Thousand and Fifty-five Only) including the interest accrued, remains deposited in that account as of now.

CONTENTIONS OF RESPONDENT NO. 2 (BRPL)

11. Respondent No. 2/BRPL has filed written submissions dated 27.02.2021 setting-out their arguments and submissions in the matter.

Mr. Ravi Gupta, learned senior counsel appearing on behalf of BRPL has relied upon the said written submissions and has placed detailed arguments before this court, which are summarized below.

12. The first objection raised by BRPL is with regard to maintainability of the present petition, particularly against BRPL. It is contended that the claim made by way of the present petition is not maintainable against BRPL for the following reasons:

(a) BRPL argues, first and foremost, that since the claims raised by way of the present petition involve serious, disputed questions of fact, which require evidence for adjudication, such claims ought not to be entertained under the extraordinary jurisdiction of this court under Article 226 of the Constitution; and for that reason, the present petition is liable to be dismissed. Mr. Gupta submits that several contentions raised by the petitioner as also by respondent No. 3/Bryn are seriously disputed by BRPL, especially on points of fact; and that such issues cannot be determined by this court under its writ jurisdiction, without permitting parties to lead detailed evidence in the matter. It is pointed-out that the petitioner has *inter-alia* claimed that the "... *Respondents did not provide any safety equipment to the Petitioner's Son and made the him climb the electricity pole without even disconnecting the electricity supply to remove the fluctuation point* …". It is submitted that apart from the fact that

electricity supply was disconnected as borne-out by the electrical inspector's report as well as various statements recorded therein, as also from the Accident Enquiry Report dated 09.05.2016, these are all matters of evidence which require to be marshalled, before the court can draw any conclusions on such aspects. It is further pointed-out that the petitioner's contention that the "*(r)espondents did not provide any medical assistance to the Petitioner's son (Bharat) after the accident occurred*", is also disputed and denied since, according to BRPL, it was BRPL's employees who took Bharat to the AIIMS Trauma Centre in their breakdown vehicle immediately after the accident. This, it is submitted, is borne-out even by the statement of Bryn's supervisor. It is accordingly submitted that the petitioner's remedy, if any, lies before a civil court and not by way of the present writ petition. To support the foregoing contentions, Mr. Gupta has drawn attention of this court to the verdicts of the Hon'ble Supreme Court in ***Chairman, Grid Corporation of Orissa Ltd. (GRIDCO) & Ors. vs. Smt. Sukamani Das***[1]; ***SDO, Grid Corporation of Orissa Ltd. & Ors. vs. Timudu Oram***[2] and ***Tamil Nadu Electricity Board vs.***

[1] (1999) 7 SCC 298

[2] (2005) 6 SCC 156

Sumathi & Orss.[3]**,** to say that it is the settled legal position that where disputed questions of fact are involved, a petition under Article 226 of the Constitution is not the proper legal remedy;

(b) It is also contended that the petition is not maintainable at the instance of the petitioner, who is Bharat's father, since Bharat himself is major and ought to have filed the petition himself. It is also emphasized that petition has come to be filed on 14.01.2016, *i.e.*, some 20 (twenty) months after the accident which occurred on 25.04.2014 and is therefore hit by *delay and laches*;

(c) Mr. Gupta submits next, that the petition is liable to be dismissed since New India Insurance Corporation Ltd., from whom BRPL is stated to have obtained an insurance policy *inter-alia* covering the work in which Bharat sustained injury, has not been made a party respondent in the present case. It is BRPL's submission that the insurance company is a necessary party; and in the absence of the said necessary party as a respondent in the present proceedings, the petition is liable to be dismissed for non-joinder of a necessary party. In support of this submission, senior counsel has drawn attention to this court to the decision of the Hon'ble Supreme Court in ***Avtar Singh***

[3] (2000) 4 SCC 543

Hit vs. Delhi Sikh Gurdwara Management Committee & Ors.[4], wherein the Hon'ble Supreme Court has relied on an earlier decision in ***Prabodh Verma & Ors. vs. State of Uttar Pradesh & Ors.***[5], to observe that a High Court ought not to hear and dispose of a writ petition without the persons *who would be vitally affected by its judgment being before it as respondents*, failing which a High Court ought to dismiss the petition for non-joinder of necessary parties. BRPL further submits that since in its affidavit dated 13.01.2017, BRPL had raised this issue of non-joinder of necessary party, the petitioner was well aware that the insurance company is a necessary party but despite being given numerous opportunities to amend its petition, the petitioner has failed to implead the insurance company, which is fatal to the present proceedings;

(d) As regards the liability sought to be foisted on BRPL to pay 'compensation' to Bharat, Mr. Gupta submits, that for one, there is no prayer in the petition for award of compensation or damages and the only prayer made on behalf of Bharat is for financial assistance for the medicines required for the daily requirements of the petitioner's son. Yet again, it is submitted,

[4] (2006) 8 SCC 487, para 31

[5] (1984) 4 SCC 251

that despite the petitioner having been given opportunities to amend the petition, he chose not to amend his prayers; and that no compensation or damages ought to be awarded where none have been prayed for in the petition. In this behalf, Mr. Gupta draws attention to the decision of the Hon'ble Supreme Court in ***Bharat Amratlal Kothari & Anr. vs. Dosukhan Samadkhan Sindhi & Ors.***[6], to submit that the Hon'ble Supreme Court has held in the said case that the general principle contained in the Code of Civil Procedure, 1908 is that it is incumbent on a petitioner to claim all reliefs he seeks from the court; and normally, the court will grant only those reliefs that have specifically been prayed for. Reliance is also placed on the decision of the Hon'ble Supreme Court in ***Shehla Burney & Ors. vs. Syed Ali Mossa Raza & Ors.***[7], where the Hon'ble Supreme Court has referred to the requirement of Order VII Rule 7 of the Code of Civil Procedure, 1908 to the effect that relief sought must be specifically stated in a plaint.

(e) BRPL states that, in any case, Bharat was not in its employment; nor was he working under the said respondent at the time of the accident. It is BRPL's contention that Bharat

[6] (2010) 1 SCC 234

[7] (2011) 6 SCC 529

was an employee/workman under Bryn; and that BRPL had assigned to Bryn the work in question as part of the work contracted to Bryn *vidé* a work contract/agreement letter dated 31.07.2010 ('BRPL-Bryn Agreement', for short). It is accordingly BRPL's contention that, if at all, Bryn would be liable for any claim raised by Bharat arising from the accident. As per the BRPL-Bryn Agreement for shifting the 11 KV line at Farm No.28, Ansal Farm, Bijwasan, the entire responsibility for hiring and recruiting personnel, for maintaining of register of skilled and semi-skilled labour was also the sole responsibility of Bryn as stipulated in clause 18 of the contract. Furthermore, it is pointed-out that clause 17 of the BRPL-Bryn Agreement provided that Bryn was liable to keep BRPL indemnified at all times, against all claims of compensation and was in fact required to take a third-party insurance policy for employees who are not covered under the Employees State Insurance Act as per the mandate of Employee's Compensation Act. Clause 19 of the contract, it is argued, categorically provided that Bryn was liable for settlement of any claims in relation to the contract. Furthermore, attention of this court is drawn to clause 21 of the contract, which provides that workmen and labourers were to be responsible and not to carry-out any work without proper safety tools and other safety measures, adding that as per the petitioner's contention, Bharat had not been provided any

safety tools/gears/rubber gloves/ladders to climb on to the pole, by reason of which Bharat ought to have refused to undertake the dangerous task. It is also BRPL's contention that the electric pole was erected at a place where the soil/mud was loose, where work ought not have been done *inter-alia* in view of clause 2 of the contract which provided that Bryn was responsible for the terrain/work conditions before executing any work;

(f) Mr. Gupta also contends that it is evident that the petitioner's son acted in wilful disobedience of express orders given by his superiors, and had climbed the pole and disconnected the wire in breach of such directions, by reason of which the pole fell and Bharat sustained injuries. Thereby, Mr. Gupta alleges contributory negligence on Bharat's part in relation to the accident. It is further BRPL's contention that even the provisions of section 3(b)(ii) of Employee's Compensation Act, 1923 waive any liability on the part of an employer to pay compensation to an employee, if injury is caused in the course of employment but as a result of an act committed *in wilful disobedience of orders* of the superiors;

(g) It is also BRPL's contention that Bharat's claim would be covered under the Workmen's Compensation Act, 1923 (now the Employee's Compensation Act, 1923) pointing-out further, that under the terms of the BRPL-Bryn Agreement it was

Bryn's responsibility to provide adequate safety gear and to take all precautions while work was being performed by its workmen. BRPL argues that if Bryn has not adhered to the prescribed safety code, Bryn must be held liable for such omission. It is accordingly contended that Bharat's claim, if at all, is maintainable only against Bryn under the Employee's Compensation Act and not as a claim in tort;

(h) BRPL further confirms, that though no liability ought to attach to it, as a matter of abundant precaution, BRPL does have an insurance policy dated 19.12.2013 from the New India Assurance Company Limited to cover liability which may arise or be fastened upon BRPL in the course of its work; and that therefore, the New India Assurance Company Limited should be made to bear any financial liability that may be fastened upon BRPL by this court;

(i) It is further submitted that in any case, BRPL has provided all possible assistance for Bharat's treatment; that on 08.03.2016, BRPL even submitted before this court that it would bear all additional expenses for treatment/tests etc. and shall issue necessary instructions to the ISIC in this behalf and shall recover all such expenses from Bryn

(j) BRPL contends that the amount of Rs. 5,00,000/- (Rupees Five Lacs Only) deposited with UCO Bank, Delhi High Court Branch in compliance of order dated 31.03.2016 was of course without prejudice to its rights and contentions; and it is BRPL's contention that this amount may also be recovered by it from Bryn. BRPL also contends that it has paid further sums aggregating to Rs.20,946/- (Rupees Twenty Thousand Nine Hundred Forty-six Only) towards Bharat's medical treatment, which is also liable to be recovered from Bryn. In view thereof, senior counsel submits that since BRPL has provided to Bharat all necessary financial assistance till now; and the petitioner has not sought either compensation or damages in the petition, the writ petition is now infructuous and is liable to be dismissed.

(k) It is also urged with some emphasis that *vidé* an undated declaration/statement, purportedly drawn and signed by Bharat in his own handwriting, he has *inter-alia* confirmed that the pole fell since Bharat himself cut the electricity cables on one side; that the contractor has paid for his entire medical treatment in addition to compensation (though the word used is *jurmana*, *i.e.*, fine); and that Bharat is satisfied with the arrangement and does not wish to pursue any legal remedies against the contractor;

(l) Besides, Mr. Gupta also contends that as stated by the Indian Spinal Injuries Centre in its medical reports and prescriptions, if the petitioner's son *wishes* to recover from his medical condition, he requires physiotherapy and exercise and must come out of his sedentary lifestyle. It is argued that *it is therefore upon Bharat*, with help from the petitioner and his family, to exercise efforts and pull himself out of his physical condition; but it appears that such effort on their part is lacking. Attention in this regard is drawn to discharge summaries dated 15.05.2014, 05.08.2014, 13.03.2016, 24.05.2016 and 26.04.2019 issued by the Jai Prakash Narayan Apex Trauma Center, AIIMS, and ISIC, to support the submission that petitioner's son had not abided by medical advice and had failed to follow the physiotherapy exercises and other regimen prescribed to him by the doctors.

(m) It is further the argument of BRPL that it cannot be held responsible for any subsequent complications and/or injuries that may have resulted, for example, by reason of the screws implanted at the time of the first surgery having broken. This could be a result of medical negligence at the time of the first operation; or may have resulted from Bharat not taking care of himself. Mr Gupta submits that in view of the foregoing, BRPL

cannot be held liable for any further monetary compensation or other liability in respect of petitioner's son.

CONTENTIONS OF RESPONDENT NO. 3 (BRYN)

13. In its defence, Bryn has principally raised the following contentions:

(a) Bryn contends that the accident took place at the 'premises' of BRPL and during the course of performance of work by Bharat for and at the instance of BRPL; and that therefore Bryn is not liable for Bharat's injuries, and in fact, is not even a necessary party to the present proceedings;

(b) Bryn argues, that as per the terms, conditions and most importantly, the practice for execution of work by contractors for BRPL, it is then BRPL's obligation to buy third-party liability insurance to cover the risk of injury that may be suffered at any BRPL site by any third party in the course of performance of work for BRPL;

(c) It is also Bryn's contention that at the time of the accident, work was being carried-out by Bharat under the 'overall supervision' of BRPL's Sub-Divisional Officer (Bijwasan) and since the accident occurred as a result of defects in the electricity pole which fell, which pole was BRPL's property, the cause of the accident has nothing to do with Bryn;

(d) Bryn argues that the accident was not a result of any negligence on Bryn's part but only on account of defect in the quality/strength of BRPL's electricity pole;

(e) Bryn says that it had taken all necessary precautions and had in fact also bought an insurance policy for its workmen, in accordance with the terms of its contract with BRPL;

(f) According to Bryn, it was its own staff who took Bharat to the hospital and provided all necessary financial assistance for his treatment on humanitarian grounds. Bryn claims that it paid approximately Rs.1,25,000/- (Rupees One Lac Twenty Five Thousand Only) for Bharat's treatment apart from Rs. 4,500/- (Rupees Four Thousand Five Hundred Only) towards cost of a wheel-chair, in addition to a sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) that was paid in cash to Bharat's attendant under intimation to Bharat for additional support required in hospital. Furthermore, Bryn contends that it also paid an additional sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) for an "*inverter*" and Rs.7,000/- (Rupees Seven Thousand Only) for "*speedy recovery*";

(g) Bryn argues that it is BRPL and its insurance company that are liable for payment of compensation to Bharat.

CONTENTIONS OF AMICUS CURIAE

14. At the outset the learned *Amicus* has drawn attention to the following statutory provisions, which are extracted below for ease of reference:

Statutory Provisions

(1) The Electricity Act, 2003

Section 2 (20):

"*(20) "electric line" means any line which is used for carrying electricity for any purpose and includes—*

(a) any support for any such line, that is to say, any structure, tower, pole or other thing in, on, by or from which any such line is, or may be, supported, carried or suspended; and

(b) any apparatus connected to any such line for the purpose of carrying electricity;"

Section 53:

"53. ***Provision relating to safety and electricity supply. —*** *The Authority may, in consultation with the State Government, specify suitable measures for —*

…

(d) ***giving notice in the specified form to the Appropriate Commission and the Electrical Inspector, of accidents and failures of supplies or transmissions of electricity****;*

…."

(emphasis supplied)

(2) Indian Electricity Rules, 1956

Rule 29:

"***29. Construction, installation, protection, operation and maintenance of electric supply lines and apparatus***- *(1) All electric supply lines* ***and apparatus*** *shall be of sufficient ratings for power, insulation and estimated fault current and of* ***sufficient mechanical strength****, for the duty which they may be required to perform under the environmental conditions of installation, and shall be* ***constructed, installed, protected, worked and maintained in such a manner as to ensure safety of human beings, animals and property****.*

..."

(emphasis supplied)

(3) Employee's Compensation Act, 1923

Section 2(1)(dd):

"(dd) "employee" means a person, who is—

(i) * * * * *

(ii) * * * * *

(iii) ***employed in any such capacity as is specified in Schedule II****, whether the contract of employment was made before or after the passing of this Act and* ***whether such contract is expressed or implied, oral or in writing****; but does not include any person working in the capacity of a member of the Armed Forces of the Union; and any reference to any employee who has been injured shall, where the employee is dead, include a reference to his dependants or any of them;*"

(emphasis supplied)

Section 3:

*"**3. Employer's liability for compensation**.—(1)* ***If personal injury is caused to a employee by accident arising out of and in the course of***

his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter*:*

Provided that the employer shall not be so liable—

(a) in respect of any injury which does not result in the total or partial disablement of the employee for a period exceeding three days;

(b) in respect of any injury, ***not resulting in death or permanent total disablement****,* ***caused by an accident which is directly attributed to****—*

(i) the employee having been at the time therefore under the influence of drink of drugs, or

(ii) the ***wilful disobedience of the employee to an order expressly given,*** *or to a rule expressly framed, for the purpose of securing the safety of employee, or*

(iii) the wilful removal or disregard by the employee of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of employees;

(2) * * * * *

(2-A) * * * * *

(3) * * * * *

(4) * * * * *

(5) Nothing herein contained shall be deemed to confer any right to compensation on a employee in respect of any injury if he has instituted in a Civil Court a suit for damages in respect of the injury against the employer or any other person; and no suit for damages shall be maintainable by a employee in any court of law in respect of any injury—

(a) if he has instituted a claim to compensation in respect of the injury before a Commissioner; or

(b) if an agreement has been come to between the employee and his employer providing for the payment of compensation in respect of the injury in accordance with the provisions of this Act."

(emphasis supplied)

Section 4:

*"**4. Amount of compensation**.—(1) Subject to the provisions of this Act, the amount of compensation shall be as follows, namely:-*

(a) where death results from the injury	***an amount equal to fifty per cent of the monthly wages of the deceased employee multiplied by the relevant factor;*** ***or*** ***an amount of one lakh and twenty thousand rupees, whichever is more;***
(b) Where permanent total disablement results from the injury	***An amount equal to sixty per cent of the monthly wages of the injured employee multiplied by the relevant factor;*** *Or* *an amount of one lakh and forty thousand rupees, whichever is more:*

Provided that the Central Government may, by notification in the Official Gazette, from time to time, enhance the amount of compensation mentioned in clauses (a) and (b).

Explanation I.—For the purposes of clause (a) and clause (b), "relevant factor", in relation to a employee means the factor specified in the second column of Schedule IV against the entry in the first column of that Schedule specifying the number of years which are the same as the completed years of the age of the employee on his last birthday immediately preceding the date on which the compensation fell due*;*

(c) Where permanent partial disablement results from the injury	*(i) in the case of an injury specified in Part II of Schedule I, such percentage of the compensation which would have been payable in the case of permanent total disablement as is specified therein as being the percentage of the loss of earning capacity caused by that injury, and* *(ii) in the case of an injury not specified in Schedule I, such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity (as assessed by the qualified medical practitioner) permanently caused by the injury;*

Explanation I.—Where more injuries than one are caused by the same accident, the amount of compensation payable under this head shall be aggregated but not so in any case as to exceed the amount which would have been payable if permanent total disablement had resulted from the injuries;

Explanation II.—In assessing the loss of earning capacity for the purposes of sub-clause (ii), the qualified medical practitioner shall have due regard to the percentages of loss of earning capacity in relation to different injuries specified in Schedule I;

* * * * *

(1-B) The Central Government may, by notification in the Official Gazette, specify, for the purposes of sub-section (1), such monthly wages in relation to an employee as it may consider necessary.

(2) * * * * *

Provided that—

(a) ***there shall be deducted from any lump sum or half-monthly payments to which the employee is entitled the amount of any payment or allowance which the employee has received from the employer by way of compensation during the period of disablement prior to the receipt of such lump sum or of the first half-monthly payment, as the case may be****; and*

(b) no half-monthly payment shall in any case exceed the amount, if any, by which half the amount of the monthly wages of the employee before the accident exceeds half the amount of such wages which he is earning after the accident.

*Explanation.—**Any payment or allowance which the employee has received from the employer towards his medical treatment shall not be deemed to be a payment or allowance received by him by way of compensation within the meaning of clause (a) of the proviso**.*

(2-A) The employee shall be reimbursed the actual medical expenditure incurred by him for treatment of injuries caused during the course of employment.

(3) * * * * *

(4) * * * * *"*

(emphasis supplied)

Section 4-A:

*"**4-A. Compensation to be paid when due and penalty for default.**—(1) Compensation under Section 4 shall be paid **as soon as it falls due**.*

(2) In cases where the employer does not accept the liability for compensation to the extent claimed, he shall be bound to make provisional payment based on the extent of liability which he accepts, and, such payment shall be deposited with the Commissioner or made to the employee, as the case may be, without prejudice to the right of the employee to make any further claim.

(3) Where any employer is in default in paying the compensation due under this Act within one month from the date it fell due, the Commissioner shall—

*(a) direct that the employer shall, in addition to the amount of the arrears, **pay simple interest thereon at the rate of twelve per cent per annum** or at such higher rate not exceeding the maximum of the lending rates of any scheduled bank as may be specified by the Central Government, by*

notification in the Official Gazette, on the amount due; and

(b) if, in his opinion, there is no justification for the delay, direct that the employer shall, in addition to the amount of the arrears and interest thereon, ***pay a further sum not exceeding fifty per cent of such amount by way of penalty****:*

Provided that an order for the payment of penalty shall not be passed under clause (b) without giving a reasonable opportunity to the employer to show cause why it should not be passed.

Explanation.—For the purposes of this sub-section, "scheduled bank" means a bank for the time being included in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934).

(3-A) The interest and the penalty payable under sub-section (3) shall be paid to the employee or his dependant, as the case may be."

(emphasis supplied)

Section 12:

*"**12. Contracting**.—(1) Where any person (hereinafter in this section referred to as the principal) in the course of or for the purposes of his trade or business contracts with any other person (hereinafter in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work which is ordinarily part of the trade or business of the principal, the* ***principal shall be liable to pay*** *to any employee employed in the execution of the work any compensation which he would have been liable to pay if that employee had been immediately employed by him; and where compensation is claimed from the principal, this Act* ***shall apply as if references to the principal were substituted for references to the employer*** *except that the amount of compensation shall be*

calculated with reference to the wages of the employee under the employer by whom he is immediately employed.

(2) Where the ***principal is liable to pay compensation under this section, he shall be entitled to be indemnified by the contractor****, or any other person from whom the employee could have recovered compensation and where a contractor who is himself a principal is liable to pay compensation or to indemnify a principal under this section he shall be entitled to be indemnified by any person standing to him in the relation of a contractor from whom the employee could have recovered compensation, and all questions as to the right to and the amount of any such indemnity shall, in default of agreement, be settled by the Commissioner.*

…"

(emphasis supplied)

(4) Form of Reporting Electrical Accidents.

The Intimation Of Accidents (Form And Time Of Service Of Notice) Rules, 2005

*"**3. Intimation of accidents** .-(1) If any accident occurs in connection with the generation, transmission, supply or use of electricity in or in connection with, any part of the electric lines or other works of any person and the accident results in or is likely to have resulted in loss of human or animal life or in any injury to a human being or an animal, such person or any authorized person of the generating company or licensee, not below the rank of a Junior Engineer or equivalent shall send to the Inspector a telegraphic report within 24 hours of the knowledge of the occurrence of the fatal accident and a report in writing in Form A within 48 hours of the knowledge of occurrence of fatal and all other accidents. Where possible a telephonic message should also be given to the Inspector immediately, if the accident comes to the knowledge of the authorized officer of the generating company/licensee or other person concerned.*

(2) * * * * * *"*

15. Apropos the factual backdrop of the matter, at the very outset, Ms. Kaur, states that no facts *that are material for a decision of the present matter* are disputed as between the parties. It is the *Amicus's* contention that the following factual position is in fact admitted as between the petitioner, respondent No. 2 and respondent No. 3 *inter-se*:

(a) The petitioner, Kehar Singh has filed the present petition on behalf of his son Bharat who is now about 28 years of age but who has suffered permanent disability, as a consequence of the accident on 25.04.2014; is still bed-ridden; and is therefore unable to take any steps or actions to pursue his legal remedies against BRPL and/or Bryn;

(b) The accident as a result of which Bharat sustained injuries, occurred at the time when he was rectifying a fault in an electricity line which was causing fluctuation in the electricity supply to a certain farmhouse, for which purpose he had climbed onto an electricity pole; and this pole fell while he was on it, causing serious injuries to Bharat. Bharat was performing the task he was assigned by Bryn's supervisors. On the other hand, Bryn had been engaged by BRPL *vidé* the BRPL-Bryn Agreement as a contractor for various purposes, including repair and maintenance of the electrical supply lines, in

connection with which contract the work in question was being done by Bharat;

(c) At the time when the accident occurred, Bharat was being supervised on-site by other employees/officers of Bryn and BRPL, who were also present when the accident occurred; and in fact some of them took Bharat to hospital thereafter;

(d) Whether or not Bharat had been provided requisite protective gear and equipment, such as a ladder to climb the pole, may be a disputed question of fact as between the petitioner on the one hand and BRPL and Bryn on the other, this is irrelevant to the adjudication of the claim made by way of the present petition;

(e) Both BRPL and Bryn made certain payments towards the treatment, medical care and other expenses incurred on Bharat as a result of the accident, partly voluntarily, and partly under directions issued by this court in the present matter. Additionally, a disclaimer, worded as a full-and-final settlement, was obtained by Bryn from Bharat against one such payment that was made;

(f) There is also no dispute as regards the medical records, including the record of surgeries performed on Bharat or the various prescriptions issued by AIIMS and ISIC for his

treatment, rehabilitation and care, all of which are matters of record in the present proceeding.

16. In fact, the substance of learned *Amicus'* submissions, is that the claim made in the present proceedings ought to be decided simply on the principles of 'strict liability', without entering upon any factual issues, much less into any disputed questions of fact.

17. In so far as the calculation of the quantum of compensation is concerned, it is the submission of learned *Amicus* that in situations similar to the one at hand, there are primarily three different methodologies for quantifying compensation. These are:

(i) Computation of compensation on the principles of the Motor Vehicles Act, 1988;

(ii) Computation of compensation on the principles of the Employee's Compensation Act, 1923; and

(iii) *Ex-gratia* payment of compensation in exercise of the extraordinary powers of this court under Article 226 of the Constitution.

18. Though learned *Amicus* has cited judicial precedents in relation to computing compensation under the Motor Vehicles Act, being the decisions in ***Pappu Deo Yadav vs. Naresh Kumar & Ors***[8] and ***Kajal***

[8] cf. (2020) SCC OnLine SC 752, paras 8, 9 and 20

vs. Jagdish Chand & Ors[9], it is submitted that those were specific cases, which employed the mechanism as provided under the Motor Vehicles Act, which may not have direct application to the case at hand. As per submissions of learned *Amicus*, the principles applicable under the Employee's Compensation Act, 1923 are the most suitable and applicable to the present case.

19. It is submitted that section 4 of the Employee's Compensation Act and the method of calculating compensation provided therein may be followed as a guiding principle for computing compensation in the present case. The principles of section 4 of the Employee's Compensation Act if applied to the present case, would lead to the following calculation of compensation payable to Bharat:

> *Amount of Compensation = 60% of Monthly Wages X Relevant Factor*

20. The 'relevant factor' being as provided in Schedule IV of the Employee's Compensation Act, which sets-out certain multiplication factors which depend on the age of the employee who suffers permanent disablement or death. In the present case, though the monthly wages of Bharat are not disclosed in the record, learned *Amicus* seeks to estimate his monthly wages from the salary slips of 'linesman' as available on Bryan's website *www.brynconstructioncompany.com*,

[9] cf. (2020) 4 SCC 413, paras 26, 28 and 34

for the period of October 2014, as placed on the record, which discloses the salary of a linesman as varying between Rs. 8,566/- (Rupees Eight Thousand Five Hundred Sixty-Six Only) and Rs. 10,375/- (Rupees Ten Thousand Three Hundred Seventy-Five Only).

21. Learned *Amicus* also points-out that under section 4A of the Employee's Compensation Act, the lump-sum compensation amount payable would attract interest @ 12% per annum for the period of delay after one month from the date it fell due, in addition to penalty of up to 50% of the amount that fell due towards compensation. As per the *Amicus'* calculation, taking the monthly wage paid by Bryn to a linesman, namely Rs. 10,375/- per month, the amount of lump-sum compensation payable to Bharat would be as follows:

60% x Rs. 10,375 x 222.71 = Rs. 13,86,370/-.

22. For clarity, it may be noted that in Disability Certificate dated 21.10.2019 issued to Bharat by the concerned *Viklang Jan Vikas Vibhag* (District Welfare Handicap Office) of the State of U.P., his age is recorded as 27 years of age as on 21.10.2019, and in his application for disability pension, his date of birth is recorded as 01.01.1993; and therefore, on the date of the accident, namely on 25.04.2014, Bharat would have completed 21 years of age (*i.e.*, the age on the last birthday immediately preceding the date on which the compensation fell due in terms of Schedule IV to the Employee's Compensation Act), and therefore the multiplication factor for

working-out lump sum equivalent of compensation for permanent disability would be '222.71' as per the said Schedule.

23. Learned *Amicus* has also given detailed responses to the other objections and contentions raised by Bryn and BRPL, which are discussed and dealt-with below in this judgement.

JUDICIAL PRECEDENTS CITED BY *AMICUS CURIAE*

24. To answer the legal points raised in opposition by respondents Nos. 2 and 3, learned *Amicus* has cited the following judicial precedents, which are dealt with in detail in the latter part of this judgment:

On Maintainability:

(a) ***Air India Statutory Corporation & Ors. vs. United Labour Union & Ors.***[10]

(b) ***Jaipur Golden Gas Victims Association vs. Union of India & Ors.***[11]

On *Inter-Se* Dispute as to Liability as between BRPL and Bryn:

(c) ***Rajeev Singhal & Anr. vs. MCD (East Delhi Municipal Corporation) & Anr.***[12]

(d) ***Taskinuddin & Ors. vs. State (NCT of Delhi) & Anr.***[13]

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[10] (1997) 9 SCC 377

[11] (2009) 164 DLT 346

[12] (2018) 172 DRJ 373

[13] (2013) 138 DRJ 614

(e) ***Sattira Devi vs. State of U.P. & Ors.***[14]

On Strict Liability:

Arguing that the present case is one of strict liability arising upon respondents Nos. 2 and 3, the *Amicus* has cited the following judicial decisions:

(f) *Jaipur Golden Gas Victims Association* (supra)

(g) ***M.P. Electricity Board vs. Shail Kumar & Ors.***[15]

On Contributory Negligence:

(h) ***Jaya Biswal & Ors. vs. Branch Manager, IFFCO Tokio General Insurance Company Ltd & Anr.***[16]

(i) ***Union of India vs. Prabhakaran Vijaya Kumar & Ors.***[17]

(j) ***Anil Kumar Gupta v Union of India & Ors.***[18]

(k) ***Fatima & Ors. vs. National Zoological Park & Ors.***[19]

[14] Misc. Bench No.7476/2014 decided on 25.05.2017 by Allahabad High Court (DB)

[15] (2002) 2 SCC 162

[16] (2016) 11 SCC 201

[17] (2008) 9 SCC 527

[18] (2016) 14 SCC 58

[19] (2016) 159 DRJ 102

On Delays and Laches:

(l) ***Tukaram Kana Joshi & Ors. vs. Maharashtra Industrial Development Corporation & Ors***[20]

(m) ***Vidya Devi vs. State of Himachal Pradesh & Ors.***[21]

On Computation of Compensation:

On computation of the compensation payable to the petitioner's son, the *Amicus* has cited the following case law:

(n) ***M. Sudakar vs. V. Manohahram & Ors.***[22]

(o) ***Brijesh Kumar Verma vs. Aurangjeb & Anr.***[23]

(p) *Jaipur Golden Gas Victims Association (supra)*

(q) ***Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr.***[24]

(r) *Sattira Devi (supra)*

(s) ***Anand vs. Pratap & Anr.***[25]

(t) ***State of Himachal Pradesh & Ors. vs. Naval Kumar***[26]

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[20] (2013) 1 SCC 353

[21] (2020) 2 SCC 569

[22] (2011) 1 SCC 484

[23] (2018) 246 DLT 143

[24] (2009) 6 SCC 121

[25] (2018) 9 SCC 450

[26] (2017) 3 SCC 115

(u) ***Raman vs. Uttar Haryana Bijli Vitran Nigam Ltd & Ors.***[27]

(v) *Taskinuddin (supra); and*

(w) ***R.D. Hattangadi vs. Pest Control (India) Pvt Ltd & Ors.***[28]

On Remedy in Public Law:

(x) ***Nilabati Behera vs. State of Orissa & Ors.***[29]

DISCUSSION

Maintainability of writ petition:

25. Though from the factual matrix of the present case, it does appear that the petitioner's son may be entitled to bring an action in *private law* against respondents Nos. 2 and 3 seeking compensation for the accident, there is an unbroken line of judicial precedents from which it is clear that there is no bar or prohibition on this court entertaining and deciding the present claim in its extraordinary jurisdiction under Article 226 of the Constitution by way of *public law* remedy available to the petitioner. This view is bolstered *inter-alia* by the following judicial precedents cited by the *Amicus:*

[27] (2014) 15 SCC 1

[28] (1995) 1 SCC 551

[29] (1993) 2 SCC 746

(a) In *Air India Statutory Corporation* (supra) the Hon'ble Supreme Court has ruled that it is no longer *res integra* that there are no factors for the exercise of the extraordinary jurisdiction of the High Court under Article 226 of the Constitution *except* self-imposed limitations;

(b) In *Taskinuddin* (supra), relying upon decisions of the Hon'ble Supreme Court, this court ruled as follows:

> "*41. It is well settled by now that a* ***writ court can award compensation while exercising the extraordinary constitutional jurisdiction****. The question has been dealt with extensively by the Supreme Court in Rudul Shah v. State of Bihar, (1983) 3 SCR 508, Smt Nilabati Behera v. State of Orissa, (1993) 2 SCC 746, D.K. Basu v. Union of India, (1997) 1 SCC 416, Chairman, Grid Corporation of Orissa Ltd (GRIDCO) (Supra), Tamil Nadu Electricity Board v. Sumathi, (2000) 4 SCC 543, S.P.S. Rathore v. State of Haryana, (2005) 10 SCC 1 and by this court in Jaipur Golden (supra) and Kamla Devi (supra)."*
>
> *"42. The position that emerges from the afore mentioned decisions is that at least in cases, where the relevant facts are not in dispute; there is established negligence in the acts and omissions of the respondent authority/authorities on the face of the record, and; there is consequent deprivation of a fundamental right of the petitioner, the writ court may award monetary compensation.*"
>
> (emphasis supplied)

(c) In *Rajeev Singhal* (supra), the petitioners were claiming compensation from East Delhi Municipal Corporation and BRPL-Yamuna Power Limited on account of death of their son by electrocution while he was playing in a public park. Holding that merely because there were *inter-se* disputes between the respondents, that would not render the petition not maintainable, a Division Bench of this court has held that merely because there is *inter-se* dispute between the respondents, that would not dis-entitle the petitioner from claiming relief under Article 226 of the Constitution; and once it is established that the accident was the consequence of negligence, the court may assess and award compensation in writ proceedings. The Division Bench observed as follows:

> *"19. From the aforesaid, it is clear that merely because there is an inter-se dispute between the respondents, it would not disentitle the petitioners from claiming the relief under Article 226 of the Constitution of India as negligence resulting in breach of Fundamental Rights is held to be established. Even though the judgment in the case of Varinder Prasad (supra) has been rendered by Single Judge of this court but the said judgment refers to various judgments not only of Supreme Court but also of this court and once in this case the finding recorded is to the effect that the accident took place because of negligence in the matter of maintenance of electrical equipments and it is also proved that the accident was a consequence of such negligence, merely on account of inter-se dispute between the parties, namely, respondent No. 1 and respondent No. 2, in our considered view, the petitioner could*

not be non-suited or their petition is dismissed. Once the factum of accident having occurred resulting into death of the child and the accident being a consequence of negligence are established, the learned writ Court should have, in our considered view, proceeded to assess the compensation and awarded it to the appellants instead of dismissing the writ petition. ***In fact, the inter-se dispute on facts between the respondents cannot be a ground for dismissing the writ petition. On the contrary, as has been done in various cases including the case of Varinder Prasad (supra), the Court should have held both the respondents jointly and severally liable for payment of compensation, imposed 50% liabilities on them and thereafter left it to them to work out their inter-se dispute****, particularly so when both the respondents are functioning under the control of the Government."*

"20. Accordingly, in dismissing the writ petition on the ground that there are disputed questions of fact, in our considered view, the writ Court has committed a grave error which cannot be upheld by us. Accordingly, we allow this petition by holding that the writ petition was maintainable and merely because there is an inter-se dispute between the respondents, the right of the petitioners (appellants herein) to claim compensation cannot be denied. ..... "

(emphasis supplied)

26. In *Sattira Devi* (supra) a Division Bench of the Allahabad High Court while dealing with a claim by a wife for the death of her husband by electrocution while he was engaged as a lineman repairing an electrical line and was working on contract basis, the court held:

"41. Now the question is whether the writ petition for such a claim is maintainable before this court .

"42. The position of law for awarding compensation in writ jurisdiction has been recognized by the Apex Court in Nilabati Behera vs. State of Orissa & Ors. 1993 (2) SCC 746 and in Dr. Mehmood Nayyar Azam Vs. State of Chhatisgarh JT 2012 (7) SC 178, wherein the principle enunciated is that the Supreme Court and the High Court being the protectors of the civil liberties of the citizen, have ***not only the power and jurisdiction but also an obligation*** *to grant relief in exercise of its jurisdiction under Articles 32 and 226 of the Constitution. Award of compensation in writ jurisdiction for contravention of human rights and fundamental freedoms is thus recognized by the Supreme Court.*

* * * * *

"44. Thus, following the above dictum of law, this court can grant compensation by moulding the relief in writ jurisdiction by way of penalizing the wrong doer and fixing the liability for the public wrong on the respondents who have failed to perform their public duties. In the view of the Supreme Court, the payment of compensation is ***not to be understood as a civil action for damages*** *but of making* ***"monetary amends" under Public law*** *for wrong done for breach of public duty. As per the law laid down by the Apex Court, this is independent of the rights of the aggrieved party to claim compensation* ***under private law*** *in an action based on tort through a suit instituted in a court of competent jurisdiction or/and prosecution of the offender under the penal law. Thus, this claim for "exemplary damages" is maintainable before this court under the above settled position of law and monetary compensation can be awarded to the victim."'*

(emphasis supplied)

27. Furthermore, in *Jaipur Golden Gas Victims Association* (supra) the Division Bench of this court has also reiterated the power of the court

under Article 226 of the Constitution to mould the relief so as to compensate a victim in the following words:

> *"IN ARTICLE 226 PROCEEDINGS, THE COURT CAN ALWAYS MOULD THE RELIEF*
>
> *49.* ***The power of the High Courts and the Supreme Court under Article 226 and Article 32 respectively, to mould the relief so as to compensate the victim has been affirmed by the Supreme Court*** *on numerous occasions including Common Cause, A Registered Society v. Union of India, (1999) 6 SCC 667; Chairman Railway Board v. Chandrima Das, (2000) 2 SCC 465; Delhi Domestic Working Women's Forum v. Union of India, (1995) 1 SCC 14; D.K. Basu v. State of W.B., (1997) 1 SCC 416 and Rudul Sah v. State of Bihar, (1983) 4 SCC 141."*

(emphasis supplied)

Strict Liability Rule:

28. In the present case in fact, the claim of the petitioner rests upon the well settled 'strict liability' rule which propounds that irrespective of whether negligence or fault is established, a party may be liable to compensate another for harm or injury caused, arising from certain undisputed actions or omission on the part of such party. This rule has been explained with clarity in the decisions as cited by the learned *Amicus* as discussed below.

29. In *Madhya Pradesh Electricity Board* (supra), the Hon'ble Supreme Court directed the Electricity Board to pay compensation to the

dependents of a deceased after it found that a live electric wire snapped and fell on a public road and got partially inundated with rainwater; and the deceased unwittingly rode over the wire on a bicycle which resulted in his electrocution. While applying the strict liability rule, the Hon'ble Supreme Court observed as follows:

> *"8. Even assuming that all such measures have been adopted, a person undertaking an activity involving hazardous or risky exposure to human life, is liable under law of torts to compensate for the injury suffered by any other person,* ***irrespective of any negligence or carelessness on the part of the managers of such undertakings****. The basis of such liability is the foreseeable risk inherent in the very nature of such activity.* ***The liability cast on such person is known, in law, as "strict liability"****.* ***It differs from the liability which arises on account of the negligence or fault*** *in this way i.e. the concept of negligence comprehends that the foreseeable harm could be avoided by taking reasonable precautions. If the defendant did all that which could be done for avoiding the harm he cannot be held liable when the action is based on any negligence attributed. But such consideration is not relevant in cases of strict liability where the defendant is held liable irrespective of whether he could have avoided the particular harm by taking precautions."*
>
> (emphasis supplied)

30. In *Jaipur Golden Gas Victims Association* (supra), the case involved the death of four persons on account of fire in a godown in Delhi, while discussing the principle of strict liability, this court observed as follows:

"APPLICATION OF RULE IN RYLAND v. FLETCHER

50. The principle of liability without fault was enunciated in Ryland v. Fletcher, (1868) LR 3 HL 330. Facts of the said case were that defendant, who owned a mill, constructed a reservoir to supply water to the mill. This reservoir was constructed over old coal mines, and the mill owner had no reason to suspect that these old diggings led to an operating colliery. The water in the reservoir ran down the old shafts and flooded the colliery. Blackburn J. held the mill owner to be liable, on the principle that the person who for his own purposes brings on his land and collects and keeps there anything likely to do mischief if it escapes, must keep it at his peril, and if he does not do so, he is prima facie answerable for all the damage which is the natural consequence of its escape. On appeal this principle of liability without fault was affirmed by the House of Lords (per Cairns, J.) but restricted to non-natural users."

"52. But the fact is that the Rule in Rylands v. Fletcher (supra) 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, vibralious, noxious fumes, colliery spoil, poisonous vegetation, a flagpole, etc. (see Winfield and Jolowiez 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. [See Delhi Jal Board v. Raj Kumar, ILR (2005) 2 Del 778]."

"58. In Jay Laxmi Salt Works (P) Ltd. v. State of Gujarat, (1994) 4 SCC 1 the Supreme Court held as under:

> *"9…… **What is fundamental is injury and not the manner in which it has been caused**. 'Strict liability', 'absolute liability', 'fault liability, and neighbour proximity', are all refinements and development of law by English*

> *Courts for the benefit of society and the common man. Once the occasion for loss or damage is failure of duty, general or specific, the cause of action under tort arises.* ***It may be due to negligence, nuisance, trespass, inevitable mistake, etc. It may be even otherwise****. In a developed or developing society the concept of duty keeps on changing and may extend to even such matters as was highlighted in Donoghue v. Stevenson, (1932 AC 562 : 1932 All ER Rep 1) where a manufacturer was held responsible for injury to a consumer. They may individually or even collectively give rise to tortuous liability. Since the appellant suffered loss on facts found due to action of respondent's officers both at the stage of construction and failure to take steps even at the last moment it was liable to be compensated.""*
>
> (emphasis supplied)

Contributory Negligence:

31. Insofar as the issue of 'contributory negligence' raised by the contesting respondents is concerned, as cited by learned *Amicus,* this issue is squarely answered in *Jaya Biswal* (supra), *Prabhakaran Vijaya Kumar* (supra) and *Anil Kumar Gupta* (supra) and in *Fatima* (supra):

Jaya Biswal (supra) :

> "*25. The next contention which needs to be dispelled is that the appellants are not entitled to any compensation because the deceased died as a result of his own negligence. We are unable to*

agree with the same. ***Section 3 of the EC Act does not create any exception of the kind, which permits the employer to avoid his liability if there was negligence on the part of the workman.*** *The reliance placed on the decisions of this Court on contributory negligence like the three-Judge Bench decision in Mastan [National Insurance Co. Ltd. v. Mastan, (2006) 2 SCC 641 : 2006 SCC (L&S) 401] is wholly misplaced as the same have been passed in relation to the Motor Vehicles Act, 1988, and have no bearing on the facts of the case on hand. The EC Act does not envisage a situation where the compensation payable to an injured or deceased workman can be reduced on account of contributory negligence. It has been held by various High Courts that mere negligence does not disentitle a workman to compensation. Lord Atkin in Harris v. Associated Portland Cement Manufacturers Ltd. [Harris v. Associated Portland Cement Manufacturers Ltd., 1939 AC 71 : (1938) 4 All ER 831 (HL)] observed as under : (AC pp. 76-77)*

> *"... Once you have found the work which he is seeking to do to be within his employment the question of negligence, great or small, is irrelevant and no amount of negligence in doing an employment job can change the workman's action into a non-employment job. ...* ***In my opinion if a workman is doing an act which is within the scope of his employment in a way which is negligent in any degree and is injured by a risk incurred only by that way of doing it he is entitled to compensation****."*

The above reasoning has been subsequently adopted by several High Courts. In Janaki Ammal v. Divisional Engineer, Highways [Janaki Ammal v. Divisional Engineer, Highways, (1956) 2 LLJ 233 (Mad)] , the High Court of Madras held as under : (LLJ p. 237)

> *"... '13. ... Men who are employed to work in factories and elsewhere are human beings, not machines. They are subject to human imperfections.* ***No man can be***

> ***expected to work without, ever allowing his attention to wander, without ever making a mistake, or slip, without at some period in his career being, momentarily careless***. *Imperfections of this and the like nature form the ordinary hazards of employment and bring a case of this kind within the meaning of the Act.' [Ed. : As observed in Sk. Jafarji Hiptullah Bhoy Gin and Press Factory v. Sk. Ismail, 1936 SCC OnLine MP 243, para 13 : AIR 1937 Nag 311 p. 313.]* "

Prabhakaran Vijaya Kumar (supra):

"*19. … It was realised that there are certain activities in industrial society 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 irrespective of who was at fault. The principle of strict liability (also called no-fault liability) was thus evolved, which was an exception to the general principle in the law of torts that there is no liability without fault (vide American Jurisprudence, 2nd Edn., Vol. 74, p. 632).*

20. 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 [(1866) LR 1 Ex 265] …

* * * * *

45. Thus, Section 3 of the Workmen's Compensation Act, 1923 provides for compensation for injuries arising out of and in the course of employment, and ***this compensation is not for negligence on the part of the employer but is a sort of insurance to workmen against certain risks of accidents****.*

* * * * *

47. However, apart from the principle of strict liability in Section 124-A of the Railways Act and other statutes, we can and should develop the law of strict liability dehors statutory provisions in view of the Constitution Bench decision of this Court in M.C. Mehta case

[(1987) 1 SCC 395 : 1987 SCC (L&S) 37 : AIR 1987 SC 1086] . In our opinion, we have to develop new principles for fixing liability in cases like the present one.

* * * * *

52. In view of the above, ***we are of the opinion that the submission of learned counsel for the appellant that there was no fault on the part of the Railways, or that there was contributory negligence, is based on a total misconception and hence has to be rejected***."

Anil Kumar Gupta (supra):

"*13. Those who were in charge of the Railway Administration in the Divisions concerned ought to have taken sufficient precaution. The Administration can certainly be taken to be aware of the fact that the* ***foot overbridges or any structures on the way could possibly be a hindrance and could have caused such incident with people in large number on rooftop****. The Administration alone would be in a position to know about the existence of infringements with regard to certain structures and what could be possible implications if the train were to run at a great speed with large number of people on rooftop. Reasonable care would naturally be expected of those in charge of the Administration. We therefore do not agree with the conclusion in the Report that the Railway Administration was not responsible.*

17. In the backdrop of the aforesaid precedents, in our view, it must be expected of the persons concerned to be aware of the inherent danger in allowing the train to run with such speed having large number of persons travelling on rooftop. Though the people who travelled on rooftop also contributed to the mishap, the Railway Administration, in our view, was not free from blame. Concluding so, we direct that the next of kin of those who died in the incident and those who sustained injuries must be duly compensated by the Railway Administration. Those who died were obviously very young in age for they had come to compete for the jobs. Taking all these

factors into consideration we direct the Railway Administration to pay:

(a) Compensation of Rs 5 lakhs to the next of kin in case of every death;

(b) Compensation of Rs 1.5 lakhs in every case of permanent disability suffered by anyone in the incident;

(c) Compensation of Rs 75,000 in case of any grievous injury suffered by anyone; and

(d) Compensation of Rs 25,000 in case of simple injury suffered by anyone.

Fatima (supra) :

"7. Delhi Zoo which is under the control of respondent No. 3 has also filed their counter affidavit. It is their contention that the deceased was suffering from schizophrenia and undergoing treatment in the hospital. It is stated that the deceased climbed and crossed the fencing and climbed on the wall of the moat on his own and slipped. He hence fell 25 feet deep into the moat. Therefore, it is stated that the Delhi Zoo cannot be blamed for the incident. It is further stated that the attack by the tiger took place within four minutes and 27 seconds of the deceased slipping into the cage. The period of 15 minutes mentioned by the petitioners has been denied. It is further stated that the animal keeper who was on duty on seeing Maqsood, tried to call the animal to close the tiger into a cell. However, some of the visitors reacted and started pelting the animal with stones. A big stone hit the tiger on the neck because of which the animal got irritated and attacked Maqsood. It is urged that the answering respondent has put lot of sign boards containing warnings. The victim was not in a good mental state and was getting treatment from hospital. The victim was said to be crazy about tigers and often used to question his family about a tiger incident that occurred in Kolkata Zoo. The security staff warned Maqsood twice

when he tried to cross the barricade and climb the wall. When the security staff was engaged with other visitors, Maqsood jumped in the cage. ***Hence, it is urged that the unfortunate incident took place due to the own acts of negligence of the deceased and the respondents cannot be held liable for any amount****. The allegations being made about negligence of the zoo authorities have been denied claiming that all adequate precautions have been taken by the Zoo. As a goodwill gesture, it is stated, a payment of Rs. 1 lac has been made to the victim's family i.e. petitioners.*

* * * * *

"10. The issue which first seeks answer from this court is as to whether in these facts this court could grant compensation to the petitioners in the present writ petition. The legal position in this regard may be looked at. The Supreme Court in the case of Nilabati Behera Alias Lalita Behera v. State of Orissa, (1993) 2 SCC 746 was dealing with the issue of award of compensation in proceedings under Article 32/226 of the Constitution. The court noted that ***the remedy is available in public law based on strict liability for contravention of fundamental rights****. The court further held that this right is distinct from and* ***in addition to*** *the remedy in private law for damages for the tort resulting from contravention of the fundamental rights. The court also held that the Supreme Court and the High Courts have wide powers under Article 32 and Article 226 respectively* ***to forge new tools*** *that may be necessary for doing complete justice and enforcing the fundamental rights guaranteed in the Constitution. ....*

* * * * *

"13. We may now have a look at the position of visitors to the zoo i.e. in case any visitor suffers an injury or dies due to acts connected with a visit to the zoo. The rule of strict liability was propounded by English Law as laid down in the noted case of Rylands v. Fletcher, (1868) LR 3 HL 330. ...

* * * * *

"18. The legal position that follows is that doctrine of strict liability would apply in the case of an injury or death of a visitor to the zoo due to acts of a wild or dangerous animal in the zoo. As dangerous animals are kept in the zoo, it would be the ***absolute*** *responsibility of the zoo to ensure that the dangerous and ferocious animals do not cause damage or injury to any visitors. It is the responsibility of the zoo and its staff to ensure and upkeep the place in a manner that no untoward incident takes place and all necessary precautions and steps have to be taken to ensure that the visitors remain safe.* ***The zoo cannot escape responsibility on the plea that the visitor did not adhere to relevant safety precautions, which he was obliged to or would have normally followed****.*

* * * * *

"29. It is also a fit case to hold respondent No. 1 liable under the principles of "Absolute liability". The zoo was aware that a tiger is a dangerous animal capable of causing injuries or death to a visitor. The zoo would be liable for any injury or death caused to a visitor by the tiger under the principles of Strict Liability. Respondent No. 1 is, in these facts, liable to compensate the petitioner for the unfortunate death of Maqsood and the monetary loss as a consequence thereof."

(emphasis supplied)

Delay and Laches:

32. In response to the contentions that the writ petition is barred by delay and laches, from the chronology it is evident that after the accident occurred on 25.04.2014, Bharat was hospitalized and underwent a major surgery on 28.04.2014; whereafter he was discharged from hospital on 05.09.2014. After that, it is stated, Bharat went back to his

native place in Bulandshehar, U.P., and was bed-ridden throughout, and only consulted some local doctors by reason of lack of resources to return to a specialist medical facility in Delhi. The writ petition came to be filed on 14.01.2016 *i.e.*, *only* about 16 (sixteen) months from the time when Bharat was discharged from the hospital after his major surgery. This, as learned *Amicus* submits, can hardly be reckoned as *inordinate delay or laches* such as would disentitle the petitioner from claiming relief from this court. It is also noticed that on the very next day after the accident *i.e.*, on 26.04.2014, a First Information Report bearing FIR No. 175/2014 dated 26.04.2014 came to be filed at P.S.: Kapashera in relation to the accident. Moreover, as is pointed-out, even today *i.e.*, 07 (seven) years later, when the petition is being finally decided, Bharat is still bed-ridden and unable even to perform his daily chores without assistance of others. In the circumstances, there is no delay or laches that would, in any manner, affect the maintainability of the present petition. The above position notwithstanding, learned *Amicus* has also drawn the attention of this court to the following decisions:

> ***Tukaram Kana Joshi & Ors*** (supra):
>
> *"13. The question of condonation of delay is one of discretion and has to be decided on the basis of the facts of the case at hand, as the same vary from case to case. It will depend upon what the breach of fundamental right and the remedy claimed are and when and how the delay arose. It is not that there is any period of limitation for the courts to exercise their powers under Article 226, nor is it that there*

*can never be a case where the courts cannot interfere in a matter, after the passage of a certain length of time. **There may be a case where the demand for justice is so compelling, that the High Court would be inclined to interfere in spite of delay. Ultimately, it would be a matter within the discretion of the Court and such discretion, must be exercised fairly and justly so as to promote justice and not to defeat it**. The validity of the party's defence must be tried upon principles substantially equitable. (Vide P.S. Sadasivaswamy v. State of T.N. [(1975) 1 SCC 152 : 1975 SCC (L&S) 22 : AIR 1974 SC 2271] , State of M.P. v. Nandlal Jaiswal [(1986) 4 SCC 566 : AIR 1987 SC 251] and Tridip Kumar Dingal v. State of W.B. [(2009) 1 SCC 768 : (2009) 2 SCC (L&S) 119])*

*"14. No hard-and-fast rule can be laid down as to when the High Court should refuse to exercise its jurisdiction in favour of a party who moves it after considerable delay and is otherwise guilty of laches. Discretion must be exercised judiciously and reasonably. In the event that the claim made by the applicant is legally sustainable, delay should be condoned. In other words, where circumstances justifying the conduct exist, the illegality which is manifest, cannot be sustained on the sole ground of laches. **When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have a vested right in the injustice being done, because of a non-deliberate delay**. The court should not harm innocent parties if their rights have in fact emerged by delay on the part of the petitioners. (Vide Durga Prashad v. Chief Controller of Imports and Exports [(1969) 1 SCC 185 : AIR 1970 SC 769] , Collector (LA) v. Katiji [(1987) 2 SCC 107 : 1989 SCC (Tax) 172 : AIR 1987 SC 1353] , Dehri Rohtas Light Railway Co. Ltd. v. District Board, Bhojpur [(1992) 2 SCC 598 : AIR 1993 SC 802] , Dayal Singh v. Union of India [(2003) 2 SCC 593 : AIR 2003 SC 1140] and Shankara Coop. Housing Society Ltd. v. M. Prabhakar [(2011) 5 SCC 607 : (2011) 3 SCC (Civ) 56 : AIR 2011 SC 2161] .)*

15. In H.D. Vora v. State of Maharashtra [(1984) 2 SCC 337 : AIR 1984 SC 866] ***this Court condoned a 30-year delay in approaching the court where it found violation of substantive legal rights of the applican****t. In that case, the requisition of premises made by the State was assailed."*

Vidya Devi (supra):

"12.12. The contention advanced by the State of delay and laches of the appellant in moving the Court is also liable to be rejected. Delay and laches cannot be raised in a case of a continuing cause of action, or if the circumstances shock the judicial conscience of the Court. Condonation of delay is a matter of judicial discretion, which must be exercised judiciously and reasonably in the facts and circumstances of a case. It will depend upon the breach of fundamental rights, and the remedy claimed, and when and how the delay arose. There is no period of limitation prescribed for the courts to exercise their constitutional jurisdiction to do substantial justice.

12.13. ***In a case where the demand for justice is so compelling, a constitutional court would exercise its jurisdiction with a view to promote justice, and not defeat it****. [P.S. Sadasivaswamy v. State of T.N., (1975) 1 SCC 152 : 1975 SCC (L&S) 22]*

Jaipur Golden Gas Victims Association (supra):

"19. According to him, present writ petition was also barred by limitation as it had been filed two years after the incident of fire which occurred on 4th April, 2004 and further the impleadment application had been filed only on 17th March, 2009 on behalf of legal heirs of deceased Babu Lal, Ved Prakash @ Raju and Poonam. In any event, according to him, no writ petition for monetary claim was maintainable.

* * * * *

LIMITATION OBJECTION

32. We fail to understand as to how a writ petition can be said to be barred by limitation inasmuch as no period of limitation has been statutorily prescribed for filing a writ petition under Article 226 of the Constitution. In fact, writ petitions are dismissed on account of delay on the ground of laches and not as barred by limitation. ***The test to be applied is whether laches on the part of the Petitioner are such as to hold that petitioners by their act or conduct have given a go-by to their rights. On perusal of the present case we find that present writ petition was filed in about two years, time from the date of fire and delay in filing the present petition was on account of the fact that victims of the fire and gas tragedy were extremely poor and not organized****. In any event the alleged delay, if any, has not prejudiced the rights of any third party including that of respondent No. 5."*

(emphasis supplied)

Compensation not part of prayers:

33. As far as BRPL's contention that since in the writ petition there is no prayer seeking compensation, no compensation deserves to be awarded, that submission also has no merit since the issue of payment of compensation was in fact flagged and framed by this court *vidé* order dated 31.03.2016, in para 5 whereof this court recorded as under:

"5. With respect to the compensation to which the petitioner is entitled, the same shall be determined after the treatment is over and the permanent disability of the petitioner is assessed. However, considering that the petitioner's family has no source of sustenance, this Court is of the view that respondent no. 2 should deposit a sum of Rs.5 lacs which shall remain in fixed deposit and the monthly

interest thereon shall be released to the petitioner to enable him to ensure the sustenance of his son during the period of his treatment."

34. As learned *Amicus* points-out, the aforesaid order made by this court apart, in any case, it is the settled position of law that the court exercising jurisdiction under Article 226 of the Constitution is always entitled to *mould the relief to render substantial justice*, as held *inter-alia* in the case of *M. Sudakar* (supra)**:**

> *"14.* ***The power to mould relief is always available to the court possessed with the power to issue high prerogative writs****. In order to do complete justice it can mould the relief, depending upon the facts and circumstances of the case. In the facts of a given case a writ petitioner may not be entitled to the specific relief claimed by him but this itself will not preclude the writ court to grant such other relief which he is otherwise entitled. Further delay and laches do not bar the jurisdiction of the court. It is a matter of discretion and not of jurisdiction. The learned Single Judge had taken note of the relevant facts and declined to dismiss the writ petition on the ground of delay and laches."*

Insurance Company was necessary party:

35. Insofar as the assertion that the petition is not maintainable since the insurance company, which the respondents contend, was a necessary party, was not impleaded as a party-respondent in the matter, learned *Amicus* submits that it will be noticed that in none of the judicial precedents cited was an insurance company impleaded as a party. It is submitted that in the present case, since the petitioner's claim is against BRPL and/or Bryn, and the petitioner has no privity of contract with

any insurance company, the petitioner may not even be able to maintain a claim against any insurance company. It is further submitted that if either BRPL and/or Bryn are entitled to any reimbursement of compensation or damages paid or payable to Bharat under any insurance policy held by BRPL and/or Bryn**,** the concerned respondent may raise a claim for reimbursement upon their insurance company; but that has nothing to do with Bharat and does not affect Bharat's claim made by way of the present petition.

Remedy in Public Law:

36. As submitted by learned *Amicus*, it requires to be appreciated that the present claim is one by way of *public law remedy* brought before the court under Article 226 of the Constitution and is not a claim in *private law*, which could or may have been brought by proceedings under the Employee's Compensation Act or by way of a civil suit. Attention in this behalf is drawn to the decision of the Hon'ble Supreme Court in *Nilabati Behera (*supra) in para 34 whereof, the Hon'ble Supreme Court draws a clear distinction between public law proceedings and private law proceedings in the following words:

> *"34. The public law proceedings serve a different purpose than the private law proceedings.* ***The relief of monetary compensation, as exemplary damages, in proceedings under Article 32 by this Court or under Article 226 by the High Courts, for established infringement of the indefeasible right guaranteed under Article 21 of the Constitution is a remedy available in public law and is based***

on the strict liability for contravention of the guaranteed basic and indefeasible rights of the citizen. *The purpose of public law is not only to civilize public power but also to assure the citizen that they live under a legal system which aims to protect their interests and preserve their rights. Therefore, when the court moulds the relief by granting "compensation" in proceedings under Article 32 or 226 of the Constitution seeking enforcement or protection of fundamental rights, it does so under the public law by way of penalising the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizen.* ***The payment of compensation in such cases is not to be understood, as it is generally understood in a civil action for damages under the private law but in the broader sense of providing relief by an order of making 'monetary amends' under the public law for the wrong done due to breach of public duty****, of not protecting the fundamental rights of the citizen. The compensation is in the nature of 'exemplary damages' awarded against the wrongdoer for the breach of its public law duty and is independent of the rights available to the aggrieved party to claim compensation under the private law in an action based on tort, through a suit instituted in a court of competent jurisdiction or/and prosecute the offender under the penal law.*

35. This Court and the High Courts, being the protectors of the civil liberties of the citizen, ***have not only the power and jurisdiction but also an obligation*** *to grant relief in exercise of its jurisdiction under Articles 32 and 226 of the Constitution to the victim or the heir of the victim whose fundamental rights under Article 21 of the Constitution of India are established to have been flagrantly infringed by calling upon the State to repair the damage done by its officers to the fundamental rights of the citizen, notwithstanding the right of the citizen to the remedy by way of a civil suit or criminal proceedings.* ***The State, of course has the right to be indemnified***

by and take such action as may be available to it against the wrongdoer in accordance with law—through appropriate proceedings*. Of course, relief in exercise of the power under Article 32 or 226 would be granted only once it is established that there has been an infringement of the fundamental rights of the citizen and no other form of appropriate redressal by the court in the facts and circumstances of the case, is possible. The decisions of this Court in the line of cases starting with Rudul Sah v. State of Bihar [(1983) 4 SCC 141 : 1983 SCC (Cri) 798 : (1983) 3 SCR 508] granted monetary relief to the victims for deprivation of their fundamental rights in proceedings through petitions filed under Article 32 or 226 of the Constitution of India, notwithstanding the rights available under the civil law to the aggrieved party where the courts found that grant of such relief was warranted. ....*"

(emphasis supplied)

CONCLUSIONS

37. The above discussion leads this court to the inevitable conclusions as set-out below.

38. Upon a plain reading of section 2(20)(a) of the Electricity Act 2003 ("Electricity Act", for short) it is evident that a 'pole', which supports and carries the electricity wire/cable and/or from which such electricity cable is suspended, is included within the definition of "electric line" within the meaning of the statute. Accordingly, the electricity pole, which admittedly fell, and as a result of which Bharat suffered injury, would fall within the definition of electric line. Now, section 53 of the Electricity Act mandates that the *electricity authority*, in this case BRPL, "may" provide suitable measures to

protect persons *inter-alia* engaged in maintenance of any electric line and eliminate or reduce the risk of personal injury to any such person. Furthermore, Rule 29 of the Indian Electricity Rules 1956 ("Electricity Rules", for short) provides that all apparatus used in connection with electric supply shall *inter-alia* be of "sufficient mechanical strength" and shall be constructed, installed, protected, worked and maintained in a manner so as to ensure safety of human beings. Rule 46 of the aforesaid rules also mandates periodical inspection and testing of such installations, all of which is the responsibility of the electricity authority, namely BRPL.

39. It is also necessary to address another very fundamental issue that is relevant for the present matter, namely whether Bharat was an 'employee' of Bryn or was engaged by Bryn to perform the task that led to the accident. A close reading of Bryn's affidavit filed in the matter betrays the *cleverness* with which it has been drafted. Bryn does not expressly admit that Bharat was their employee; nor that he had been engaged by them to perform the task in question. However, there is also *no denial of any kind, whether express or implied,* that Bharat was working for Bryn. The thrust of Bryn's counter affidavit is that BRPL is responsible to compensate Bharat for the injury, since at the relevant time Bharat was working under BRPL's supervision and performing BRPL's tasks. However, as with most clever drafting, the

truth comes-out in a somewhat unintended way *inter-alia* in the following paragraphs of Bryn's counter affidavit:

> *"8. That the deponent hereby state that* ***whatever financial assistance was required for the treatment of Bharat Singh on humanitarian grounds, the same was provided*** *and the staff of deponent immediately took Bharat Singh to hospital for his treatment to AIIMS Trauma Centre and doctors attending him recommended that an implant is required for the treatment costing approximately Rs. 1,25,000/- and the same was provided by the deponent as that was the need of the time and further when he was discharged from the hospital Rs.4,500/- was spent on arranging the wheel chair and a sum of Rs.25,000/- in cash was given to his attendant under intimation to Bharat Singh for the other support required in the hospital and Rs.25,000/- were provided for inverter and Rs.7, 000/- was provided to him for speedy recovery.*
>
> *9. That the deponent states that Bharat Singh was provided medical aid so as to save his life but the accident occurred just because the pole fell down from the base and the cause of accident relates to the quality of the pole being the property/material of Respondent No. 2 and not account of any other fault because the* ***entire team was working*** *as per prescribed norms."*

(emphasis supplied)

40. However, nowhere does Bryn say that Bharat was BRPL'S employee; Bryn also does not say that Bharat was engaged by BRPL on a casual or ad-hoc basis to perform the task in question; Bryn does not offer any explanation as to why, if Bharat was not working for them, did they take all the trouble and pay all the monies, including one might notice, the sum of about Rs. 2,00,000 (Rupees Two Lakhs) towards

the so-called full-and-final settlement *vidé* an undated declaration/statement purportedly signed by Bharat.

41. Bryn's stand in this regard is also belied by the documents upon which Bryn itself places reliance, namely the Form of Reporting Electrical Accidents, which document is a record of the first reporting of the accident. Accident Enquiry Report dated 09.05.2916, on which Bryn itself relies, begins thus:

> *"It is a case of non-fatal accident which occurred on 25.04.2014 between 4:00 to 5:00 PM at farm 28. Ansal Farm, Bijwasan, New Delhi,* ***in which Sh. Bharat Singh, lineman of M/s Bryn construction who was working on pole*** *for dismantling of dead 11 KV line fell down along with PCC pool which has fallen from its base. He was given treatment in trauma centers of safdarjung hospital."*

(emphasis supplied)

42. Additionally, if it is Bryn's contention that Bharat was not their employee, then their other main contention, namely that Bharat has an efficacious alternate remedy under the Employees' Compensation Act cannot be sustained, since in that case, Bharat would be left with no alternate remedy other than by way of the present writ petition. This contradiction again betrays the falsity of Bryn's stand that Bharat was not performing the task for them.

43. While BRPL and Bryn both contend that all requisite safety equipment and precautions were made available by them, neither

BRPL nor Bryn explain why such equipment, if available, failed to protect Bharat from the serious injury he suffered. They do not explain why, if Bharat failed or refused to use such equipment, did their officers who were present at site allow Bharat to perform the task without requisite safety equipment.

44. And even if BRPL and Bryn's claim that they were not negligent is accepted, this stand, if anything, makes the case fall squarely within the scope of 'strict liability' on the part both of BRPL and Bryn.

45. In the opinion of this court, in the present case there is no doubt, that Bharat *was working for* Bryn and was tasked with certain maintenance work to be performed on an electricity pole owned by BRPL; which pole, it turned-out, was not strong enough to take Bharat's weight or was not rooted securely in the ground, and thereby fell, as a result of which Bharat sustained serious injuries. It is also evident that Bharat was not provided any safety gear before he was directed to climb the pole to undertake the task.

46. In the opinion of this court, the present case would also be squarely covered by the principle of *res ipsa loquitur*, whereby no detailed evidence, much less a trial, is required to establish *ex-facie* negligence on the part of BRPL and Bryn.

47. In the leading case of ***Shyam Sundar & Ors. vs. State of Rajasthan***[30]**,** the Hon'ble Supreme Court has lucidly explained the maxim *res ipsa loquitur* in the following way:

> "*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.*
>
> *10. The maxim is stated in its classic form by Erle, C.J.: [Scott v. London & St. Katherine Docks, (1865) 3 H&C 596, 601]*
>
> > *"... where the thing is shown to be under the management of the defendant or his servants, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of explanation by the defendants, that the accident arose from want of care."*
>
> ..... *The principal function of the maxim is to prevent injustice which would result if a plaintiff were invariably compelled to prove the precise cause of the accident and the defendant responsible for it even when the facts bearing on these matters are at the outset unknown to him and often within the knowledge of the defendant. But though the parties' relative access to evidence is an influential factor, it is not controlling. Thus, the fact that the defendant is as much at a loss to explain the accident or himself died in it, does not preclude an adverse inference against him, if the odds otherwise*

[30] (1974) 1 SCC 690

> *point to his negligence (see John G. Fleming, The Law of Torts, 4th Edn., p. 264). The mere happening of the accident may be more consistent with the negligence on the part of the defendant than with other causes.* ***The maxim is based as commonsense and its purpose is to do justice when the facts bearing on causation and on the care exercised by defendant are at the outset unknown to the plaintiff and are or ought to be within the knowledge of the defendant*** *(see Barkway v. S. Wales Transo [(1950) 1 All ER 392, 399]).*
>
> * * * * *
>
> *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]* ."

(emphasis supplied)

48. In the opinion of this court, the aforesaid position explained by the Hon'ble Supreme Court applies squarely to the present case inasmuch as, by any manner of practical reckoning, it is clear that the accident could not have occurred had Bryn and/or BRPL not been negligent in taking reasonable precautions to avoid it; which gives rise to their strict liability for the injuries sustained by Bharat.

49. To reiterate, whether or not Bharat was provided any safety gear is in any case irrelevant, since that would not absolve Bryn and/or BRPL of their obligation to compensate Bharat, as that obligation is based on

the 'strict liability' principle and therefore arises *de-hors* any negligence on the part of either of the respondents.

50. It is also noticed that though there are vague, passing averments that compensation has already been paid to Bharat and medical aid was also provided to him, the counter affidavits filed do not give any particulars of proof of payment, except an undated declaration/statement allegedly signed by Bharat accepting payment of a small sum of compensation in full-and-final settlement from Bryn and absolving them of any further liability. In the opinion of this court, this declaration, even though signed by Bharat, deserves no credence or value since it smacks of being a document procured by Bryn *precisely for the purpose of absolving itself* of any further claim or liability *vis-à-vis* Bharat, by suborning a hapless and resourceless victim with a small amount of monetary bait, knowing full well that their actual liability would be much more. Such declaration does not inspire any confidence and was *ex-facie* signed under economic duress. It may be noticed that in *Jaipur Golden Gas Victims Association* (supra) the court has held that agreements of this nature to pay paltry sums of compensation in exchange of declaration of no liability are unfair, unreasonable, unconscionable and void.

51. In its counter affidavit, while BRPL has admitted the factum of the accident, it has disclaimed any liability, on the premise that all liability would lie with the contractor Bryn. BRPL has done this

placing reliance *inter-alia* upon clauses 18 and 19 of the BRPL-Bryn contract, which provisions are worded so as to avoid any liability on BRPL's part.

52. It would be relevant at this point to record that so far as the *inter-se* disputes between BRPL and Bryn, or even the apportionment of liability between those two parties is concerned, that would not distract this court from awarding "*just and fair compensation*" to the victim. Merely because there are more than one respondents attempting to foist blame or liability on each other, that would not defeat the just claim of the petitioner's son. In such circumstances in fact, *both respondents* would be held *jointly and severally liable*, giving them liberty to recover the whole or any part of compensation paid, from one another. This was indeed what the court did in *Sattira Devi* (supra) and *Rajeev Singhal* (supra).

53. From the foregoing discussion, this court is persuaded to reach the following inferences:

(a) At the time when the accident occurred on 25.04.2014, Bharat was performing a task assigned to him by Bryn, which entity was at that time engaged as a contractor by BRPL. Without delving into the technical semantics of whether Bharat was an 'employee' of Bryn within the meaning of the Employee's Compensation Act, suffice it

to say that Bharat was performing the task in question for Bryn and at their instance;

(b) Bharat suffered a fall in the course of performing the task assigned to him by Bryn, which has resulted in him being rendered 100% disabled. Today Bharat is unable to perform even the most basic, personal, daily chores himself and is all but 100% dependent on others; and as a result, *though Bharat is living, he is barely alive*;

(c) Again, without delving into the niceties of whether the fault for putting Bharat in this state lies with Bryn and/or BRPL, suffice it to say that on the principle of 'strict liability', both Bryn and BRPL are, *jointly and severally*, liable to compensate Bharat for putting him in his current state;

(d) No factual aspect *that is legally relevant* for the present proceedings, is disputed or requires marshalling of any evidence or material, beyond what is already available on the record of these proceedings;

(e) Technicalities apart, in relation to the objection raised by Bryn and BRPL as to the necessity of having the insurance company as a party-respondent in the present proceedings, it bears mentioning that BRPL's insurer M/s New India Insurance Company Limited was represented in the present proceedings on 04.05.2016 and

25.07.2016, whereby they are evidently aware of the pendency of the present proceedings;

(f) It is also noticed that section 4(2)(a) of the Employee's Compensation Act mandates that apart from the liability to pay compensation, the employer is also under obligation to reimburse all actual medical expenses incurred by an employee for treatment of injuries. Furthermore, section 4-A provides that failure of an employer to pay compensation in a timely manner would attract payment of *both interest and penalty* for the delayed payment of compensation;

(g) Reading the Bryn-BRPL Agreement and section 12 of the Employee's Compensation Act together, it is seen that section 12 *also fixes liability upon the "principal"* for payment of compensation to an injured employee, with a right in the principal to recover the same from the contractor, if work was being carried-out by a contractor. In the present case the principal would therefore be BRPL and the contractor would be Bryn; and

(h) Upon a conspectus of the statutory and precedential landscape as discussed above, this court is well and fully empowered in exercise of its extraordinary powers under Article 226 of the Constitution to award in favour of Bharat and against Bryn and/or BRPL 'just and fair compensation'; and to issue other directions to provide monetary and non-monetary relief, with all its limitations

and restrictions, to enable Bharat to survive the rest of his natural life with a semblance of dignity and self-worth.

54. Given the above circumstances, this court is persuaded to allow the writ petition and to award to Bharat relief in two broad categories:

(i) Monetary relief/compensation/damages;

(ii) Non-monetary relief by way of directions.

Monetary Relief:

55. Taking cue from the principles contained in section 4 of the Employee's Compensation Act, this court assesses the monetary compensation/damages to which Bharat is entitled at Rs.20,00,000/- (Rupees Twenty Lacs Only), considering that had he filed a claim under the Employee's Compensation Act, he would have been entitled to a sum of approximately Rs. 14 lacs *plus* 12% p.a. interest from 2014 onwards *plus* 50% penalty. This sum of Rs. 20,00,000/- (Rupees Twenty Lacs) shall be paid by Bryn and BRPL to Bharat in two equal parts, namely Rs.10,00,000/- (Rupees Ten Lacs Only) each, within 04 (four) weeks from the date of this judgment, by depositing the same into a new account in the name of "Bharat Singh" to be opened at the UCO Bank, Bulandshehar Branch (IFSC Code : UCBA0000332), U.P. *to be operated on his behalf and for his benefit* by his brother Amar Singh s/o Kehar Singh. The opening of this account will be facilitated by the UCO Bank, Delhi High Court Branch, New Delhi under supervision of the learned *Amicus*.

56. It is further directed that in addition to the aforesaid sum of Rs.20,00,000/- (Rupees Twenty Lacs Only) awarded to Bharat, he shall be also entitled to retain the entire balance lying in Savings Bank Account No.15530110109670 and Fixed Deposit Account No. 15530311149460 opened at the UCO Bank, Delhi High Court Branch, New Delhi under directions issued by this court *vidé* order dated 31.03.2016; and the entire proceeds lying in the said savings bank account and fixed deposit account shall be transferred to the new account to be opened at the aforesaid UCO Bank, Bulandshehar Branch, U.P., within 03 (three) days of opening of the said new account. It is made clear that though the earlier account opened at the UCO Bank, Delhi High Court Branch was operated by the petitioner Kehar Singh, considering the petitioner's advancing age, and at the specific request made on behalf of Bharat Singh, the new account to be opened at the UCO Bank, Bulandshehar Branch, U.P. shall be made operable by Bharat Singh's brother Amar Singh s/o Kehar Singh.

Non-monetary Relief:

57. It is further directed that out of the total sum of Rs. 20,00,000/- (Rupees Twenty Lacs Only) awarded as monetary compensation/damages, the petitioner shall open *for the benefit and welfare and in the name of Bharat Singh*, a general/provisions store from a portion of his house in Village : Daulat Nagar, District

Bulandshehar, Uttar Pradesh, which store would be run by the petitioner or by any other responsible member of Bharat's immediate family, for and in Bharat's name, with the stipulation that *Bharat will also be engaged* in running the store to the extent his health and physical state permits. It is made clear that all earnings from the store will be used and applied for Bharat's medical and living expenses and for his welfare and well-being. For the purpose of opening the store, the petitioner shall be entitled to withdraw from the UCO Bank account such sum of money as may be required and necessary, subject to verification by learned *Amicus* as detailed below.

58. For the record, the aforesaid directions for setting-up a store in Bharat's name is being made on the assurance given by counsel appearing on behalf of the State of Uttar Pradesh that no license or permission would be required to run such store from the house where Bharat lives; and with the aim and intent of ensuring proper use and application of the compensation awarded to Bharat, as also for giving Bharat the opportunity of usefully engaging himself in some gainful activity.

59. It is further directed that the aforesaid directions relating to the setting-up a store be complied with, within a period of 04 (four) months from the date of this judgment; and proof of compliance thereof would be placed on the record of these proceedings, with a copy to learned *Amicus*, who may undertake such verification in

relation to the proper application of the money for setting-up the store, as she may consider appropriate at the end of the said period of 04 (four) months.

60. Furthermore, as non-monetary relief to Bharat, the State of Uttar Pradesh is directed to continue to treat Bharat as a person with 100% permanent disability and to continue to provide to him:

(i) Disability pension;

(ii) Lifelong free bus and railway passes;

(iii) Free physiotherapy and occupational therapy, till as long as it is considered necessary in the professional opinion of the concerned doctors; and

(iv) All other forms of relief, assistance, help and aid in accordance with his entitlements, under government schemes, rules and notifications, as may be applicable to him from time-to-time.

61. For abundant clarity, all rights and contentions of Bryn and BRPL but *restricted only* to their *inter-se* rights and liabilities or any claim that one of them may have against the other, in relation to the present matter, are left open.

62. This court would be remiss if it did not place on record its sincere appreciation for the untiring and invaluable assistance rendered by learned *Amicus Curiae* Ms. Prabhsahay Kaur, in this matter.

63. The writ petition stands disposed of in the above terms.

64. Other pending applications, if any, also stand disposed of.

65. There shall be no order as to costs.

ANUP JAIRAM BHAMBHANI, J.

AUGUST 25, 2021
uj/Ne/*ds*