IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF JANUARY, 2025

PRESENT

THE HON'BLE MR JUSTICE V KAMESWAR RAO

AND

THE HON'BLE MR JUSTICE C M JOSHI

WRIT APPEAL NO.861 OF 2022(GM-KEB)

c/w

WRIT APPEAL NO.865 OF 2022(GM-KEB) &

WRIT APPEAL NO.868 OF 2022(GM-KEB)

IN WA.NO.861/2022:

BETWEEN:

KARNATAKA POWER TRANSMISSION
CORPORATION LIMITED (KPTCL),
K.G. ROAD, BENGALURU-560 001,
REPRESENTED BY ITS
MANAGAING DIRECTOR/
DIRECTOR (ADMN. & HR.).

…APPELLANT

(BY SRI. SRIRANGA.S, SENIOR COUNSEL FOR
SRI. PRADYUMNA.K.V, MS./SMT. ASHWINI,
SRI. N.RAVINDRA AND SRI. H.V.DEVARAJU, ADVS.)

AND:

1. MRS. REKHA,
W/O LATE. N.SUBRAMANYA,
PRESENTLY AGED ABOUT 36 YEARS,
RESIDING AT NAGANAHALLI VILLAGE,
UCHANGI POST, YESALUR HOBLI,
SAKALESHPURA TALUK,
HASSAN DISTRICT-573 137.

2. THE CHAMUDESHWARI ELECTRIC
SUPPLY CORPORATION LIMITED (CESC),

NO.29, KAVERI GRAMMENA BANK ROAD,
VIJAYANAGAR 2ND STAGE,
HINKAL, MYSURU-570 017,
REPRESENTED BY ITS
MANAGING DIRECTOR.

3. ELECTRICAL INSPECTOR,
OFFICE OF THE ELECTRICAL INSPECTOR,
SAGARA NILAYA, 1ST FLOOR,
SRI. RAGHAVENDRASWAMY TEMPLE ROAD,
1ST CROSS, RAVINDRA NAGAR,
HASSAN-573 201.

4. THE STATE OF KARNATAKA,
DEPARTMENT OF ENERGY,
VIKASA SOUDHA,
DR. AMBEDKAR VEEDHI,
BENGALURU-560 001,
REPRESENTED BY ITS
ADDITIONAL CHIEF SECRETARY.

…RESPONDENTS

(BY SRI. SHRIDHAR PRABHU, ADVOCATE FOR R1,
MS./SMT. RAKSHITHA .D.J, ADVOCATE FOR R2,
SRI. BHOJEGOUDA T.KOLLER, AGA FOR R4,
RESPONDENT NO.3 SERVED)

THIS WRIT APPEAL IS FILED U/S 4 OF THE KARNATAKA HIGH COURT ACT, 1961 PRAYING TO SET ASIDE THE ORDER DATED 04.08.2022 PASSED BY THE LEARNED SINGLE JUDGE IN WP.NO.1383/2020 AND CONSEQUENTLY DISMISS THE WRIT PETITION.

IN WA.NO.865/2022:

BETWEEN:

KARNATAKA POWER TRANSMISSION
CORPORATION LIMITED,
A COMPANY REGISTERED UNDER THE
PROVISIONS OF THE COMPANIES ACT, 1956,
HAVING ITS CORPORATE OFFICE AT
CAUVERY BHAVAN, K.G. ROAD,
BENGALURU-560 009,

NOW REPRESENTED BY ITS
DIRECTOR (ADMN. & HR.),
MAHESH KARJAGI.

…APPELLANT

(BY SRI. SRIRANGA.S, SENIOR COUNSEL FOR
SRI. PRADYUMNA.K.V, MS./SMT. ASHWINI,
SRI. N.RAVINDRA AND
SMT. SUMANA NAGANAND, ADVS.)

AND:

1. MUIZZ AHMAD SHARIFF,
S/O MAQSOOD AHMED SHARIFF,
AGED ABOUT 10 YEARS,
RESIDING AT NO.17, 1ST FLOOR,
2ND MAIN, GURAPPANAPALYA,
BANNERGHATTA ROAD,
BENGALURU-560 029,
REPRESENTED BY HIS FATHER
MAQSOOD AHMED SHARIFF.

2. STATE OF KARNATAKA,
DEPARTMENT OF ENERGY,
VIKASA SOUDHA,
AMBEDKAR VEEDHI,
BENGALURU-560 001,
REPRESENTED BY ITS PRINCIPAL SECRETARY.

3. KARNATAKA STATE COMMISSION
FOR PROTECTION OF CHILD RIGHTS,
4TH FLOOR, KRISHI BHAVAN,
NRUPATHUNGA ROAD, AMBEDKAR VEEDHI,
SAMPANGIRAMA NAGAR,
BENGALURU-560 002.

…RESPONDENTS

(BY MS./SMT. MAITREYI KRISHNAN, ADVOCATE FOR R1,
SRI. BHOJEGOUDA T.KOLLER, AGA FOR R2,
V/O.DTD.12.09.2022, NOTICE TO R3 IS DISPENSED WITH)

THIS WRIT APPEAL IS FILED U/S 4 OF THE KARNATAKA HIGH COURT ACT, 1961 PRAYING TO SET ASIDE THE ORDER DATED 04.08.2022 PASSED BY THE LEARNED SINGLE JUDGE

IN WP.NO.6087/2019(GM-KEB) AND CONSEQUENTLY DISMISS THE WRIT PETITION.

IN WA.NO.868/2022:

BETWEEN:

BANGALORE ELECTRICITY SUPPLY
COMPANY LIMITED (BESCOM),
REPRESENTED BY MANAGAING DIRECTOR/
GENERAL MANAGER(ELE),
QUALITY, STANDARD AND SAFETY,
CORPORATE OFFICE, BESCOM,
K.R. CIRCLE, BENGALURU-560 002.

…APPELLANT

(BY SRI. SRIRANGA.S, SENIOR COUNSEL FOR
SRI. PRADYUMNA.K.V, MS./SMT. ASHWINI,
SRI. N.RAVINDRA AND SMT. SUMANA NAGANAND, ADVS.)

AND:

1. KUMARI. CHANDANA .K,
D/O. SRI. K.S. KRISHNAMURTHY,
PRESENTLY AGED ABOUT 19 YEARS,
RESIDING AT NO.192/27,
10TH CROSS, LOTTEGOLLAHALLI,
DEVI NAGAR, BENGALURU-560 094.

2. PRINCIPAL SECRETARY,
DEPARTMENT OF ENERGY,
VIKASA SOUDHA,
BENGALURU-560 001.

3. KARNATAKA STATE COMMISSION
FOR PROTECTION OF CHILD RIGHTS,
4TH FLOOR, KRISHI BHAVAN,
NRUPATHUNGA ROAD, AMBEDKAR
VEEDHI, SAMPANGI RAMA NAGAR,
BENGALURU-560 002.

…RESPONDENTS

(BY MS./SMT. MAITREYI KRISHNAN, ADVOCATE FOR R1,
SRI. BHOJEGOUDA T.KOLLER, AGA FOR R2,
NOTICE TO R3 IS DISPENSED WITH)

THIS WRIT APPEAL IS FILED U/S 4 OF THE KARNATAKA HIGH COURT ACT, 1961 PRAYING TO SET ASIDE THE ORDER DATED 04.08.2022 PASSED BY THE SINGLE JUDGE IN WP.NO.53302/2018 (GM-KEB)(CONNECTED WP.NO.1383/2020 AND WP.NO.6087/2019) AND CONSEQUENTLY DISMISS THE WRIT PETITION.

THESE WRIT APPEALS HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 24.07.2024, COMING ON FOR PRONOUNCEMENT THIS DAY, ***V KAMESWAR RAO J.,*** DELIVERED THE FOLLOWING:

CORAM: THE HON'BLE MR JUSTICE V KAMESWAR RAO
AND
THE HON'BLE MR JUSTICE C M JOSHI

CAV JUDGMENT

(PER: THE HON'BLE MR JUSTICE V KAMESWAR RAO)

These appeals have been filed by the appellants viz., Karnataka Power Transmission Corporation Limited (KPTCL) and Bangalore Electricity Supply Company Limited (BESCOM), challenging the common order dated 04.08.2022 in WPs No.1383/2020, 53302/2018 and 6087/2019 on a common prayer made by the respondent No.1 herein in all the appeals for grant of compensation for having suffered burn injuries/death because of electrocution. It may be stated here that, the compensation has been sought for injuries in WA No.865/2022 in respect of a child aged about

5 years and 8 months as on 16.09.2017; in respect of a student in WA No.861/2022 studying in class IX as on 19.10.2017 and death of husband of respondent No.1 in WA No.868/2022. The learned Single Judge has allowed all three petitions by granting compensation to respondent No.1 in these appeals in the following manner:

Writ Petition No.	**Compensation granted**
WP No.1383/2020	Rs.25,52,500/-
WP No.53302/2018	Rs.49,26,000/- (Rs.51,76,000/- - Rs.2,50,000/-)
WP No.6087/2019	Rs.44,32,050/- (Rs.50,82,050/- - Rs.6,50,000/-)

2. We have heard Sri. Sriranga.S, learned Senior Counsel for the appellants; Sri. Shridhar Prabhu, learned counsel for respondent No.1 and Ms./Smt. Rakshitha.D.J, learned counsel for respondent No.2 in WA No.861/2022; Ms./Smt. Maitreyi Krishnan, learned counsel for respondent No.1 in WAs No.865/2022 and 868/2022 and Sri. Bhojegouda T.Koller, learned Additional Government Advocate for State.

3. Suffice to state, the facts which arise for consideration in each of the appeals shall be narrated while

referring to the submissions made by the counsels during the hearing.

Submissions of Sri. Sriranga for the appellant in WA No.861/2022:

4. The Submission of Sri. Sriranga was that, the writ petition was not maintainable as respondent No.1 had not availed the alternate remedy available to him in law, as respondent No.1 had to approach the jurisdictional civil court to claim damages. In fact, the Fatal Accidents Act, 1855 provides for the legal representatives of the deceased to file a suit seeking compensation. As a statutory remedy was available, respondent No.1 ought to have approached the Civil Court. In matters such as awarding of compensation, the victim will have to prove by way of evidence as to how he is entitled to the amounts claimed as compensation and the same can only be led before a competent Civil Court and not before the High Court in writ jurisdiction. In fact, respondent No.1 has categorically stated in the writ petition that she would approach the Civil Court under the Fatal Accidents Act, 1855 to claim compensation beyond the solatium amount. In view of this statement made by

respondent No.1 in the writ petition, the learned Single Judge could only have issued a direction to pay the solatium amount to respondent No.1 and thereafter should have relegated respondent No.1 to avail the statutory remedy available in law.

4.1. According to him, the appellant had also contended that the writ petition was not maintainable against it. The electric line in question in the present proceedings is a 11 KV feeder line. The maintenance of 11 KV line does not come within the purview of the appellant as the same was being maintained by respondent No.2. The learned Single Judge has failed to consider this aspect and has directed only the appellant to pay compensation, despite the fact that it was not responsible for maintaining the 11 KV feeder line. When the electric line in question does not belong to the appellant, the question of directing the appellant to pay compensation does not arise.

4.2. He stated, in the absence of any evidence and merely based on bald statements made by respondent No.1, the learned Single Judge could not have awarded a huge amount of Rs.25,52,500/- as compensation. The learned

Single Judge has arbitrarily granted compensation in favour of respondent No.1 without considering the grounds raised by the appellant. Reliance in this regard is placed on the following judgments:

i. Judgments of the Supreme Court in ***Chairman, Grid Corpn. of Orissa Ltd. (Gridco) -Vs.- Sukamani Das [(1999) 7 SCC 298]*** and ***SDO, Grid Corpn. of Orissa Ltd. -Vs.- Timudu Oram [(2005) 6 SCC 156]***;

ii. Judgments of the Delhi High Court in ***Satish Kumar -Vs.- BSES Yamuna Power Limited and another [(2018) 247 DLT 542]***, ***Dharampal -Vs.- Delhi Transport Corporation [(2008) 101 DRJ 197]*** and ***Abdul Haque and others -Vs.- BSES Yamuna Power Limited and others [(2007) 97 DRJ 415]***;

iii. Judgments of this Court in ***P. Malappa -Vs.- BESCOM and others [WPs No.54502-54506/2015****, decided on 16.10.2017****]*** and ***Managing Director, BESCOM and others -Vs.- Basavaraj [WA No.4/2020****, decided on 09.01.2020****].***

4.3. He stated, the heavy reliance placed by the learned Single Judge on the judgment in ***Madhya Pradesh Electricity Board -Vs.- Shail Kumari and Others [AIR 2002 SC 551]*** and the order passed in ***The Managing Director, HESCOM -Vs.- Nagappa Manneppa Naik [WP No.101244/2016 and connected matters****, decided on 03.09.2021****]*** to fasten the liability on the appellant is erroneous as he has failed to note that both judgments were not applicable to the facts of the present case as in those cases, there was prior adjudication of negligence. In ***Shail Kumari*** (supra), a suit was filed in which there was a specific finding of negligence recorded by the Trial Court against the Board. The Trial Court, after coming to the said conclusion, awarded compensation. Similarly, in ***Nagappa Manneppa Naik*** (supra), there was prior adjudication by the Permanent Lok Adalat on the aspect of negligence.

4.4. He stated, the learned Single Judge has failed to note several co-ordinate bench decisions on the issue of maintainability of writ petition. This Court in the case of ***P. Malappa*** (supra) has considered the question of maintainability of writ petitions seeking compensation in

cases of death or injury caused due to electrocution and has held that writ petitions are not maintainable and that the Petitioners should approach Civil Courts by way of civil suits, where all questions of facts can be established with relevant evidence. This Court has also observed in earlier judgments that the appropriate remedy in cases of death of the victim would be to approach the Civil Court, as per the provisions of the Fatal Accidents Act, 1855. The judgment in the case of ***P. Malappa*** (supra) has been followed by this Court in the following judgments:

i. ***Smt Irudaya Mary and Others -Vs.- State of Karnataka and Others [WP Nos.28260-28264/2017,*** *decided on 05.02.2018****]***;

ii. ***Smt. Lakshmidevamma -Vs.- Managing Director, BESCOM [WP No.52510/2014,*** *decided on 11.12.2017****]***;

iii. ***Smt. Annapurna and Others -Vs.- Managing Director, CESCOM and Others [WP No. 47962/2014****, decided on 08.01.2018****]***;

iv. ***Smt. Bhagyamma and Others -Vs.- Managing Director, BESCOM and Others [WP No. 54686/2014****, decided on 08.01.2018****]***;

v. ***Sri. H.N.Lingappa and Others -Vs.- Managing Director, KPTCL and Others [WP No. 36617/2015****, decided on 07.11.2017****].***

4.5. The learned Single Judge ought to have noted that the aforementioned judgments have not been reversed by

the Hon'ble Supreme Court or by this Court. In view of the same, the writ petition filed by respondent No.1 ought not to have been entertained by the learned Single Judge.

Not impleading the owner of the coffee plantation in the present proceedings:

5. He stated, it is not in dispute that the electrocution accident occurred in the coffee plantation owned by Sri. U.S.Lokesh. The Electrical Inspector, in her report, has given a finding that the accident would not have occurred if the owner had given S.N. Subrahmanya a wooden ladder or an insulated ladder. Further, respondent No.1 had lodged a police complaint against the owner of the coffee plantation on 22.02.2018 and after investigation, the jurisdictional police filed a charge sheet against him. Therefore, it is not in dispute that the owner of the coffee plantation was negligent in his actions.

5.1. As the owner of the coffee plantation, U.S.Lokesh, was not arrayed as a party in the writ petition, the appellant had filed an application under Order I Rule 10 of the Code of Civil Procedure, 1908 to implead him as a Respondent in the writ petition. The appellant had contended that U.S.Lokesh

was a necessary party to the petition and that the writ petition in the present form was bad for non-joinder of necessary parties. The learned Single Judge did not pass any order on the said application during the pendency of the writ petition and kept the application pending till final disposal. While passing the final order, the learned Single Judge has rejected the said application on the ground that scope of the proceedings cannot be enlarged and that the appellant will have to independently proceed against the owner of the coffee plantation.

5.2. According to Sri. Sriranga, the order of the learned Single Judge refusing to apportion the liability is contrary to earlier judgments of this Court. This Court, in the judgment of ***Nagappa Manneppa Naik*** (supra), has held that the liability of the owner of the house can be proportionately apportioned and deducted and that compensation can be awarded after making appropriate deduction. The learned Single Judge, having recognized the liability of the joint tort-feasor, ought to have passed orders apportioning the liability in the present proceedings itself. A further direction could have been issued that such amount

could be recovered by executing the order as a decree against the erring third parties.

Report of the Electrical Inspector:

6. He stated, the findings of the learned Single Judge are contrary to the report of the Electrical Inspector under Section 161 of the Electricity Act, 2003. The Electrical Inspector in his report dated 31.05.2018 (Annexure-E) has held that the accident occurred due to the negligence of the husband of No.1 in touching the electric line using an aluminium ladder. The Electrical Inspector has opined that the accident could have been avoided if an insulated ladder or a wooden ladder was used while working in the coffee plantation. The Electrical Inspector has held that there was violation of Regulation 64 of the Central Electricity Authority (Measures relating to Safety and Electric Supply) Regulations, 2010. Regulation 64 states that no rods or other materials shall be taken below or in the vicinity of bare overhead lines and that rods, pipes etc. shall not be brought within the flash over distance of bare lines. However, the husband of respondent No.1 brought the aluminium ladder

in contact with the electric line in violation of the said Regulation.

No negligence on the part of the appellant:

7. He stated, the learned Single Judge has failed to note that there was absolutely no negligence on the part of the appellant. The accident did not occur due to any pilferage or leakage of electricity and no material was placed to demonstrate that the appellant was negligent. The accident occurred due to the negligence of the land owner and Sri. S.N.Subrahmanya, while working in the coffee plantation. The electric line was not at a low height. It is an admitted fact that S.N.Subrahmanya was using an aluminium ladder of 20 feet. Therefore, the husband of respondent No.1 came in contact with the electric line while negligently carrying the aluminium ladder from one plant to another.

7.1. He stated, the observation made by the Electrical Inspector that the break fixed to the 11 KV line was not working properly, is erroneous. The appellant had produced a report dated 25.09.2017 submitted by the Assistant Executive Engineer (Ele.) which clearly states that the

condition of the backup relays was good, and had contended that there was no violation on the part of the appellant in maintaining the sub-station. However, these aspects have been ignored by the learned Single Judge.

7.2. He stated, the appellant could not have filed an appeal under Section 162 of the Electricity Act, 2003 to challenge the report of the Electrical Inspector as it was not a part of the exercise at all. The appellant was not present when the Electrical Inspector visited the spot of the accident. The inspection was conducted in the presence of officials belonging to Respondent No.2. Moreover, even a copy of the report of the Electrical Inspector was not marked to the appellant. Therefore, the appellant was not even aware of the contents of the said report and hence, the same is not binding on the appellant. Though these contentions were raised before the learned Single Judge, the same have not been considered in the right perspective.

7.3. He stated, it is not in dispute that the electric line which was passing over the coffee plantation was a 11 KV feeder line. It was the specific contention of the appellant that it was vested with the responsibility of transmitting

power all over the State of Karnataka and construction and maintenance of sub-stations and lines of 66 KV and above. The appellant had contended that the maintenance of 11 KV feeder line does not come within the purview of the appellant and that the same was being maintained by respondent No.2. The learned Single Judge has failed to consider this aspect and has directed only the appellant to pay compensation, despite the fact that it was not responsible for maintaining the 11 KV feeder line.

The principle of absolute liability:

8. According to Sri. Sriranga, the conclusion of the learned Single Judge that there is absolute liability as regards the activity of the appellant and that the appellant is liable to pay compensation is erroneous. Even if the learned Single Judge was of the opinion that the appellant is liable to pay compensation, the learned Single Judge could only have applied the principle of strict liability, subject to recognized exceptions such as act of God, petitioner's own default and interference of third party. In the case on hand, these exceptions are attracted. The negligence on part of the owner of the coffee plantation is also admitted by

respondent No.1. In fact, there are proceedings initiated against the owner and charge sheet has been filed. Therefore, the principle of absolute liability could not have been made applicable to the present case.

8.1. He stated, the question relating to the liability of a person for an accident which occurred in his premises was considered in the celebrated case of ***Rylands -Vs.- Fletcher [(1868) LR 3 HL 330]***. In the said judgment, it was held that if a person brings to his land and keeps something which is likely to cause harm and such thing escapes and causes harm to others, such person is liable to compensate for the damage caused. The principle, also known as the principle of Strict Liability, has been followed in a catena of decisions over the past century. The said judgment provides exceptions to the principle of Strict Liability. These exceptions envisaged in ***Rylands***' case (supra) have also been recognized by the Hon'ble Supreme Court in ***Vohra Sadikbhai Rajakbhai and Others -Vs.- State of Gujarat and Others [(2016) 12 SCC 1]*** and ***M.C. Mehta and another -Vs.- Union of India and others [(1987) 1 SCC 395]***.

8.2. Sri. Sriranga stated, the judgment considered by the learned Single Judge ***Shail Kumari*** (supra) has no applicability as in that case, the accident occurred due to the snapping of electrical wires and leakage of electricity and therefore, M.P. Electricity Board was held liable to pay compensation. In the present case, there was no leakage of electricity as such. It was S.N.Subrahmanya who touched the electric line using a tall aluminium ladder.

8.3. He also stated, the learned Single Judge has relied upon the judgment of the Hon'ble Supreme Court in ***State of Himachal Pradesh and Others -Vs.- Naval Kumar [(2017) 3 SCC 115]*** while awarding compensation to respondent No.1. However, the said judgment was passed based on a completely different set of facts and the said judgment could not have been made squarely applicable to the present case, while awarding compensation under different heads. It is settled law that a judgment is a precedent for what it decides and even a small change in factual matrix may lead to different conclusions. In this regard, he placed reliance upon the judgment of the Hon'ble

Supreme Court in ***Padma Sundara Rao -Vs.- State of Tamil Nadu and Others [(2002) 3 SCC 533]***.

8.4. He also relied upon the judgment of the Supreme Court in ***Rajkot Municipal Corporation -Vs.- Manjulben Jayantilal Nakum and Others [(1997) 9 SCC 552]*** to contend that the Supreme Court has laid down various aspects which the Courts should consider while deciding a claim for compensation in relation to negligence by a public authority. He stated, a perusal of the said judgment makes it amply clear that the Court should consider aspects like scope of duty of care of the authority, whether negligence is attracted to the case, public policy etc. The said duty and negligence is to be determined in light of statutory provisions. In the present case, the learned Single Judge ought to have examined the fact as to whether there was any negligence at all on the part of the appellant. As stated supra, the appellant was not responsible for maintaining the 11 KV feeder line. The negligence has to be attributed to the owner of the coffee plantation, who negligently gave an aluminium ladder to pluck pepper. The learned Single Judge

has virtually let the owner of the coffee plantation go scot-free, which is impermissible.

No credible material available to apply the principles governing MVC proceedings and no basis for the compensation determined:

9. Even otherwise, the huge compensation of Rs.25,52,500/- awarded by the learned Single Judge is without basis, with absolutely no material to substantiate the sums awarded. The learned Single Judge has awarded compensation towards future prospects and under other heads without any evidence. The estimates adopted by the learned Single Judge are purely speculative in nature and not based on any evidence. Decisions not based on credible evidence are unsustainable and liable to be set aside.

9.1. According to him, seen from any angle, the impugned order passed by the learned Single Judge is unsustainable in law and on facts. The findings of the learned Single Judge are erroneous and require interference at the hands of this Hon'ble Court.

Submissions of Sri. Sriranga in WA No.865/2022:

10. Sri. Sriranga has made similar submissions as made by him in WA No.861/2022 on the maintainability of

writ petition; on non-impleadment of the owner; no negligence on the part of the appellant and on the principle of absolute liability as noted in paragraphs No.4 to 4.5; 5 to 5.2; 7 to 9.1 above.

Forum Shopping:

11. It was also his contention that even if writ petition is held to be maintainable, the purpose of entertaining the same would be to provide immediate financial assistance to the victim or his/her family. However, in the present case, respondent No.1 was not entitled to any interim compensation also as he had already availed the same from various quarters including the appellant. The learned Single Judge failed to observe that respondent No.1 had indulged in forum shopping with the intention of availing maximum compensation. Respondent No.1 had approached the Karnataka State Commission for Protection of Child Rights with regard to the very same incident. The Commission had passed an order dated 12.04.2018 (Annexure-T) granting an ad hoc compensation of Rs.40 lakh. The said order was sought to be enforced. At this juncture, the appellant challenged the said order before this Court in

WP No.26329/2019, which was disposed of vide order dated 30.08.2019 (Annexure-R5). This Court had held that the order of the Commission was recommendatory in nature and it should be considered by the State Government. Pursuant to the same, the Additional Chief Secretary, Government of Karnataka vide order dated 09.03.2020 categorically held that the appellant is not responsible for the electrocution incident. However, the Additional Chief Secretary took a humanitarian view and directed the appellant to pay advance solatium of Rs.5,00,000/- to respondent No.1 and recover the same from the building owner along with interest. Pursuant to the same, respondent No.1 accepted the compensation amount of Rs.5,00,000/-.

11.1. In view of the fact that the order passed by this Court as well as the Additional Chief Secretary had attained finality, the learned Single Judge could not have permitted respondent No.1 to agitate the same issues again in the present petition. Respondent No.1 was bound by the outcome of the said proceedings, unless it was altered in accordance with law, and therefore, he was precluded from invoking the extraordinary writ jurisdiction of this Court.

In this regard, Sri. Sriranga has placed reliance on the following judgments:

i. ***State of Punjab and others -Vs.- Gurdev Singh [(1991) 4 SCC 1]***;

ii. ***Gorle Gouri Naidu (Minor) and another -Vs.- Thanarathu Bodemma and others [AIR 1997 SC 808]***.

Contravention of Rule 80 and Rule 82 of the Indian Electricity Rules, 1956 and not impleading the land owner and BBMP in the present proceedings:

12. Sri. Sriranga stated, Rule 80 of the Indian Electricity Rules, 1956 prescribes the distance which has to be maintained between a high/extra high voltage line and a building. In the case of 66 KV line, a minimum distance of 4 meters is required to be maintained between the transmission line and the building. Rule 82 provides that if a person intends to construct or alter a building under an existing transmission line, which would be in contravention of Rule 80, then such a builder is required to give notice of the contravention to the appellant before the construction work is commenced. These Rules have been amended by the Central Electricity Authority (Measures relating to Safety and

Electric Supply) Regulations, 2010 and the Central Electricity Authority (Measures relating to Safety and Electric Supply) Regulations, 2023. It is to be noted that despite these amendments, the distance that is required to be maintained from the high-voltage line has remained the same.

12.1. According to Sri. Sriranga, Rule 80 and Rule 82 make it abundantly clear that the onus is on the person who constructs the building to maintain the required distance from the high-tension wire. In case of any contravention to the said rule, the person is also duty bound to inform the appellant regarding the contravention. In the present case, the owner of the building, Abdul Rofe, has maintained a distance of only 2.75 metres as against the required 4 metres. Apart from the said violation, Abdul Rofe also failed to intimate the appellant regarding the violation.

12.2. He also stated, the original owner of the building, i.e., the father of Abul Rofe, Mohammed Ziauddin, had given an undertaking on 19.04.2002 (Annexure-P) that if any accident occurs due to the overhead line of 66 KV, he will be solely and wholly responsible for the accident. He submitted that Abdul Rofe did not inform the appellant regarding the

contravention to the Rules. The appellant had issued notices dated 20.11.2011 and 06.03.2016 (Annexure-Q and Annexure-R) informing the owner that the distance between the transmission line and the building is not in accordance with the Rules, and if any damage is caused to property or life due to the same, the owner shall be solely responsible. Therefore, the appellant had acted on its own to prevent such an incident. However, the incident involving respondent No.1 took place due to the shortcomings on behalf of the building owner.

12.3. He also stated, while approving the sanction plan for the building, it was the responsibility of the municipal body i.e., Bruhat Bengaluru Mahanagara Palike (BBMP) to ensure that there were no violations. However, the building plan has been sanctioned in violation of the Rules. Therefore, the action of BBMP in approving the sanction plan was clearly in violation of Rule 80 and 82 of the Indian Electricity Rules, 1956. Therefore, the compensation, if any, to be paid to respondent No.1 had to be fastened on the building owner as well as BBMP proportionately.

12.4. It was stated, Abdul Rofe and BBMP were not arrayed as parties in the writ petition. The appellant had filed an application under Order I Rule 10 of the Code of Civil Procedure, 1908 to implead the said parties in the writ petition. The appellant had contended that Abdul Rofe and BBMP were necessary parties to the petition and that the writ petition in the present form was bad for non-joinder of necessary parties. The learned Single Judge did not pass any order on the said application during the pendency of the writ petition and kept the application pending till final disposal. While passing the final order, the learned Single Judge has rejected the said application on the ground that scope of the proceedings cannot be enlarged and that the appellant will have to independently proceed against the building owner and authorities. The learned Single Judge has arrived at this conclusion by holding that the joint tort-feasors are private entities. This finding is erroneous inasmuch as BBMP is also a body of the State just like the appellant.

12.5. He stated, the order of the learned Single Judge refusing to apportion the liability is contrary to earlier judgments of this Court. This Court, in the case of ***Nagappa***

Manneppa Naik (supra), has held that the liability of the owner of the house can be proportionately apportioned and deducted and that compensation can be awarded after making appropriate deduction. The Delhi High Court has also recognized the principle of apportionment of liability in ***Rajeev Singhal and Another -Vs.- MCD (East Delhi Municipal Corporation) and Another [(2018) 172 DRJ 373]***. The learned Single Judge, having recognized the liability of the joint tort-feasors, ought to have passed orders apportioning the liability in the present proceedings itself. A further direction could have been issued that such amount could be recovered by executing the order as a decree against the erring third parties.

Occupancy Certificate not required for supply of electricity:

13. Sri. Sriranga stated, the learned Single Judge's finding that the appellant ought to have ensured that unauthorized buildings are demolished is contrary to Regulations. The Conditions of Supply Regulations do not require an Occupancy Certificate to be issued by the respective municipal bodies for regulating electricity supply in the State. This Court in ***Bruhat Bengaluru Mahanagara***

Palike -Vs.- BESCOM [WP No.47730/2016*, decided on 05.09.2017****]***, has held that insistence upon the Individual flat owners to produce Occupancy Certificate as a pre-condition for obtaining power connection would be *per se* illegal. Further, the Karnataka Electricity Regulatory Commission (KERC) has formulated draft Conditions of Supply of Electricity of Distribution Licensees (Tenth Amendment) in March, 2022, which proposes doing away with Occupancy Certificate for residential and commercial buildings to obtain power supply.

No negligence on the part of the appellant:

14. He stated, the learned Single Judge has failed to note that there was absolutely no negligence on the part of the appellant. The accident did not occur due to any pilferage or leakage of electricity and no material was placed to demonstrate that the appellant was negligent. The accident occurred due to the negligence of the land owner and BBMP. The height of respondent No.1 as on the date of the accident was 3.5 feet and the electrical wire was at a distance of 9 feet. Therefore, respondent No.1 could not have come in contact with the transmission line on his own

accord and he may have used some additional paraphernalia to come in contact with the transmission line.

14.1. According to him, the learned Single Judge has failed to note that even under the statutory framework, the appellant could not have taken any action against the building which was constructed in contravention of the Rules. The learned Single Judge has relied on Section 68(5) of the Electricity Act, which gives powers to the appellant to cause the structure to be removed if the same interrupts or interferes with the conveyance or transmission of electricity or the accessibility of any works. However, the learned Single Judge ought to have noted that in the present case, though the building was constructed by flouting the Rules, the building was not causing any interruption or interference with the conveyance or transmission of electricity or the accessibility of any works. Therefore, there was no occasion for the appellant to make an application for removal of the building.

14.2. He stated, even under Section 163(1) of the Electricity Act, the appellant has the power to enter the premises and remove fittings or other apparatus only for the

limited purposes mentioned therein i.e., inspecting, testing, repairing or altering the electric supply-lines, meters, fittings, works and apparatus; for ascertaining the amount of electricity used and for removing a line where supply of electricity is no longer required. As the present case did not come under the aforesaid limited purposes, the appellant could not have entered the premises of the unauthorised building. These aspects have been ignored by the learned Single Judge.

The principle of absolute liability:

15. He stated, the learned Single Judge has held that there is absolute liability as regards the activity of the appellant and that the appellant is liable to pay compensation. The learned Single Judge erred in applying the principle of absolute liability to the facts of the present case. Even if the learned Single Judge was of the opinion that the appellant is liable to pay compensation, the learned Single Judge could only have applied the principle of strict liability, subject to recognized exceptions such as act of God, Plaintiff's own default and interference of third party. In the case on hand, these exceptions are attracted. The

negligence on part of the owner of the building was also admitted by respondent No.1. In fact, there are proceedings initiated against the land owner on the basis of allegations of negligence. Even the BBMP was clearly negligent in its actions. Therefore, the principle of absolute liability could not have been made applicable to the present case.

15.1. In this appeal also, he relied on the celebrated case of ***Rylands -Vs.- Fletcher*** (supra).

15.2. He stated, in the judgments considered by the learned Single Judge i.e., ***Shail Kumari*** (supra) and ***Nagappa Manneppa Naik*** (supra), though the defence of 'Act of Stranger' has been rejected, these cases did not consider the aspect of contravention of Rule 80 and Rule 82 of the Indian Electricity Rules, 1956. Even in ***Shail Kumari*** (supra), which the learned Single Judge has relied upon, the accident occurred due to the snapping of electrical wires and leakage of electricity and therefore, M.P. Electricity Board was held liable to pay compensation. In the present case, there was no leakage of electricity as such.

15.3. In this appeal also, he stated, a judgment is a precedent for what it decides and even a small change in factual matrix may lead to different conclusions. In this regard, reliance is placed upon the Judgment of the Hon'ble Supreme Court in the case of ***Padma Sundara Rao*** (supra).

15.4. He also relied on the judgment of the Supreme Court in ***Manjulben Jayantilal Nakum*** (supra), wherein the Supreme Court has laid down various aspects which the Courts should consider while deciding a claim for compensation in relation to negligence by a public authority. A perusal of the said judgment makes it amply clear that the Court should consider aspects like scope of duty of care of the authority, whether negligence is attracted to the case, public policy etc., and the said duty and negligence is to be determined in light of the statutory provisions. In the present case, the learned Single Judge ought to have examined the fact as to whether there was any negligence at all on the part of the appellant. As stated supra, the appellant had taken necessary care to prevent any accident by issuing notice to the building owner on two occasions for contravention of statutory rules. In response, the building

owner had signed an indemnity bond categorically stating that he alone shall be responsible for any accident which occurs in the premises. The negligence has to be attributed to the building owner, who constructed the building in contravention of Rule 80 and 82, and the BBMP which permitted construction of the building in violation of the aforementioned Rules. The learned Single Judge has virtually let the building owner and BBMP go scot-free, which is impermissible.

No credible material available to apply the principles governing MVC proceedings and no basis for the compensation determined:

16. He stated, even otherwise, the huge compensation of Rs.44,32,050/- awarded by the learned Single Judge is without basis, with absolutely no material to substantiate the sums awarded. The compensation granted by the learned Single Judge is in addition to the compensation of Rs.6,50,000/- already received by respondent No.1. Regarding future medical expenses, the learned Single Judge has granted the entire amount claimed by respondent No.1 i.e., Rs.10,06,050/- even though the same was only an estimate issued by a private hospital.

16.1. He stated, there is no disability certificate available in the proceedings before the learned Single Judge or in the present proceedings. Further, there is no statement of a doctor or a credible expert in the present proceedings. The estimates adopted by the learned Single Judge are purely speculative in nature and not based on any evidence. Decisions not based on credible evidence are unsustainable and liable to be set aside.

16.2. According to him, seen from any angle, the impugned order passed by the learned Single Judge is unsustainable in law and on facts. The findings of the learned Single Judge are erroneous and require interference at the hands of this Court.

Submissions of the learned counsel for the appellant in WA No.868/2022:

17. In this appeal also Sri. Sriranga has stated, the writ petition was not maintainable as respondent No.1 had not availed the alternate remedy available to her in law. Respondent No.1 had to approach the jurisdictional civil court to claim damages. In matters such as awarding of compensation, the victim will have to prove by way of

evidence as to how he is entitled to the amounts claimed as compensation and the same can only be led before a competent Civil Court and not before the High Court in writ jurisdiction. In the absence of any evidence and merely based on bald statements made by respondent No.1, the learned Single Judge could not have awarded a huge amount of Rs.51,76,000/- as compensation. The learned Single Judge has arbitrarily granted compensation in favour of respondent No.1 without considering the grounds raised by the appellant. As respondent No.1 had failed to approach the Civil Court to claim damages, the learned Single Judge, at best, could have ordered for payment of immediate interim compensation and ought to have relegated respondent No.1 to avail the alternate remedy available in law. Reliance was placed by him on the judgments, referred by him on maintainability which we noted above.

Forum Shopping:

18. It was the contention Sri. Sriranga that even if writ petition is held to be maintainable, the purpose of entertaining the same would be to provide immediate financial assistance to the victim or his/her family. However,

in the present case, respondent No.1 was not entitled to any interim compensation also as she had already availed the same from various quarters including the appellant. The learned Single Judge failed to observe that respondent No.1 had indulged in forum shopping with the intention of availing maximum compensation. Respondent No.1 had approached the Karnataka State Commission for Protection of Child Rights with regard to the very same incident. The Commission had passed an order dated 27.03.2018 (Annexure-K) granting an ad hoc compensation of Rs.50 lakh. The appellant challenged the said order before this Court in WP No.48907/2018, which was disposed of vide order dated 30.08.2019 (Annexure-R6). This Court had held that the order of the Commission was recommendatory in nature and it should be considered by the State Government.

18.1. He stated, pursuant to the same, the Additional Chief Secretary, Government of Karnataka vide order dated 28.01.2020 categorically held that the appellant is not responsible for the electrocution incident. However, the Additional Chief Secretary took a humanitarian view and

directed the appellant to pay solatium of Rs.2,50,000/- to respondent No.1. Pursuant to the same, respondent No.1 accepted the compensation amount of Rs.2,50,000/-.

18.2. According to him in view of the fact that the order passed by this Court as well as the Additional Chief Secretary had attained finality, the learned Single Judge could not have permitted respondent No.1 to agitate the same issues again in the present petition. Respondent No.1 was bound by the outcome of the said proceedings, unless it was altered in accordance with law, and therefore, was precluded from invoking the extraordinary writ jurisdiction of this Court. In this regard, reliance is placed on the following judgments:

i. ***State of Punjab and others -Vs.- Gurdev Singh [(1991) 4 SCC 1]***;

ii. ***Gorle Gouri Naidu (Minor) and another - Vs.- Thanarathu Bodemma and others [Civil Appeal No.242/1987]***.

Compliance done by the appellant with Regulation 61 of the Central Electricity Authority (Measures relating to Safety and Electric Supply) Regulations, 2010:

19. He stated, Regulation 61 of the Central Electricity Authority (Measures relating to Safety and Electric Supply)

Regulations, 2010 prescribes the horizontal distance between the nearest conductor and any part of the building, which must be maintained. In the case of lines exceeding 650 volts up to and including 11,000 volts, a minimum distance of 1.2 meters is required to be maintained between the line and the building. The Central Electricity Authority (Measures relating to Safety and Electric Supply) Regulations, 2010 have been amended by the Central Electricity Authority (Measures relating to Safety and Electric Supply) Regulations, 2023. However, the horizontal distance that is required to be maintained from the high-voltage line has remained the same.

19.1. In the present case, the appellant had ensured that there was minimum horizontal distance of 1.2 meters between the line and the building and had therefore, complied with the requirements mentioned in Regulation 61 of the Central Electricity Authority (Measures relating to Safety and Electric Supply) Regulations, 2010. Despite this being the case, respondent No.1 negligently touched the electric line using a metal mop and was therefore electrocuted. As such, there was no negligence on the part

of the appellant. The fact that the appellant had complied with the Regulations and there was no dereliction of duty on its part has not been appreciated by the learned Single Judge.

Report of the Electrical Inspector:

19.2. In this appeal also, he stated, the findings of the learned Single Judge are contrary to the binding statutory report of the Electrical Inspector under Section 161 of the Electricity Act, 2003. The Electrical Inspector in his report dated 17.09.2018 (Annexure-R1) has clearly held that the accident occurred due to the negligence of respondent No.1 in touching the electric line using an iron mop. The Electrical Inspector has held that there was violation of Regulation 64 of the Central Electricity Authority (Measures relating to Safety and Electric Supply) Regulations, 2010. Regulation 64 states that no rods or other materials shall be taken below or in the vicinity of bare overhead lines and that rods, pipes etc. shall not be brought within the flash over distance of bare lines. However, respondent No.1 brought the iron mop in contact with the electric line in violation of the said Regulation.

19.3. He stated, the report of the Electrical Inspector does not attribute any negligence on the part of the appellant. Despite these clear findings, the said report has been completely disregarded by the learned Single Judge. According to him, the Report submitted by the Electrical Inspector is a statutory report under Section 161 of the Electricity Act, 2003. The Electrical Inspector has been conferred with the powers of a Civil Court. When the said statutory Report of a neutral government officer makes it crystal clear that respondent No.1 was responsible for the accident, the said Report should have been considered by the learned Single Judge.

19.4. He stated, Section 162 of the Electricity Act, 2003 provides for an appeal against the Report of the Electrical Inspector to the Appropriate Government or Appropriate Commission, as the case may be. In the present case, the Electrical Inspector's Report categorically states that respondent No.1 was responsible for the accident. Respondent No.1 has not preferred an appeal challenging the said Report. Therefore, the Report of the Electrical

Inspector having attained finality, the learned Single Judge erred in not considering the said Report.

No negligence on the part of the appellant:

20. He stated, the learned Single Judge has failed to note that there was absolutely no negligence on the part of the appellant. The appellant can be held responsible and asked to provide compensation if there was any negligence on its part. However, in the present case, there was no negligence on the part of the appellant. The accident did not occur due to any pilferage or leakage of electricity. Respondent No.1 had not produced any document to show that the wires were in a damaged condition. No material was placed to demonstrate that the appellant was negligent. The accident occurred due to the negligence of respondent No.1 in touching the electric line using a metal mop, thereby contravening Regulation 64 of the Central Electricity Authority (Measures relating to Safety and Electric Supply) Regulations, 2010.

20.1. He also stated, the learned Single Judge has failed to note that even under the statutory framework, the appellant could not have taken any action except ensuring

that there was compliance with Regulation 61 of the Central Electricity Authority (Measures relating to Safety and Electric Supply) Regulations, 2010, which was done in the present case.

20.2. He stated, respondent No.1 miserably failed to prove negligence as no material evidence was produced to prove the same. He stated the, Courts awarding compensation even in cases where there has been no negligence on the part of the distribution companies will lead to a dangerous trend of the appellant being faced with malicious claims, thereby causing huge financial loss to the distribution companies as well as to the public exchequer. The appellant has taken a number of measures to avoid accidental contact with overhead power lines. The appellant has also put in efforts to educate the common people regarding the wires passing over in the vicinity and the precautions that are required to be taken. The appellant is also observing the 3rd Saturday of every month as 'Safety Day.' The appellant had maintained the lines in a proper condition in the present case. However, respondent No.1 was negligent and used an iron mop while trying to collect

her veil and came in contact with the wire. The learned Single Judge ought to have considered these aspects Instead of blindly allowing the claim of respondent No.1, by relying on their statements and hypothetical estimates.

The principle of absolute liability:

21. He stated, the learned Single Judge has erred in applying the principle of absolute liability to the facts of the present case. Even if the learned Single Judge was of the opinion that the appellant is liable to pay compensation, the learned Single Judge could only have applied the principle of strict liability, subject to recognized exceptions such as act of God, Plaintiff's own default and interference of third party. In the case on hand, these exceptions are attracted. The negligence on the part of respondent No.1 has been observed in the report of the Electrical Inspector. Therefore, the principle of absolute liability could not have been made applicable to the present case.

21.1. He also relied upon, in the appeal on ***Rylands - Vs.- Fletcher*** (supra).

21.2. He stated, the learned Single Judge has relied upon the judgment of the Hon'ble Supreme Court in the case of ***Naval Kumar*** (supra) while awarding compensation to respondent No.1. However, the said judgment was passed based on a completely different set of facts and the said judgment could not have been made squarely applicable to the present case, while awarding compensation under different heads. It is settled law that a judgment is a precedent for what it decides and even a small change in factual matrix may lead to different conclusions. In this regard, reliance is placed upon the Judgment of the Hon'ble Supreme Court in the case of ***Padma Sundara Rao*** (supra).

21.3. The Hon'ble Supreme Court in ***Rajkot Municipal Corporation -Vs.- Manjulben Jayantilal Nakum and others*** (supra) has laid down various aspects which the Courts should consider while deciding a claim for compensation in relation to negligence by a public authority. A perusal of the said judgment makes it amply clear that the Court should consider aspects like scope of duty of care of the authority, whether negligence is attracted to the case, public policy etc., and the said duty and negligence is to be

determined in light of the statutory provisions. In the present case, the learned Single Judge ought to have examined the fact as to whether there was any negligence at all on the part of the appellant. As stated supra, the appellant had taken necessary care to ensure that sufficient horizontal clearance is maintained between the line and the building. The negligence has to be attributed to respondent No.1 who touched the electric line with a metal mop, in contravention of Regulation 64 of the Central Electricity Authority (Measures relating to Safety and Electric Supply) Regulations, 2010.

No credible material available to apply the principles governing MVC proceedings and no basis for the compensation determined:

22. Even otherwise, he stated, the huge compensation of Rs.51,76,000/ awarded by the learned Single Judge is without basis, with absolutely no material to substantiate the sums awarded. The compensation granted by the learned Single Judge is in addition to the compensation of Rs.2,50,000/- already received by respondent No.1. Regarding future medical expenses, the learned Single Judge has granted the entire amount claimed by respondent No.1

i.e., Rs.6,00,000/- even though the same was only an estimate Issued by a private hospital.

22.1. He stated, there is no statement of a doctor or a credible expert in the present proceedings. The estimates adopted by the learned Single Judge are purely speculative in nature and not based on any evidence. Decisions not based on credible evidence are unsustainable and liable to be set aside.

22.2. He also stated, seen from any angle, the impugned order passed by the learned Single Judge is unsustainable in law and on facts. The findings of the learned Single Judge are erroneous and require interference at the hands of this Hon'ble Court.

Submissions of the learned counsel for respondent No.1 in WA No.861/2022:

Re: Maintainability

23. Sri. Shridhar Prabhu, the learned counsel for the respondent no.1 sated the 3rd respondent statutory authority has analysed the facts and in the Statutory Report submitted under section 161 of the Electricity Act, 2003 (the "Act") has come to an unmistakable conclusion that had the Breaker

installed at the 11 KV /66 KV Substation of the appellant automatically tripped, the severity of the accident could have been prevented. Thus, the 3rd respondent has analysed and reported that the appellant has violated Regulation 45 (2) (ii) of the Central Electricity Authority (Measures Relating to Safety) Regulations, 2010.

23.1. He stated, the Statutory Report submitted by the 3rd Respondent can be challenged under section 162 (2) of the Act before the 4th respondent-State Government. However, the Statutory Report has remained unchallenged and attained finality. Hence, the appellant cannot renege or dispute or challenge the analysis arrived at in the Statutory Report.

23.2. According to the counsel it is trite law that Writ Petitions based on undisputed/uncontested facts for public law remedies are maintainable.

Re: Apex Court judgments

24. The counsel justified the conclusion of the learned Single Judge on entertaining the writ petition. According to the counsel, the learned Single Judge, citing catena of

judgements, including the Constitution Bench Judgement of the Apex Court in the case of ***M.C. Mehta*** (supra), ***Shail Kumari*** (supra), ***Naval Kumar*** (supra), ***Bhagyabai -Vs.- State of Karnataka [WA No. 3249/2010, decided on 25.10.2010]*** and several other cases, has rightly come to the conclusion that Writ Petitions are maintainable. The appellant has not been able to distinguish these cases on facts or on merits.

Re: Public Law Remedy

25. The counsel further stated, the appellant is a wholly owned State Corporation and a creature of the Karnataka Electricity Reforms Act, 1999. It is State within Article 12 of the Constitution of India. Moreover, it is discharging a public function of Transmission of Electricity. The availing of electricity is held to be a Fundamental Right and all acts and omissions in the course of transmission and supply of electricity are held to be state functions. Moreover, in catena of judgments this Court as well as the Apex Court have held that in the course of business - acts and omissions by the State, the public law remedy is available.

Writ is the only recourse to challenge to KPTCL Circular mandating undertaking

26. According to the counsel, the appellant has issued a circular dated 09th November, 2017 (Annexure-A @ pages 147-156) to its officials and also to other Distribution Companies across Karnataka (by using its monopolistic dominant position) as per which the victim, in order to receive solatium amount, has to give an undertaking that once the solatium amount is paid, s/he shall not approach any court.

26.1. He stated, the answering Respondent has not received a single rupee as compensation simply because she refused to give an undertaking. The undertaking is not just illegal but also inhuman.

26.2. It was stated, this Court has the power to issue a Writ of Certiorari to quash/overreach/ignore/read down such illegal circulars. The power of the Civil Court, acting as a Tribunal under the Fatal Accidents Act, 1855 (a Reconstitution era legislation), cannot be invoked. Hence, the respondent was constrained to approach this Court.

26.3. According to counsel the appellant is bound to pay the no-fault liability solatium immediately on death, irrespective of liability or the negligence, part or entire. However, to this date, solely because the respondent has refused to give an undertaking, the appellant has not chosen to pay a single penny to the Respondents who has 3 daughters and 1 son to look after.

26.4. According to the counsel, it is true that the said circular was ignored/ impliedly overruled by the learned Single Judge of this Court, however, the appellant KPTCL still relies on and applies the Circular across the State for all claims by all victims. In this particular case, even after the disposal of the case, the appellant has not chosen to pay a single penny to the Respondent. On this count alone, the appellant may be unsuited in its Appeal.

RE: ABSOLUTE LIABILITY

i. RE: Monopolistic Transmission Business

27. According to the counsel the Apex Court and this Court have time and again held that the liability of the electricity supplier/transmission licensee is absolute and

unconditional. This is because, under the scheme of the Act, the transmission and distribution of electricity is a licensed and regulated function. The licensees have been given absolute and monopolistic power in respect of their functions and duties. A brief overview of the scheme of the Act is submitted below.

ii. Legal Provisions enabling absolute monopolistic control:

Sl. No.	Sections of the Electricity Act, 2003	**Analysis**
	12 - Authorised persons to transmit, supply, etc., electricity.	The appellant is the sole transmission licensee and total monopoly in the State of Karnataka. It is wholly owned by the state of Karnataka and is a state transmission utility (STU).
	39 - State Transmission Utility and functions. 40 - Duties of transmission licensees.	
	53 - Provision relating to safety and electricity supply.	The appellant is bound to comply with the safety and the rules/ regulations prescribed under this section and

		rules/regulations made by the Central authority. It is the duty of the appellant to protect the public from danger arising from the transmission of electricity or use of electricity supply or installment, maintenance, or use of any electrical line or plant.
	68 (5) - Overhead lines Where any tree standing or lying near an overhead line or where any structure or other object which has been placed or has fallen near an overhead line subsequent to the placing of such line, interrupts or interferes with, or is likely to interrupt or interfere with, the conveyance or transmission of electricity or the accessibility of any works, an Executive Magistrate or	The licensee has been given powers to remove all obstructions and structures. Hence, it cannot blame the local authorities to removal of illegal structures. The BBMP or any local body will not test the legal validity of a building on the anvil of Electricity laws. This is the sole domain of

	authority specified by the Appropriate Government may, on the application of the licensee, cause the tree, structure or object to be removed or otherwise dealt with as he or it thinks fit.	the appellant.
	136 - Theft of electric lines and materials	Absolute penal powers have been given to the appellant to deal with the transmission lines, works and system. As logical sequel to that, the liability also should be absolute.
	138 - Interference with meters or works of licensee.	
	139 - Negligently breaking or damaging work.	
	140 - Penalty for intentionally injuring works.	
	161 - Notice of accidents and inquiries.	The Report and Inquiry function is made independent. The State constituted / appointed Inspectorate is made responsible to conduct. inquiry, generate report and analyze the causes for the accidents. In this case, the Report

		is unequivocal about the violation of law viz., CEA (Measures Relating to Safety) Regulations, 2010 by the appellant.
	162 - Appointment of Chief Electrical Inspector and Electrical Inspector.	The Section 161 Report supra under before is challengeable this provision the State. However, the appellant did not chose to challenge the same and accepted the analysis and findings. Hence, it cannot now renege or refuse to comply with the consequences that followed.
	164 - Exercise of powers of Telegraph Authority in certain cases.	Under this provision the appellant has been given absolute powers under a Pre Constitutional legislation viz., Indian

		Telegraph Act, 1885. As logical sequel absolute responsibility must be shouldered by the appellant.
	185 (2) (c)	As per this of the Act, the Rules made under the Indian Electricity Rules, 1956 stand repealed once the CEA frames the Regulations under section 53 of the Act. The Regulations were framed by CEA in 2010. Hence, appellant's reliance on the Indian Electricity Rules, 1956 is misplaced.

iii. Non-Impleading of the Coffee Plantor

27.1. On impleadment, the counsel stated, it is trite law that no writ can be issued against a private individual. Hence, the question of impleading a private individual does

not arise. Moreover, when the Courts have held that the appellant's liability is absolute, then, there is no question of impleading any other individual.

RE: NEGLIGENCE IS WRIT LARGE

28. The Counsel stated, the learned single judge had noted the negligence of the appellant as recorded in the statutory report submitted by Respondent No. 3. In para 39.3 (III) & (IV) there is a specific finding about the violation. Once the Apex Court and this Court have upheld the absolute liability principle and particularly when there is a specific finding in Section 162 (2) (of the Electricity Act, 2003), the appellant cannot shed its responsibility.

RE: ON QUANTUM OF COMPENSATION

29. The Apex Court and this Court have applied the principles of compensation structure under the Motor Vehicle Act, 1989 to the accidents under the Electricity Act, 2003. Hence, the impugned judgment cannot be faulted on the quantum of compensation.

29.1. The appellant herein adopts the arguments of the 1st Respondent in the connected appeal in W.A. 865/2022 on the quantum of compensation.

Submissions of learned counsel for respondent No.1 in WA No.865/2022:

30. The Respondent No. 1, then aged 5 years and 8 months, was electrocuted by a 66 KV HT Line above the neighbour's roof on 16.09.2017. On the next day, FIR was registered by the Suddaguntepalya Police Station being Cr. No. 190/2017.

- **Nature of the Injury:**

30.1. The Respondent No. 1 had 80% burn with 40% deep burns, with risk of infection and multi-organ failure. He was on ventilator till 23.09.2017 and was treated as inpatient for one and a half months.

- **Cause of Accident and Negligence of the appellant:**

31. According to the counsel of the respondent No.1 went to the roof of the house of Abdul Rofe, he came within the induction zone of 66KV transmission line belonging to PTCL. The Electrical Inspector, Office of the Electricity Inspectorate, Government of Karnataka issued Report dated

19.02.2018, finding that the required perpendicular distance per Regulation 61(2)(ii) and 63 of the Central Electricity Authority (Measures relating to Safety and Electric Supply) Regulations, 2010 had been violated by the building owner. KPTCL was aware of the violation, but failed to take any action

- **The appellant was aware of the violations of the Electricity Act and Rules in respect to the building**

32. In this regard the learned counsel has brought to the notice of the Court the following:

i. Notice dated 20.11.2011 issued by the appellant.

ii. The appellant has provided for a tapping meter to the owner of the building and took an undertaking dated 19.04.2000 from the owner of the building that he will be solely responsible for any accident that occurs.

iii. A notice dated 06.03.2016 was issued by the appellant to the owner of the building.

32.1. According to the counsel Section 68 of the Electricity Act, 2003 is in regard to Overhead Lines, and

Section 68(5) provides that "where any tree standing or lying near an overhead line or where any structure or other object which has been placed or has fallen near an overhead line subsequent to the placing of such line, interrupts or interferes with, or is likely to interrupt or interfere with, the conveyance or transmission of electricity or the accessibility of any works, an Executive Magistrate or authority specified by the Appropriate Government may, *on the application of the licensee, cause the tree, structure or object to be removed or otherwise dealt with as he or it thinks fit".* Admittedly, no such steps were taken by the appellant, resulting in the occurrence of the accident that caused the injuries to the respondent No.1.

32.2. She stated, the submission of Sri. Sriranga that the appellant could not have taken any action under Section 68(5) was not causing any interruption or interference with the conveyance or transmission of electricity is a misreading of the provision. It also shows the failure of the appellant to actually take steps to maintain the safety. She submitted that the appellant has in fact provided a tapping meter to the said owner of the house, even while recognizing that

there was a violation which would result in accidents taking place.

32.3. She stated the submission of Sri. Sriranga that the occupancy certificate is not required for supply of electricity, is untenable, and cannot be used by the appellant to cover its liability. It was submitted that the Electricity Act, 2003 specifically mandates the duty of the appellant to ensure the safety of all persons concerned, and its failure to take steps in a situation it recognize as dangerous, clearly establishes its liability.

32.4. She stated, none of these facts are disputed, and the nature and form of the accident are admitted by the appellant.

- **Maintainability and Public Law Remedy:**

33. According to the counsel the appellant is a wholly owned State Corporation. It is State within the hearing of Article 12 of the Constitution of India. Moreover, it is discharging a public function of Transmission of Electricity. All acts and omissions in the course of transmission and supply of electricity supply are held to be state functions. In

a catena of Judgements this Court as well as the Apex Court have held that in the course of business - acts and omissions by the State, the public law remedy is available.

That the appellant (KPTCL) is engaged in the production, supply and distribution of electricity, which is inherently dangerous activity, and hence, are strictly and absolutely liable to compensate those effected by electrocution accidents:

34. The Counsel stated, the learned Single Judge has considered these aspects and found that with regard to the Nature of Liability of Transmission Utility and Distribution Company in the following manner:

i. It is a settled position that electricity has been treated to be a hazardous substance for the purpose of applicability of the rule in ***Rylands - Vs.- Fletcher*** [Para 6(a)(ii)]

ii. This principle of absolute liability propounded by the Apex Court in the case of ***M.C. Mehta*** has been extended to be applicable in the case of electrical accidents [Para 6(a)(iii)]

iii. All doubts regarding imposition of strict liability without defences on the power companies have been removed by virtue of the clarification regarding the applicability of strict liability principles by the Apex Court in the case of

Union of India -Vs.- Prabhakaran Vijaya Kumar and Others (2008) 9 SCC 527 [Para 6(a)(vii)]

iv. The question of liability under common law was explained and applied in a detailed order in ***Nagappa Manneppa Naik*** (supra) which was accepted by the appellant, and the attempt to reopen this questions is to be frowned upon. [Para 6(a)(ix and x)]

34.1. The counsel sated, the learned Single Judge has held in regard to the Maintainability of the Petition at Para 7 to 19 as under:

> *7. "Once the liability of the State Entity is established as in the present case in light of discussion, by virtue of principle of absolute liability the quantification is also an aspect that has been made by the courts even in exercise of writ jurisdiction by resort to settled principles to monetarily quantify loss of life or injury to a person as is applied in motor vehicle accidents which is the methodology adopted by the Division Bench of this court in Bhagyabhai"*
>
> *XX XX XX XX*
>
> *19. "The breach of a statutory obligation resulting in harm to a person can be sought to be addressed by way of a Public Law Remedy through a petition under Article 226. The compensation granted in such an*

action is made in the nature of making monetary amends for such breach of statutory duty by a State Authority."

34.2. So, according to the counsel the Hon'ble Supreme Court and this Court have clearly laid down the difference in principle of strict and absolute liability.

34.3. The counsel stated even in ***M.C. Mehta*** (supra), the Supreme Court has laid down the principles of absolute liability in paragraphs No.31 to 33.

34.4. The above position is reiterated in ***Parvati Devi -Vs.- Commissioner of Police Delhi [2000 (3) SCC 754]*** at para 2.

34.5. The counsel stated, the principle was specifically laid down in regard to cases of electrocution in ***Shail Kumari*** (supra).

34.6. This Court has specifically dealt with the issue in the case of ***Smt. Bhagyabai*** (supra) which was upheld by the Hon'ble Supreme Court in ***BESCOM -Vs.- Bhagyabai [Order dated 07.10 2013 in SLP 3295-3299/2011]***.

34.7. The counsel stated even in ***H.S.E.B. and Others -Vs.- Ram Nath and Others [(2004) 5 SCC 793]***, the same principle was extended where liability was sought to be disowned by the Power Supply Company by contending that the unauthorised structure near the electric line had contributed to the accident, the Apex Court overruled such objection.

34.8. It was stated, the Apex Court in the case of ***Prabhakaran Vijaya Kumar*** (supra) has considered and rejected the argument of contributory negligence.

34.9. The same position has also been reiterated in the following judgments:

v. ***Surjya Das -Vs.- Assam State Electricity Board [AIR 2006 Gau 59]*** *at para 6.*

vi. ***Alamelu -Vs.- State of Tamil Nadu [2012 (2) CTC 644]*** at paras 13.

vii. ***Md. Idul Ali -Vs.- State of Assam [(2013) GLR 262]*** at paras 9-12.

viii. ***Naval Kumar***'s case (supra) at paras 39, 40, 42, 43.

ix. ***State of Himachal Pradesh and Ors -Vs.- Naval Kumar [C.A. No. 1339/2017, Order dated***

02.02.2017] of the Hon'ble Supreme Court at para 14.

x. ***Yash Pal Singh and Ors. -Vs.- State of UP and Ors. [2017 (5) ADJ 696]*** at para 27, 28, and 29.

xi. ***Nagappa Manneppa Naik***'s case (supra) at paras 32-34.

34.10. The counsel also highlighted the relevant provisions of Law in regard to the Electricity Act

i. The provisions of the Electricity Act, 2003 establish that electricity is a dangerous commodity and it is a statutory duty of the person responsible for the supply and maintenance to abide by all protective measures.

ii. Section 53 of the Act is in regard to Provisions relating to safety and electricity supply, and mandates that the Authority may in consultation with the State Government, specify suitable measures for inter alia – (a) protecting the public (including the persons engaged in the generation, transmission or distribution or trading) from dangers arising from the generation, transmission or distribution or trading of electricity, or use of electricity supplied or installation, maintenance or use of any electric line or electrical plant; (b) eliminating or reducing the risks of personal injury

to any person, or damage to property of any person or interference with use of such property.

iii. Section 68 of the Act is in regard to overhead lines and mandates the duty to ensure the removal of structures that are likely to interfere or interrupt the transmission of electricity.

iv. Section 146 of the Electricity Act mandates that non-compliance of the Regulations would invite a punishment with imprisonment for a term which may extend to three months or a fine which may extend to Rs. 1 lakh.

v. Regulations 5, 8, 12(1), 58, 60, 61, 63, of the Central Electricity Authority (Measures relating to Safety and Electric Supply) Regulations, 2010 mandated under Section 177 of the Electricity Act, 2005 make it apparent that the Authorities are responsible for ensuring that the electric supply lines and apparatus are constructed, installed, protected, worked and maintained in such a manner to ensure safety of human beings, animals and property. In fact, it is the responsibility of the Electricals Safety Officer appointed under Regulation 5 for ensuring observance of safety measures specified under these Regulations.

34.11. She stated, in the case of ***Naval Kumar*** (supra) which judgment was upheld by the Hon'ble Supreme

Court in C.A. No. 1339/2017, the relevant provisions of the Act have been considered in Para 4 onwards and it is concluded at para 11 that electricity is a dangerous commodity and it is a statutory duty of the person responsible for the supply and maintenance to abide by all protective measures.

34.12. Similarly in ***Yash Pal Singh and Ors. -Vs.- State of UP and Ors. [2017 (5) ADJ 696],*** the provisions of the Act were considered in paragraphs 10 to 13 of the judgment, as also the 1956 Rules from Para 14 onwards. It is concluded at Para 17 that it is the statutory duty of the person responsible for the supply and maintenance to abide by all the protective measures since it is a dangerous commodity. The same has been reiterated at Paragraph 27 and in ***Alamelu -Vs.- State of Tamil Nadu [2012 (2) CTC 644]*** at Paragraph 10.

34.13. In so far as the reliance placed by Sri. Sriranga upon the judgment in ***Rajkot Municipal Corporation -Vs.- Manjulben Jayantilal Nakum [(1997) 9 SCC 552]*** in respect of a claim for compensation is concerned the counsel submitted that the said judgment cannot be relied upon

since the facts are completely different. The said case is with regard to compensation payable by a Municipal Corporation, when a tree falls on a person, which is entirely different from the instant case. The same cannot be compared to the instant case, where the appellant is responsible for electricity, which is recognized as an inherently dangerous and hazardous substance, and the principles of absolute liability would apply.

34.14. The counsel stated, in the instant case, apart from the principle of absolute liability, it is also clear that the actions of the appellant were negligent, as they were aware of the illegalities as evidenced from their own documents, detailed above.

34.15. It was submitted that the objection with regard to maintainability of the Writ Petition would not be maintainable in view of the established principle of law, detailed above. The judgments relied upon by Sri. Sriranga have been considered in the decisions mentioned above, and the law in this regard is well settled that in regard to cases of electrocution, the principle of absolute liability would apply.

The concept of contributory negligence cannot be made applicable to children:

35. According to the counsel the learned Single Judge has answered the question in respect of contributory negligence of children at paragraphs No.34 to 38 that it could not *"be asserted that the child ought to have exercised due care and caution in not going near the high tension electrical line and coming within the induction zone as the child could not be expected to maintain the buffer distance."*

35.1. The counsel stated, in ***Naval Kumar v State of Himachal Pradesh [2016 ACJ 1289],*** which was upheld by the Hon'ble Supreme Court in C.A. No. 1339/2017, it was held at paragraph 36 that the concept of contributory negligence cannot be made applicable to a child. Further, the child's right to life under Article 21 stands violated by the electrocution.

35.2. The counsel stated, the same has been reiterated in ***Yash Pal Singh and Ors. v State of UP and Ors. [2017 (5) ADJ 696]***, at para 20 and ***Raman v Uttar Haryana Bijli Vitran Nigam Ltd. [(2014) 1 SCC 1]*** at Para 14.

35.3. Further, the right of the children are protected under Article 21 read with Article 39(f) of the Constitution of India. The counsel stated, the State's obligation is further reinforced by the United Nations Convention on the Rights of the Child, 1989 (UNCRC) which India has ratified on 11th December 1992. Of relevance are Articles 3 (Best Interests principle) and Article 6 (Right to Life). Article 19 mandated that the State shall take all steps to protect the child from all forms of injury, while Article 24 mandates that the State shall ensure access to treatment of illness, rehabilitation of health and access to healthcare services. Of further relevance is Article 23, which specifically mandates the steps to be taken in regard to mentally or physically disabled children.

35.4. The counsel stated, the Hon'ble Supreme Court in ***National Commission for Protection of Child Rights and Ors. -Vs.- Rajesh Kumar and Ors [(2020) 11 SCC 377]*** at para 2 has held that it is obligatory on the State to take all necessary steps to protect the rights of children as set out in the convention.

Regarding computation of the Compensation Amount:

36. In respect of computation of compensation amount, reliance was placed on ***Smt. Bhagyabai and Ors v Principal Secretary and Ors, Order dated 25.10.2010*** of this Court in ***W.A. No. 3249/2010***, as upheld by the Hon'ble Supreme Court in ***BESCOM v Bhagyabai, Order dated 07.10 2013 passed in SLP 3295-3299/2011*** wherein the principles laid down by the Supreme Court in ***Sarla Verma vs Delhi Transport Corporation [AIR 2009 SC 3104]*** and ***Kajal -Vs.- Jagadish Chand and Others [(2020) 4 SCC 413]*** and the Motor Vehicles Act, have been applied.

36.1. The counsel stated, the Learned Single Judge has rightly relied upon the principles laid down therein to determine the compensation payable. According to her, in paragraph 44.2 of the judgment, the learned Single Judge has, on the following parameters, decided the compensation:

i. **Expenses for treatment:** The Respondent No. 1 had 80% burn with 40% deep burn, was on ventilator till 23.09.2017 and was treated as inpatient for one and a half months. Following the

observation made in ***Kajal -Vs.- Jagadish Chand and Others***, the amount of compensation payable for the actual medical expenditure incurred will be Rs.4,50,000/- and transportation charges incurred during the period of treatment would be Rs.50,000/-, amounting to a total of Rs.5,00,000/-.

ii. **Loss of Earnings**: The Notional Income has been taken in terms of the law laid down in ***Kajal -Vs.- Jagadish Chand and Others [(2020) 4 SCC 413]***. The electrical accident occurred in the year 2017 and the Notional Income for the year 2017 was Rs. 11,000. In terms of the law laid down by the Apex Court in Sarla Verma, multiplier of 18 has been adopted. Hence the compensation under the head is Rs.23,76,000/- (11,000 x 18 x 12).

iii. **Attendant charges**: The child was hospitalized for almost one and a half month, and requires an attendant to carry out his daily routine. Compensation amount of Rs.4,00,000/- is awarded.

iv. **Pain and Suffering and Compensation for Disfigurement**: The child had to undergo long-term medical treatment and requires to undergo skin grafting and plastic surgery. An amount of Rs.5,00,000/- is awarded for Disfigurement.

v. **Loss of marriage prospects**: Rs.3,00,000/- is awarded under this head.

vi. **Future medical treatment**: The Respondent No. 1 had submitted details along with a Memo dated 21.03.2022 in regard to the future medical treatment required and the cost of the same. As per the said estimate prescribed by the doctor, an estimate of future medical treatment of Rs.10,06,050/- has been awarded.

vii. Thus, a total compensation of Rs.50,82,050/- has been awarded.

36.2. The counsel stated the Respondent No. 1 has only received the below-mentioned amounts:

i. Rs.5,00,000/- from the appellant as per Annexure – R4 at Page 257

ii. Rs.50,000/- from the B.B.M.P. Mayor's Fund

iii. Rs.1,00,000/- from the Karnataka State Board of Wakfs.

iv. In total, Respondent No. 1 has received an amount of Rs.6,50,000/- (Rupees Six Lakhs Fifty Thousand Only).

36.3. The counsel stated after deducting the amount of Rs.6,50,000/- that has already been paid, an amount of Rs.44,32,050/- has ben awarded.

36.4. According to the counsel in ***Naval Kumar*** (supra), the Himachal Pradesh High Court has granted damages taking into consideration Pecuniary Damages of Medical attendance, and, loss of earnings and Non-pecuniary damages including (1) damages for mental and physical shock, pain and suffering; (2) loss of amenities of life (3) loss of expectation of life, and, (4) inconvenience, hardship, discomfort, etc. As per the same, compensation of Rs.1.25 crores was awarded. The Supreme Court in ***State of Himachal Pradesh and Ors -Vs.- Naval Kumar [Order dated 02.02.2017 in C.A. No. 1339/2017]*** modified the above said amount to Rs.90 lakhs with interest. The counsel stated the Hon'ble Court relied upon the principle laid down by the Supreme Court in ***Dr. Balram Prasad vs Kunal Saha [2013 (13) Scale 1],*** where the principle of just compensation was evolved which is based on "*restitutio in integrum*", i.e. the claimant must receive the sum of money which would put him in the same position as he would have been if he had not sustained the wrong.

36.5. The counsel submitted that the Delhi High Court in ***Rajeev Singhal vs MCD [(2018) 172 DRJ 373]***,

produced by the appellant with their Synopsis, has in a similar case of electrocution of a child leading to his untimely demise also relied upon this method under the Motor Vehicle Act to arrive at the compensation of Rs. 27,38,607.81/-

36.6. It was submitted that the amount paid to the Respondent No. 1 vide order dated 09.03.2020 is extremely low, and is insufficient to even take care of his medical expenses. It was submitted that due to the inability of the Respondent No. 1's family to afford treatment, the family has been constrained to take several loans just to ensure his basic treatment, and he was unable to undergo the treatment that is necessary and required, as detailed in the Memo filed before the Learned Single Judge and in the Application filed before this Court.

36.7. It was submitted that the Child Rights Commission has recommendatory powers, even so, it is normally expected that the government would accept the said recommendations and implement the same. The same has been held in ***National Commission for Protection of Child Rights and Ors. -Vs.- Rajesh Kumar and Ors. [(2020) 11 SCC 377]*** at para 15.

36.8. According to the counsel, the stand of the appellant that the principles governing MVC proceeding cannot be used is untenable. The Division Bench of this Court in ***Smt. Bhagyabai and Ors v Principal Secretary and Ors [Order dated 25.10.2010 in W.A. No. 3249/2010]*** has relied upon the said principle, and the same was upheld by the Hon'ble Supreme Court in ***BESCOM v Bhagyabai, [Order dated 07.10.2013 in SLP 3295-3299/2011].*** It was further submitted that the heads taken for calculation under the Motor Vehicles Act are reasonable and just and the appellant has given no reason as to why the same cannot be made applicable.

36.9. Thus, it was submitted that the compensation awarded by the Learned Single Judge is on the basis of well established principles and admitted facts.

Reg. Other Contentions raised by the appellant

- **Reg. Forum Shopping**:

37. The said submission is without basis. It was submitted that the Respondent No. 1 had approached the Karnataka State Commission for Protect of Child Rights, who

directed the appellant to pay compensation. However, when the appellant failed to comply with the same the Respondent No. 1 approached this Court. It was stated the appellant had challenged the order of the Child Rights Commission WP No.26329/2020, where in this Court has specifically held that *"8. Needless to state that any observations made in this order shall not affect any claim of the victim made by way of filing a writ petition before this Court seeking compensation."*

- **Reg. Violation of Rule 80 and 82 of the Indian Electricity Rules**:

38. It was submitted that the appellant was well aware that these Rules are not in force and have been repealed after the coming force of the Electricity Act, 2003. The appellant is aware of the violation of the Rules, despite which they failed to take any action as mandated under Section 68 of the Electricity Act, 2003. The Learned Single Judge has reserved liberty to the appellant to proceed against the joint tort-feasor. Pertinently, the Delhi High Court in the case of ***Rajeev Singhal vs MCD*** (supra), has held that merely because an inter se dispute arises, as the

appellant herein is claiming with the BBMP that cannot disentitle the affected party from compensation.

38.1. The counsel also submitted that the appellant is liable to pay compensation, and the compensation has been calculated as per law, as detailed above. It is thus submitted that the Writ Appeal be dismissed in the interest of justice and equity.

Submissions of the learned counsel for respondent No.1 in WA No.868/2022:

39. The learned counsel for the respondent No.1 stated the following:

39.1. Respondent No.1, on 19.10.2017, aged then about 15 years, was grievously injured by electrocution when a mop-stick she was carrying accidentally came into the arcing zone of a 11 KV power line.

39.2. The Electrical Inspector, Office of the Electricity Inspectorate, Government of Karnataka issued Report dated 17.09.2018, finding that the accident has taken place when the iron handle mop came into the Arcing zone of the 11KV power line near the building.

39.3. The respondent No. 1 has received Rs.2,50,000/- from the appellant.

39.4. The respondent No. 1 was hospitalized from 19.10.2017 to 27.11.2017. Due to the electrocution her left hand was amputated at the elbow. Further, she has suffered severe burns on both her thighs. As Per the Disability Certificate issued by the Directorate for the Empowerment of Differently Abled and Senior Citizens, Bangalore, dated 05.03.2018, the Respondent No. 1, has suffered 75% permanent physical impairment.

39.5. According to the counsel the respondent No.1, on 19.10.2017, aged then about 15 years, was grievously injured by electrocution when a mop-stick she was carrying accidentally came in the arcing zone of a 11 KV power line. The 11KV line was only at a distance of "about" 1.2 metres from the building, which is not as per statutory requirements, and even otherwise is extremely dangerous. The appellant has itself recognized that 11 KV power lines being close to the buildings are extremely dangerous.

i. Section 53 of the Electricity Act mandates that all measures are to be taken to protect the public from

dangers arising from the generation, transmission or distribution or trading of electricity.

ii. The Manual for Safety / Technical Audit of Power Distribution System issued by the Karnataka Electricity Regulatory Commission finds in its analysis of accidents that *"More than 95% of electrical accidents are associated with the 11 KV and 400 V distribution systems as these are more extensive and closer to habitation."*

iii. The Tariff Orders of BESCOM issued by the Karnataka Electricity Regulatory Commission 2012 onwards finds that *"From the analysis, it is seen that the major causes of these accidents are due to snapping of LT/HT lines,* ***accidental contact with live LT/HT/EHT lines,*** *hanging live wires around the electric poles/transformers etc., in the streets."*

iv. The Tariff orders contain directives issued by the Karnataka Electricity Regulatory Commission to BESCOM in respect of ensuring safety to prevent accidents, including as follows:

a. Tariff Order 2014

"However, the Commission has viewed seriously the large number of fatal electrical accidents involving humans and livestock despite ESCOMs reporting that several measures have already been initiated in their jurisdiction to effect changes in the distribution system to minimize the accidents. This calls for urgent action

by ESCOMs to further emphasize on rectification of hazardous installations in the distribution system which are prevalent in public places posing great danger to the public. Utmost priority shall be given to these rectification works in the public places so that the accidents occurring on these counts can be reduced significantly paving the way for an accident free environment.

Further, during the Review meeting with ESCOMs held on 19.10.2013, the Commission had directed ESCOMs to initiate various measures such as effecting necessary improvements in its distribution networks, taking up preventive maintenance works, installing protection to distribution transformers on LT lines, conducting awareness programmes for public regarding safety aspects in use of electricity and insisting on use of safety equipment by the field staff besides imparting necessary training. The Commission had also observed that, even though a sum of Rs.100 lakh is earmarked for consumer education and awareness program in the ARR of BESCOM, the company has not reported implementation of such measures so far."

b. Tariff Order 2015

"The Commission notes with serious concern that the number of fatal electrical accidents involving humans and livestock has continued to increase despite

BESCOM reporting that it has initiated several measures including creating awareness about safety among public to prevent them. BESCOM needs to make more concerted efforts for identification and rectification of all the hazardous installations in the distribution system in the shortest possible time. BESCOM shall give priority for rectification of hazardous installations in densely populated areas and public places.

The Commission, during the Review meetings held with the ESCOMs has been pointing out to the ESCOMs the works that they need to do like taking up periodical preventive maintenance works, installing LT protection to distribution transformers, conducting regular awareness program for public on electrical safety aspects in use of electricity and also about ensuring use of safety tools and tackles by their field staff besides imparting them necessary training at regular intervals."

c. Tariff Order 2016 [Page 32 of the Memo dated 18.07.2024]

"The Commission therefore reiterates its directive that the BESCOM shall continue to take necessary measures to identify and rectify all the hazardous locations/installations prevalent in its distribution system and to provide LT protection to distribution transformers under an action plan to prevent and reduce the number of

fatal electrical accidents occurring in the distribution system."

d. Pertinently, in the Tariff Order 2017 just prior to the accident that resulted in the electrocution of the Respondent No. 1, the KERC stated,-

"Further, the Commission is of the view that the hazardous installations in the distribution network is the result of works carried out shabbily without adhering to the best construction practices as per the standards, while taking up construction/expansion of the distribution network. Therefore, the BESCOM shall take adequate and effective steps to ensure that distribution network is hazardous free. In addition to this, the BESCOM also needs to conduct regular safety audit of its distribution system and to carryout preventive maintenance works as per schedule in order to keep the network equipment in healthy condition.

…

The Commission, therefore, reiterates its directive that the BESCOM shall continue to take adequate measures to identify & rectify all the hazardous locations/installations existing in its distribution system under an action plan to prevent and reduce the number of electrical accidents occurring in its distribution system."

It is stated the dangers of the overhead lines and the increasing number of accidents were known to BESCOM, and KERC has also issued repeated directives to the BESCOM to take necessary action in regard to the same. However, BESCOM failed to take necessary steps in this regard.

39.6. In the Report authored by the appellant "India: Bengaluru Smart Energy Efficient Power Distribution Project", prepared by the BESCOM for the Asian Development Bank, it is stated *"2…BESCOM's current practice of using overhead distribution lines means that its conductors frequently come into contact with trees, animals, and human beings, causing not only power failure but also serious and fatal accidents."* It is also noted that in order to ensure safety and prevent accidents, a project of conversion of high voltage 11 KV and low voltage 1.1 KV overhead power distribution lines to underground lines has been undertaken.

39.7. It was submitted that recognizing the dangers of the overhead 11KV lines, the Energy Department, Govt. of Karnataka has directed BESCOM to submit DPR for the works of Conversion of 11KV Over Head (OH) lines into

Underground (UG) cable system. The note prepared by BESCOM for the same recognizes that such conversion would:

> *"3.0. Objectives of the Project*
>
> *xx xx xx*
>
> *Reduce the electrical accidents – Contact of OH Lines avoided*
>
> *4.0.**Project Benefits***
>
> *xx xx xx*
>
> *The fatal accidents due to snapping of OH line conductors & inadequate OH line to ground clearances due to conductor sagging can be completely prevented."*

39.8. Thus, it was stated, that BESCOM was well aware of the dangers of an 11KV line close to the building, and the facts that this caused a large number of accidents was repeatedly brought to their attention. However, they failed to take necessary steps including ensuring that adequate distance was maintained and that these overhead lines were made underground lines, as was found necessary in the reports of the appellant itself. That had the above steps been taken, the respondent No.1 would not have been electrocuted.

39.9. According to the counsel, Regulation 45 of the CEA (Measures relating to Safety and Electric Supply) Regulations, 2010 provides as follows:

> *"45. Inter-locks and protection for use of electricity at voltage exceeding 650 Volts*
>
> *(1)…*
>
> *(2) The following protection shall be provided in all systems and circuits to automatically disconnect the supply under abnormal conditions, namely: –*
>
> *(i) over current protection to disconnect the supply automatically if the rated current of the equipment, cable or supply line is exceeded for a time which the equipment, cable or supply line is not designed to withstand;*
>
> *(ii) earth fault or earth leakage protection to disconnect the supply automatically, if the earth fault current exceeds the limit of current for keeping the contact potential within the reasonable values;*
>
> *(iii) gas pressure type and winding and oil temperature protection with alarm and trip contacts shall be provided on all transformers of ratings 1000 kVA and above;*
>
> *(iv) transformers of capacity 10MVA and above shall be protected against incipient faults by differential protection;*
>
> *(v) all generators with rating of 100 kVA and above shall be protected against earth fault or leakage;*

(vi) all generators of rating 1000 kVA and above shall be protected against faults within the generator winding using restricted earth fault protection or differential protection or by both"

39.10. The above-said protections are necessary in order to ensure that in case of a possible accident, the power supply is immediately disconnected, which did not take place in the instant case. Admittedly, the respondent No.1 did not come into contact with the wire, and the broom accidently touched the arcing zone, and the power supply should thus have been disconnected, which did not take place, thus showing that the necessary steps required to be taken by the appellant had not been taken.

39.11. It was also stated, that none of these facts are disputed, and the nature and form of the accident are admitted by the appellant.

39.12. The appellant has in its synopsis relied upon the Report of the Electrical Inspector to state that the respondent No.1 was negligent. However, such a conclusion is not forthcoming from the contents of the Report. It was stated that, as per the Report, the Respondent No. 1 did not

touch the line, and the broom accidently came in contact with the arcing zone due to which she got electrocuted. According to the counsel the principle of contributory negligence is not applicable to children, and the Respondent No. 1 was 13 years old. Further, the Report does not consider the statutory failure by the BESCOM under Section 53 of the Electricity Act and Regulation 45 of the CEA (Measures relating to Safety and Electric Supply) Regulations, 2010. It also fails to consider the dangers of 11 KV lines, which has been recognized by the appellant itself, and the KERC, which has issued repeated directives in this regard.

39.13. The counsel stated, the appellant in its synopsis has stated that they are compliance with Regulation 61 of the Central Electricity Authority (Measures relating to Safety and Electric Supply) Regulations, 2019, but their obligations under the law are several as detailed above. Further, having recognized the grave dangers associated with overhead 11 KV lines, and the fact that there were several accidents that occurred due to the same, it was the responsibility of the appellant to have ensured that necessary steps including

converting them to underground lines was taken. Further, the failure of the appellant to have taken adequate steps to ensure that power supply was disconnected as per Regulation 45 of the CEA (Measures relating to Safety and Electric Supply) Regulations, 2010 was a direct cause for the electrocution of the respondent No. 1.

- **Maintainability and Public Law Remedy:**

40. It was stated the appellant is a wholly owned State Corporation. It is State within Article 12 of the Constitution of India. Moreover, it is discharging public function of Transmission of Electricity. All acts and omissions in the course of transmission and supply of electricity supply are held to be state functions. In a catena of judgments this Court as well as the Apex Court have held that in the course of business - acts and omissions by the State, the public law remedy is available.

41. The counsel made similar submissions highlighting the relevant provisions of Law in regard to the Electricity Act as were made by the counsel for respondent No.1 and noted in paragraphs No.34 to 35.3 and are not repeated for the sake of brevity.

Regarding computation of the Compensation Amount:

42. This Court in ***Smt. Bhagyabai and Ors v Principal Secretary and Ors [Order dated 25.10.2010 of this Court in W.A. No. 3249/2010]***, upheld by the Hon'ble Supreme Court in ***BESCOM v Bhagyabai [Order dated 07.10.2013 in SLP 3295-3299/2011]*** has applied the principles laid down by the Supreme Court in ***Sarla Verma vs Delhi Transport Corporation [(AIR 2009 SC 3104)]*** and ***Kajal -Vs.- Jagadish Chand and Others [(2020) 4 SCC 413]*** and the Motor Vehicles Act.

42.1. The Learned Single Judge has relied upon the principles laid down therein to determine the compensation payable

i. **Expenses for treatment:** Considering the fact that the Respondent No. 1 was hospitalized from 19.10.2017 to 27.11.2017, and underwent elbow amputation, and a sum of Rs.2,00,000/- was paid towards plastic surgeries, a sum of Rs.5,00,000/- was awarded including transportation expenses. Additionally, noting the judgment of the Apex Court in ***Mallikarjun -Vs.- Divisional Manager, National Insurance Co. Ltd. and Another [(2014) 14 SCC 396]***, that in cases of disability

additional compensation of Rs.4,00,000/- in addition to the actual expenditure incurred for treatment has to be awarded, a total compensation of Rs.9,00,000/- is awarded towards treatment.

ii. **Loss of Earnings:** The Respondent No. 1 has suffered permanent disability of 75% with amputation of left hand. The Notional Income has been taken in terms of the law laid down in ***Kajal -Vs.- Jagadish Chand and Others [(2020) 4 SCC 413***]. Hence the compensation Rs.23,76,000/- (11,000 x 18 x 12) is awarded under this head.

iii. **Attendant charges:** The child was hospitalized for almost one month and her elbow was amputated therefore she would require an attendant to carry out her daily routine throughout her life. Hence compensation of Rs.5,00,000/- is awarded under this head.

iv. **Pain and Suffering and Compensation for Disfigurement:** Rs.5,00,000/- is awarded under this head.

v. **Loss of marriage prospects:** Rs.3,00,000/- is awarded under this head.

vi. **Future medical treatment:** As per the memo dated 21.03.2022 and 08.07.2022, the Respondent No. 1 has provided details in regard to two surgeries that are to be carried out that would cost

Rs.2,00,000/- and the robotic arm would cost Rs.2,90,000/-, in addition to medication. Thus, on the basis of the same, compensation amount of Rs.6,00,000/- is awarded under the above head.

vii. Thus, a total compensation of Rs.51,76,000/- has been awarded. After deducting the amount of Rs.2,50,000/- that has already been paid, an amount of Rs.49,26,000/- has been awarded.

43. Thus, it is submitted that the compensation awarded by the Learned Single Judge is on the basis of well-established principles and admitted facts.

Reg. Other Contentions raised by the appellant

- **Reg. Forum Shopping**:

44. The said averment is without basis. It is submitted that the Respondent No. 1 had approached the Karnataka State Commission for Protect of Child Rights, who directed the appellant to pay compensation. However, when the appellant failed to comply with the same and ensure the payment of compensation, the respondent No. 1 approached this Court. It is pertinent to note that the appellant had challenged the order of the Child Rights Commission WP No.48907/2018, where the Hon'ble Court has specifically

held that *"8. Needless to state that any observations made in this order shall not affect any claim of the victim made by way of filing a writ petition before this Court seeking compensation."*

45. That as seen above the appellant is liable to pay compensation, and the compensation has been calculated as per law, as detailed above. It is thus submitted that the Writ Appeal be dismissed in the interest of justice and equity.

Rejoinder submissions of learned counsel for the appellant in WA No.861/2022:

Report of the Department of Electrical Inspectorate:

46. In rejoinder submission, Sri. Sriranga Stated that the respondent No.1 has relied only on some portions of the report of the Electrical Inspector dated 31.05.2018 (Annexure- E) while conveniently ignoring those portions of the report which hold that the accident occurred due to the negligence of the husband of respondent No.1 in touching the electric line using an aluminium ladder. The Electrical Inspector has opined that the accident could have been avoided if an insulated ladder or a wooden ladder was used while working in the coffee plantation. The Electrical

Inspector has held that there was violation of Regulation 64 of the Central Electricity Authority (Measures relating to Safety and Electric Supply) Regulations, 2010 by the husband of respondent No.1. If it is the contention of respondent No.1 that the said report has attained finality, then it is obvious that they have accepted the fact that the husband of respondent No.1 was negligent.

Not challenging the report of the Electrical Inspector:

47. Sri. Sriranga reiterates that the appellant was not present when the Electrical Inspector visited the spot of the accident. Moreover, even a copy of the report of the Electrical Inspector was not marked to the appellant. Therefore, the appellant was never a part of the process of investigation and was not aware of the contents of the report. Therefore, the question of filing an appeal against the said report by the appellant did not arise. The contents of the said report cannot be held against the appellant in these proceedings.

Judgments of the Hon'ble Supreme Court:

48. According to Sri. Sriranga, the contention of respondent No.1 that the appellant has not been able to

distinguish the judgments of the Apex Court in ***Shail Kumari, M.C. Mehta, Naval Kumar and Bhagyabhai*** on facts or on merits is factually incorrect.

48.1. The appellant has contended that the learned Single Judge failed to note that ***Shail Kumari*** arose from a suit and there was a clear finding of negligence. However, in the present case, there is no finding on the alleged negligence of the appellant. Moreover, ***Shail Kumari*** has been distinguished by the Hon'ble Supreme Court in ***SDO, Grid Corporation of Orissa -Vs.- Timudu Oram***. The facts in ***Shail Kumari*** are completely different and hence, the same is not applicable to the present case.

48.2. According to him, the judgment of this Court in ***Bhagyabhai*** fails to note that ***Shail Kumari*** arose from a suit and hence, the said decision could not have been made squarely applicable to the facts of the case. In any event, the compensation awarded in *Bhagyabhai* was only Rs.5 lakh.

48.3. In ***Naval Kumar***, the State did not challenge the verdict of the High Court of Himachal Pradesh. The only

question before the Hon'ble Supreme Court was regarding the quantum of compensation that is to be awarded, which is not the case in the present appeal. In the present appeal, the appellant has not only challenged the quantum of compensation awarded to respondent No.1 but has also challenged the findings regarding the alleged negligence on the part of the appellant.

Maintainability of the writ petition:

49. According to Sri. Sriranga, respondent No.1 now claims that filing a writ petition is the appropriate remedy and that the provisions of Fatal Accidents Act, 1855 cannot be invoked. That respondent No.1 in para 37 of the writ petition has categorically sought liberty to approach the jurisdictional civil court under the Fatal Accidents Act, 1855 for claiming compensation beyond the solatium amount. It is evident that the contentions of respondent No.1 regarding maintainability of the writ petition are contrary to her own averments in the memorandum of writ petition.

Rule 80 and Rule 82 of the Indian Electricity Rules, 1956:

50. According to Sri. Sriranga the contention of respondent No.1 that the appellant's reliance on Rule 80 and Rule 82 of the Indian Electricity Rules, 1956 is misplaced cannot be accepted. Rule 80 and Rule 82 of the Indian Electricity Rules, 1956 or the corresponding Regulations in the Central Electricity Authority (Measures relating to Safety and Electric Supply) Regulations, 2010 and the Central Electricity Authority (Measures relating to Safety and Electric Supply) Regulations, 2023 are not at all applicable to the facts of the present case as distance from the electric line is not in dispute in the present case. It is an admitted fact that the line was at an appropriate height from the ground and the husband of respondent No.1 was electrocuted due to his own negligence while plucking pepper. The reliance placed on Rule 80 and Rule 82 of the Indian Electricity Rules, 1956 by the appellant is in the connected writ appeal i.e., WA No.865/2022 (GM KEB) and not in the present appeal. Therefore, respondent No.1 cannot be permitted to make submissions on an appeal in which she is not a party.

Provisions of the Electricity Act, 2003:

51. According to Sri. Sriranga while respondent No.1 has relied on various provisions of the Electricity Act, 2003, it is to be noted that the same are not applicable to the facts of the case. Provisions like Section 68 can be invoked only when there is interference with the transmission of electricity. In the present case, there was no obstruction or interference with the transmission of electricity. The overhead line was at the required distance from the ground. It was the husband of respondent No.1 who negligently touched the electric line by using a very long aluminium ladder, thereby getting electrocuted. Hence, the learned Single Judge erred in holding that the appellant was negligent. In any case, it is was stated that the electric line in question was not being maintained by the appellant and hence, no liability could have been fastened on the appellant by the learned Single Judge, thereby calling for interference at the hands of this Court.

51.1. According to him the issue pertaining to violation of Rules with regard to distances does not arise in these proceedings. However, counsel for respondent No.1 has

made submissions with regard to the same without any basis in the pleadings. In the connected appeal, it has been pointed out that the provisions of Section 68 of the Electricity Act, 2003 do not apply and on the contrary, Regulation 63 of the Central Electricity Authority (Measures relating to Safety and Electric Supply) Regulations, 2010 casts an obligation on the person who intends to put up any construction to take necessary action prior to installation of any structure. In the circumstances, it is clear that reference to Section 68 during the hearing without having any basis in the pleadings is a poor attempt to mislead this Court and the same may be viewed seriously.

Section 68 of the Electricity Act, 2003:

52. According to Sri. Sriranga the contention of respondent No.1 that the Appellant could have got the building belonging to Abdul Rofe demolished is erroneous given the fact that the Appellant has no powers under the Act to demolish any structure. Even under Section 164 of the Electricity Act, 2003, the Appellant does not have such powers. The reliance placed by respondent No.1 and the learned Single Judge on Section 68(5) of the Electricity Act,

2003 is misplaced for the reason that there was no interference in the transmission of electricity even though the building was constructed in violation of the Rules. Therefore, there was no occasion for the Appellant to approach the Executive Magistrate to get the building demolished.

52.1. According to Sri. Sriranga, the respondent No.1, while relying on Section 68(5) of the Electricity Act, 2003, has conveniently ignored Regulation 63 of the Central Electricity Authority (Measures relating to Safety and Electric Supply) Regulations, 2010. The said Regulation categorically states that if a person proposes to erect a new building subsequent to erection of an overhead line, It is the duty of such person or the contractor employed by him to intimate in writing to the supplier their intention to erect a building. In the present case, it is an undisputed fact that the line was erected in the year 1976 and the building was constructed subsequently. Therefore, the land owner ought to have given an intimation regarding the building that was being constructed. In view of his failure to do so, the liability will have to be fastened on the land owner and the Appellant

cannot be held liable for permitting the construction of the building in violation of the Rules.

Occupancy Certificate:

53. The contention of respondent No.1 that the Appellant gave a tapping meter and electricity connection to the building even though it was constructed in violation of the Rules and that the Appellant is to be held liable for this reason is completely baseless. This Court in WP No.47730/2016, ***BBMP -Vs.- BESCOM and others*** (Page 569 of the List of Authorities) has held that the Appellant or any distribution company cannot insist on production of Occupancy Certificate to give electricity connection. Therefore, electricity supply could not have been refused to Abdul Rofe on the ground that the building was constructed in violation of the Rules.

Judgments cited by respondent No.1:

54. The learned Single Judge erred in relying on his own judgment in ***Nagappa Manneppa Naik*** (supra) as the facts in the said case were completely different. In those batch matters, there was a prior finding of negligence by the permanent Lok Adalat, which is absent in the present case.

54.1. The reliance placed on ***Union of India -Vs.- Prabhakaran Vijaya Kumar*** is misplaced. In the said case, a claim was filed before the Railway Claims Tribunal in terms of the provisions of the Railway Claims Tribunal Act. The Railway Claims Tribunal has been conferred with the powers of a Civil Court. Therefore, evidence was led and witnesses were examined. Moreover, the Schedule to the Railway Claims Tribunal Act fixes the amount of compensation that can be awarded and hence, compensation is not awarded based on MVC principles.

Nature of the injury:

55. Respondent No.1 claims that he has attained 80% burns with 40% deep burns due to the electrocution incident. The learned Single Judge has accepted this contention and has given. a finding regarding the percentage of burns. However, the fact remains that no reliable medical record has been produced to substantiate the nature of burns. Respondent No.1, during the course of arguments, has conceded that even a disability certificate has not been produced. Therefore, the nature of burns attained by

respondent No.1 continues to be a disputed fact and the finding given by the learned Single Judge is erroneous.

Computation of compensation:

56. The learned Single Judge has failed to observe that respondent No.1 has not produced even a single bill relating to the expenses incurred for his treatment. Respondent No.1 has only produced the Discharge Summary, which does not mention the actual expenses incurred. Therefore, there is absolutely no material to show the actual expenses incurred by respondent No.1 for his treatment.

56.1. The compensation awarded for future medical treatment is based on an estimate given by a private medical hospital. The learned Single Judge has awarded the entire amount claimed by respondent No.1. This is completely erroneous. Under the head Attendant Charges, the learned Single Judge has awarded compensation of Rs.4 lakh despite the fact that there was not a single document to show the expenses actually incurred. Respondent No.1 had not produced any Income Certificate also. Therefore, the compensation awarded to

respondent No.1 is without basis and the same requires interference at the hands of this Court.

Rejoinder submissions of learned counsel for the appellant in WA No.868/2022:

Compliance with Regulation 61 of the Central Electricity Authority (Measures relating to Safety and Electric Supply) Regulations, 2010:

57. Respondent No.1 has contended that the 11 KV line was at a distance of only 1.2 metres from the building and that the same was not as per statutory requirements. The said contention is completely erroneous. Regulation 61 of the Central Electricity Authority (Measures relating to Safety and Electric Supply) Regulations, 2010 prescribes the horizontal distance between the nearest conductor and any part of the building, which must be maintained. In the case of lines exceeding 650 volts up to and including 11,000 volts, a minimum distance of 1.2 meters is required to be maintained between the line and the building. In the present case, the Appellant had ensured that there was minimum horizontal distance of 1.2 meters between the line and the building. Despite this being the case, respondent No.1 negligently touched the electric line using a metal mop and

was therefore electrocuted. Therefore, there was no negligence on the part of the appellant.

Section 68 of the Electricity Act, 2003:

58. The reliance placed on Section 68 of the Electricity Act, 2003 by respondent No.1 contending that it is the duty of the Appellant to ensure removal of structures that are likely to Interfere or interrupt the transmission of electricity is wholly misplaced due to the fact that Section 68 of the Electricity Act, 2003 has no applicability to the facts of the present case. As stated supra, the building in the present case was at a sufficient distance of 1.2 metres and therefore, was not interrupting the supply of electricity. Therefore, there was no occasion for the Appellant to approach the Executive Magistrate to get the building demolished by taking recourse to Section 68 of the Electricity Act, 2003.

Report of the Department of Electrical Inspectorate:

59. The contention of respondent No.1 that the report of the Electrical Inspector does not state that respondent No.1 was negligent is factually incorrect. The Electrical Inspector in his report dated 17.09.2018 (Annexure-R1) has

clearly held that the accident occurred due to the negligence of respondent No.1 in touching the electric line using an iron mop. The Electrical Inspector has held that there was violation of Regulation 64 of the Central Electricity Authority (Measures relating to Safety and Electric Supply) Regulations, 2010.

Computation of compensation:

60. The learned Single Judge has failed to observe that respondent No.1 has not produced even a single bill relating to the expenses Incurred for her treatment. It is to be noted that respondent No.1 has availed treatment in Victoria Hospital, which is a Government hospital (Annexure-D). Respondent No.1 has only produced a letter regarding the treatment availed by her, which does not mention the actual expenses incurred. Therefore, there is absolutely no material to show the actual expenses incurred by respondent No.1 for her treatment. Despite this being the case, the learning Single Judge has awarded a huge sum of Rs.9 lakh towards treatment expenses. This is clearly without basis.

Under the head Attendant Charges, the learned Single Judge has awarded compensation of Rs.5 lakh despite the fact that there was not a single document to show the expenses actually incurred:

61. The compensation awarded for future medical treatment is based on an estimate given by a private medical hospital. In the memo dated 21.03.2022 and 08.07.2022, respondent No.1 had claimed that a sum of Rs.4,90,000/- was required to undergo surgeries. However, the learned Single Judge has awarded Rs.6 lakh towards future medical treatment, which is more than the estimate produced by respondent No.1. This is completely erroneous. Therefore, the compensation awarded to respondent No.1 is without basis and the same requires interference at the hands of this Court.

62. He seeks the prayers made in all the appeals.

Analysis:

63. Having heard the learned counsel for the parties and perused the record, the issue which arises for consideration is, whether the learned Single Judge is justified in awarding compensation to the respondents No.1

in all the appeals on account of death of the spouse/injuries suffered by them?

64. The common submissions of Sri. Sriranga are finally the following:

i. The writ appeals are not maintainable both on the ground of disputed facts and also on the ground of alternative remedy available to respondents No.1.

ii. Non-impleading of the owner of the Coffee Plantation/ building in two writ petitions, as according to him, the negligence is of the owners of the plantation/building resulting in the death of spouse of respondent No.1 in WA No.861/2022 and injuries to respondents No.1 in the other appeals.

iii. There is no negligence on the part of the appellant to be fastened with the liability of compensation.

iv. There is no absolute liability on the appellant to be fastened with the liability of compensation.

v. There is no credible evidence/material available to apply the principles governing motor vehicle

compensation proceedings and there was no basis for compensation as granted by the learned Single Judge to the respondents No.1 in all the appeals.

65. Insofar as maintainability of the writ petitions is concerned, the learned Single Judge has, in paragraphs No.7 to 19, dealt with the said issue and in paragraph No.20, has dealt with the issue of relegating respondents No.1 to a Civil Court.

66. According to learned Single Judge, once the liability of State entity is established by virtue of principle of absolute liability, the quantification is also made by the Courts in exercise of writ jurisdiction by relying upon the judgment of this Court in the case of ***Bhagyabai*** (supra) and ***Nagappa Manneppa Naik*** (supra), he held that the writ petitions are maintainable. On the issue of maintainability of writ petition, the issue need to be looked from the perspective that the Constitution provides for procedure to seek protection of fundamental rights as guaranteed under part-III of the Constitution. In ***State of Madras -Vs.- V.G. Row [(1952) 1 SCC 410]***, the Supreme Court recognized itself as a guardian of

fundamental rights. In ***Nilabati Behera -Vs.- State of Orissa [(1993) 2 SCC 746]***, the Supreme Court evolved the concept of invoking public law remedy in cases of violation of fundamental rights. The Supreme Court held, the State cannot plead the defence of sovereign immunity available to it in private law. It held that, the Constitutional Courts while exercising powers under Articles 32 and 226 of the Constitution of India, are justified and are obligated to pass orders directing compensation in case of proven violation of fundamental rights. The Supreme Court in the case of ***MCD -Vs.- Uphaar Tragedy Victims Assn. [(2011) 14 SCC 481]*** after considering the judgment in the case of ***D.K. Basu -Vs.- State of W.B. [(1997) 1 SCC 416]*** held that, a claim made for compensation in public law is for compensating the claimants for deprivation of life and personal liberty which has nothing to do with claim in talk in an ordinary Civil Court. In ***Hindustan Paper Corpn. Ltd. -Vs.- Ananta Bhattacharjee [(2004) 6 SCC 213]***, the Supreme Court held that public law remedy for the purpose of grant of compensation can be resorted to only when the fundamental rights of citizen under Article 21 of the

Constitution of India are violated and not otherwise. The contuse of the above constitutional guarantees expounded to not only to the protection against arbitrary deprivation of life, but also to ensure a minimum threshold standard of living. In view of the decision of the Supreme Court, it is clear that public law remedy can be resorted to and a monetary compensation can also be awarded in cases of violation of Article 21 of the Constitution of India.

67. The connected question would be, what should be the standard of proof seeking compensation under public law remedy? The Supreme Court in the case of ***Sukamani Das*** (supra) on which reliance has been placed by Sri. Sriranga was considering the issue whether the High Court was justified in awarding compensation in a case of death on account of electrocution. It was held, where disputed questions of facts are involved, a petition under Article 226 is not the appropriate remedy.

68. In the impugned order, the learned Single Judge has, on the maintainability of the writ petitions, in paragraphs No.7 to 10, stated as under:

"7. There are instances also where the State Entities commit torts giving rise to claims for compensation which is sought to be asserted by way of a Writ Petition. Liability for torts committed by the agents of the State being an accepted principle, question whether a litigant is to be driven to avail of the remedy before the Civil Court is not a necessity. Once the liability of the State Entity is established as in the present case in light of discussion, by virtue of principle of absolute liability the quantification is also an aspect that has been made by the courts even in exercise of writ jurisdiction by resort to settled principles to monetarily quantify loss of life or injury to a person as is applied in motor vehicle accidents which is the methodology adopted by the Division Bench of this court in Baghyabhai (supra). The Co-ordinate Bench of this court has also adopted similar principles to calculate compensation and grant relief in case of death or injury due to electrocution in Shri Nagappa Manneppa Naik and Others (supra).

8. Accordingly, even in case of concurrent remedies being available for claim of compensation by tortious acts committed by State Entities, the invocation of writ jurisdiction cannot be objected to as the tort-feasor being State under Article 12 of Constitution of India, remedy against such tort-feasor is open to be asserted by invoking such jurisdiction.

9. In the present case it must be noticed that there is absolute liability as regards the activity of the corporation as accordingly under common law liability,

State being liable, remedy to enforce compensation as a result of consequences following from such tortious acts is being asserted by the petitioners. That apart claim of compensation would also be construed to be consequences of breach of statutory obligation.

10. In an action for compensation arising out of wrongs by the State and if on available facts there is clarity regarding liability and quantification though partial, then to such extent, there is no reason for denial of remedy to claim compensation in writ proceedings."

(emphasis supplied)

69. We agree with the aforesaid conclusion of the learned Single Judge on the maintainability of the writ petitions. Sri. Sriranga has, in support of his submission that a writ petition in respect of prayer for compensation shall not be maintainable, had relied upon the judgments in the cases of ***Sukamani Das*** (supra) and ***Timudu Oram*** (supra). The said judgments have been distinguished by the learned Single Judge by holding that, as there were disputed questions of fact, the same were not entertained. But, in ***H.S.E.B. and others -Vs.- Ram Nath [(2004) 5 SCC 793]***, the Supreme Court has distinguished the judgment in

the case of ***Sukamani Das*** (supra) and has granted compensation.

70. Even the judgments in the cases of ***Satish Kumar*** (supra), ***Dharampal*** (supra), ***Abdul Haque*** (supra), ***P. Malappa*** (supra) and ***Basavaraj*** (supra) will not help the case of the appellants, as the Courts in the said judgments have held, there being disputed facts, the parties need to be relegated to the Civil Court. Whereas in the cases in hand, the learned Single Judge has held that there are no disputed facts. In this regard, we have already reproduced the relevant paragraphs of the impugned order above. Similarly insofar as the cases of ***Smt Irudaya Mary*** (supra), ***Smt. Lakshmidevamma*** (supra) and ***Smt. Annapurna*** (supra) are concerned, there this Court relegated the parties to the Civil Court on the ground that it would not be appropriate to invoke the writ jurisdiction in such cases and arbitrarily determine compensation without any yardsticks or parameters. Whereas in the present cases, the learned Single Judge by relying upon the judgment of Co-ordinate Bench of this Court in ***Bhagyabai*** (supra) which judgment has been upheld by the Supreme Court, held that the Court

can calculate compensation adopting parameters applied under the Motor Vehicles Act. So, by stating compensation can be determined on defined parameters/yardsticks, the learned Single judge entertained the writ petition.

71. The issue which now arises is, whether the appellant was negligent for it to be liable for compensation to respondents No.1 in the appeals? The issue has been answered by the learned Single Judge by drawing a distinction between strict liability and absolute liability by holding, the exceptions to strict liability as propounded in ***Rylands -Vs.- Fletcher*** (supra) like Act of God; petitioners' own default; and interference of third-party shall not be applicable when accidents are attributable to supply and distribution of electricity.

72. The submission of Sri. Sriranga was, the principle of absolute liability has no applicability to the facts in as much as the owner of the building was negligent against whom the proceedings have been initiated; even the BBMP was clearly negligent in its action. The aforesaid submission of Sri. Sriranga is unmerited because, the judgment of the Supreme Court in the case of ***M.C. Mehta*** (supra) on which

reliance has been placed by the learned Single Judge more particularly paragraph No.31 which is reproduced as under, is very clear that the principles of absolute liability shall be applicable in as much as any enterprise which is engaged in a hazardous or inherently dangerous activity and the accident is caused, then such enterprise is absolutely liable to compensate all those who are affected by the accident and such liability is not subject to any of the exceptions:

> *"31. We must also deal with one other question which was seriously debated before us and that question is as to what is the measure of liability of an enterprise which is engaged in an hazardous or inherently dangerous industry, if by reason of an accident occurring in such industry, persons die or are injured. Does the rule in Rylands v. Fletcher [(1868) LR 3 HL 330 : 19 LT 220 : (1861-73) All ER Rep 1] apply or is there any other principle on which the liability can be determined. The rule in Rylands v. Fletcher [(1868) LR 3 HL 330 : 19 LT 220 : (1861-73) All ER Rep 1] was evolved in the year 1866 and it provides that a person who for his own purposes brings on to his land and collects and keeps there anything likely to do mischief if it escapes must keep it at his peril and, if he fails to do so, is prima facie liable for the damage which is the natural consequence of its escape. The liability under this rule is strict and it is no defence that the thing escaped without that person's wilful act, default or*

neglect or even that he had no knowledge of its existence. This rule laid down a principle of liability that if a person who brings on to his land and collects and keeps there anything likely to do harm and such thing escapes and does damage to another, he is liable to compensate for the damage caused. Of course, this rule applies only to non-natural user of the land and it does not apply to things naturally on the land or where the escape is due to an act of God and an act of a stranger or the default of the person injured or where the thing which escapes is present by the consent of the person injured or in certain cases where there is statutory authority. Vide Halsbury's Laws of England, Vol. 45, para 1305. Considerable case law has developed in England as to what is natural and what is non-natural use of land and what are precisely the circumstances in which this rule may be displaced. But it is not necessary for us to consider these decisions laying down the parameters of this rule because in a modern industrial society with highly developed scientific knowledge and technology where hazardous or inherently dangerous industries are necessary to carry as part of the developmental programme, this rule evolved in the 19th century at a time when all these developments of science and technology had not taken place cannot afford any guidance in evolving any standard of liability consistent with the constitutional norms and the needs of the present day economy and social structure. We need not feel inhibited by this rule which was evolved in the context of a totally different kind of economy. Law has to grow in order to satisfy

the needs of the fast changing society and keep abreast with the economic developments taking place in the country. As new situations arise the law has to be evolved in order to meet the challenge of such new situations. Law cannot afford to remain static. We have to evolve new principles and lay down new norms which would adequately deal with the new problems which arise in a highly industrialised economy. We cannot allow our judicial thinking to be constricted by reference to the law as it prevails in England or for the matter of that in any other foreign country. We no longer need the crutches of a foreign legal order. We are certainly prepared to receive light from whatever source it comes but we have to build our own jurisprudence and we cannot countenance an argument that merely because the law in England does not recognise the rule of strict and absolute liability in cases of hazardous or inherently dangerous activities or the rule laid down in Rylands v. Fletcher [(1868) LR 3 HL 330 : 19 LT 220 : (1861-73) All ER Rep 1] as developed in England recognises certain limitations and exceptions, we in India must hold back our hands and not venture to evolve a new principle of liability since English courts have not done so. We have to develop our own law and if we find that it is necessary to construct a new principle of liability to deal with an unusual situation which has arisen and which is likely to arise in future on account of hazardous or inherently dangerous industries which are concommitant to an industrial economy, there is no reason why we should hesitate to evolve such principle of liability merely

because it has not been so done in England. We are of the view that an enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas owes an absolute and non-delegable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous nature of the activity which it has undertaken. The enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity in which it is engaged must be conducted with the highest standards of safety and if any harm results on account of such activity, the enterprise must be absolutely liable to compensate for such harm and it should be no answer to the enterprise to say that it had taken all reasonable care and that the harm occurred without any negligence on its part. Since the persons harmed on account of the hazardous or inherently dangerous activity carried on by the enterprise would not be in a position to isolate the process of operation from the hazardous preparation of substance or any other related element that caused the harm the enterprise must be held strictly liable for causing such harm as a part of the social cost of carrying on the hazardous or inherently dangerous activity. If the enterprise is permitted to carry on an hazardous or inherently dangerous activity for its profit, the law must presume that such permission is conditional on the enterprise absorbing the cost of any accident arising on account of such hazardous or

inherently dangerous activity as an appropriate item of its overheads. Such hazardous or inherently dangerous activity for private profit can be tolerated only on condition that the enterprise engaged in such hazardous or inherently dangerous activity indemnifies all those who suffer on account of the carrying on of such hazardous or inherently dangerous activity regardless of whether it is carried on carefully or not. This principle is also sustainable on the ground that the enterprise alone has the resource to discover and guard against hazards or dangers and to provide warning against potential hazards. We would therefore hold that where in enterprise is engaged in a hazardous or inherently dangerous activity and harm results to anyone on account of an accident in the operation of such hazardous or inherently dangerous activity resulting, for example, in escape of toxic gas the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident and such liability is not subject to any of the exceptions which operate vis-a-vis the tortious principle of strict liability under the rule in Rylands v. Fletcher [(1868) LR 3 HL 330 : 19 LT 220 : (1861-73) All ER Rep 1] ."

(emphasis supplied)

73. We are also of the view that the learned Single Judge is justified in relying upon the judgment of the Supreme Court in the case of ***Shail Kumari*** (supra) wherein in paragraph No.7, 8 and 13, the Court held as under:

"7. It is an admitted fact that the responsibility to supply electric energy in the particular locality was statutorily conferred on the Board. If the energy so transmitted causes injury or death of a human being, who gets unknowingly trapped into it the primary liability to compensate the sufferer is that of the supplier of the electric energy. So long as the voltage of electricity transmitted through the wires is potentially of dangerous dimension the managers of its supply have the added duty to take all safety measures to prevent escape of such energy or to see that the wire snapped would not remain live on the road as users of such road would be under peril. It is no defence on the part of the management of the Board that somebody committed mischief by siphoning such energy to his private property and that the electrocution was from such diverted line. It is the lookout of the managers of the supply system to prevent such pilferage by installing necessary devices. At any rate, if any live wire got snapped and fell on the public road the electric current thereon should automatically have been disrupted. Authorities manning such dangerous commodities have extra duty to chalk out measures to prevent such mishaps.

8. Even assuming that all such measures have been adopted, a person undertaking an activity involving hazardous or risky exposure to human life, is liable under law of torts to compensate for the injury suffered by any other person, irrespective of any negligence or carelessness on the part of the managers

of such undertakings. The basis of such liability is the foreseeable risk inherent in the very nature of such activity. The liability cast on such person is known, in law, as "strict liability". It differs from the liability which arises on account of the negligence or fault in this way i.e. the concept of negligence comprehends that the foreseeable harm could be avoided by taking reasonable precautions. If the defendant did all that which could be done for avoiding the harm he cannot be held liable when the action is based on any negligence attributed. But such consideration is not relevant in cases of strict liability where the defendant is held liable irrespective of whether he could have avoided the particular harm by taking precautions.

xx xx xx xx xx

13. In the present case, the Board made an endeavour to rely on the exception to the rule of strict liability (Rylands v. Fletcher [(1868) 3 HL 330 : (1861-73) All ER Rep 1]) being "an act of stranger". The said exception is not available to the Board as the act attributed to the third respondent should reasonably have been anticipated or at any rate its consequences should have been prevented by the appellant-Board. In Northwestern Utilities Ltd. v. London Guarantee and Accident Co. Ltd. [1936 AC 108 : 105 LJPC 18 : 154 LT 89] the Privy Council repelled the contention of the defendant based on the aforecited exception. In that case a hotel belonging to the plaintiffs was destroyed in a fire caused by the escape and ignition of natural gas. The gas had percolated into the hotel basement

from a fractured welded joint in an intermediate pressure main situated below the street level and belonging to the defendants which was a public utility company. The fracture was caused during the construction involving underground work by a third party. The Privy Council held that the risk involved in the operation undertaken by the defendant was so great that a high-degree care was expected of him since the defendant ought to have appreciated the possibility of such a leakage."

(emphasis supplied)

74. Similarly, the learned Single Judge has relied upon the judgment in the case of ***H.S.E.B.*** (supra), wherein in paragraph No.6, it is held as under:

"6. The appellants are carrying on a business which is inherently dangerous. If a person were to come into contact with a high-tension wire, he is bound to receive serious injury and/or die. As they are carrying on a business which is inherently dangerous, the appellants would have to ensure that no injury results from their activities. If they find that unauthorised constructions have been put up close to their wires it is their duty to ensure that that construction is got demolished by moving the appropriate authorities and if necessary, by moving a court of law. Otherwise, they would take the consequences of their inaction. If there are complaints that these wires are drooping and almost touching

houses, they have to ensure that the required distance is kept between the houses and the wires, even though the houses be unauthorised. In this case we do not find any disputed question of fact."

(emphasis supplied)

75. Similarly, the Supreme Court in the case of ***Prabhakaran Vijaya Kumar*** (supra) has, in paragraphs No.39, 40, 47 and 49, held as under:

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

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

xx xx xx xx xx

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.

xx xx xx xx xx

49. <u>There are dicta both ancient and modern that the known categories of tort are not closed, and that novelty of a claim is not an absolute defence. Thus, in Jay Laxmi Salt Works (P) Ltd. v. State of Gujarat [(1994) 4 SCC 1 : JT (1994) 3 SC 492] the Supreme Court observed: (SCC p. 10, para 8)</u>

> *"8. … law of torts being a developing law its frontiers are incapable of being strictly barricaded." "*
>
> *(emphasis supplied)*

76. In the case of ***Nagappa Manneppa Naik*** (supra) in paragraphs No.32 to 34 referred by the learned Single Judge, it is held as under:

"C) <u>Nature of liability of Power Supply Company</u>

32. The Power Supply Companies have sought to repudiate liability on the ground that the claimant by

his/her acts of negligence was responsible for the accident and hence the company was not liable, that there were intervening acts by strangers/third parties which were responsible for the accident. All such contentions raised are no longer available for being canvassed in light of the law laid down by the Apex Court in the case of Madhya Pradesh Electricity Board (supra). The facts of the case was that the deceased who was riding a bicycle rode over a live wire, lying on the road which was inundated with water and the victim died of electrocution. The defence taken was that one Hari Gaikwad had taken a wire from the main supply line to pilfer power and the line got unfastened from the hook and it fell over the road which caused the accident. While the court reiterated the applicability of strict liability but explicitly ruled the inapplicability of the defences available to 'strict liability' including that of an "an act of stranger".

33. The Court while approving the law laid down in the case of M.C.Mehta v. Union of India reported in 1987 1 SCR 819 has in effect declared that there would be absolute liability i.e., strict liability as per the rule of Rylands and Fetcher without any of the exceptions.

34. This position of law has been reiterated by the Division Bench of this court in the case of Bhagyabai V. Principal Secretary, Department of Energy and Others in W.A.No.3249/2010 and W.A.No.3540-43/2010 dated 25.10.2010. Accordingly, the contention of the Power Supply Companies

regarding absence of liability while raising defences is liable to be rejected."

(emphasis supplied)

77. We may also, at this stage, deal with the submission of Sri. Sriranga that the judgments in the cases of ***Shail Kumari*** (supra) and ***Nagappa Manneppa Naik*** (supra), the Courts have not considered the aspect of contravention of Rules 80 and 82 of the Electricity Rules, 1956 and also in ***Shail Kumari*** (supra), the accident occurred due to snapping of electrical wires and leakage of electricity, which is not the case in these appeals. We are not in agreement with this submission of Sri. Sriranga for the reason the Supreme Court in the case of ***M.C. Mehta*** (supra), has clearly held that the defendant is always liable for injuries regardless of fault. In strict liability, the defendants are only liable if they are negligent. So in that sense, an entity is liable in view of the usage of the dangerous substance which is not the case in strict liability. In this case, we find that the learned Single Judge has noted the statutory obligations of an electric company to ensure during transmission and distribution irrespective of the duties of the consumers. So in that sense, the plea that

facts are disputed and cannot be gone into in writ jurisdiction would be without merit and inconsequential when the liability is absolute. At this stage, we may reproduce the judgment of the Supreme Court in ***M.C. Mehta*** (supra), more specifically at paragraphs No.32, wherein the Supreme Court has held as under on the liability of an entity to pay compensation:

> *"32. We would also like to point out that the measure of compensation in the kind of cases referred to in the preceding paragraph must be corelated to the magnitude and capacity of the enterprise because such compensation must have a deterrent effect. The larger and more prosperous the enterprise, the greater must be the amount of compensation payable by it for the harm caused on account of an accident in the carrying on of the hazardous or inherently dangerous activity by the enterprise."*
>
> *(emphasis supplied)*

78. The aforesaid position of law has been reiterated in ***Parvati Devi***'s case (supra), wherein in paragraph No.2, the Supreme Court has held as under:

> *"2. The appellants moved the High Court of Delhi claiming compensation as the husband of Appellant 1 died on account of electrocution while walking on the road. That the death was on account of electric shock*

is established in view of the CFSL report from Calcutta. But as the appellants could not produce relevant materials indicating the negligence of any particular officer of the authority, the High Court refused to award compensation. It is against this order, the present appeal has been filed. Once it is established that the death occurred on account of electrocution while walking on the road, necessarily the authorities concerned must be held to be negligent, and therefore, in the case in hand, it would be NDMC who would be responsible for the death in question. It is found from the records that the appellant was serving as a machineman in The Statesman and was aged 54 years on the date of death, and the age of retirement is 60 years. Taking these factors into consideration, we direct that the appellants, who are the legal heirs of the deceased, be awarded compensation to the tune of Rs 1,00,000 and NDMC should pay the same within 3 months from today failing which it will carry interest at the rate of 12 %. This should be in total satisfaction of the compensation for the legal heirs of the deceased."

79. So, the plea of Sri. Sriranga that the building in WA No.865/2022 was constructed by the owner in contravention of Rules 80 and 82 of the Electricity Rules and BBMP permitted construction of the building is unmerited in view of the above position of law as injuries/death has been caused because of electrocution and there being an absolute

liability, the appellant was rightly fastened with the liability of compensation. It appears Rules 80 and 82 have been repealed. That apart, we agree with the submission of learned counsel for respondent No.1 in the said appeal that, despite issuing notice to the building owner, the appellant had failed to take action on the notices issued to the building owner in terms of Rule 68 of the Electricity Rules, 2003. This would also depict the knowledge of the appellant on the violation of Electricity Rules and the impending danger because of construction, but no action including calling upon BBMP to take action, was taken, which depict negligence on the part of the appellant.

80. The plea of Sri. Sriranga that the learned Single Judge has virtually led the building owner and BBMP go scot free is not correct as in paragraph No.45(v), the Single Judge has granted liberty to the appellant to proceed against the joint-feasors or against others on the principle of contributory negligence in accordance with law.

80.1. Insofar as the plea of Sri. Sriranga in WA No.861/2022 that there is no negligence on part of the appellant resulting in the incident leading to the death of the

husband of respondent No.1 is concerned, he has primarily relied upon the report dated 25.09.2017 of the Assistant Executive Engineer (Ele.) to say that the condition of the backup relays was good, which aspect according to him has been ignored by the learned Single Judge. Suffice to state, we find that, the learned Single Judge has, in paragraphs No.39.3(iii) and 39.3(iv) of the impugned order, stated as under:

> *"39. xx xx xx xx xx*
>
> *(iii) Though the respondent no.1 has relied on Annexure-'R2' which is the report of the Assistant Executive Engineer which certifies that the 'back-up relays' was satisfactory, there is no explanation as to why there was no cutting off of power supply when the accident occurred if indeed the relays were working. The report of the Electrical Inspector is to be given due weight as such report is made in terms of the statutory scheme under Section 161 precisely where accidents occur in generation, transmission etc., resulting in loss of human life. It may not be open for the KPTCL to dispute such finding of the Electrical Inspector. Even otherwise, the report of the Electrical Inspector if not accepted is to be appealed against before the appropriate Appellate Authority under Section 162 (2) of the Act. Once the report has attained finality, same cannot be called in question in the present proceedings.*

(iv) As the finding of the Electrical Inspector is that there has been violation of Regulation 45 (2) which relates to earth fault or earth leakage protection which relates to the equipment within the control of respondent KPTCL, the respondent-KPTCL is to be fastened with liability."

So, the plea of Sri. Sriranga is unmerited.

80.2. Similarly, in respect of respondent No.1 in WA No.868/2022 is concerned, the learned Single Judge has, in paragraphs No.39.1(i) to 39.1(v), stated as under:

"39. xx xx xx xx xx

(i) As regards the occurrence of accident, though FIR is registered belatedly on 06.01.2018, the inquiry by the Electrical Inspector concludes that the electrical accident has happened within the Arcing Zone of the 11 KV Electric line. The report being a statutory report in terms of Section 161, as long as same has not been set aside, it is required to be accepted as binding by the respondent-BESCOM.

(ii) The fact that distance between the electrical line and building was 1.2 Meters as required would by itself not absolve the company from liability.

(iii) The other contention relating to liability under Common Law is settled and no defence would save the respondents from their liability. In fact, the respondent in the statement of objections has

observed that the petitioner had touched the 11 KV line with a metal mop to collect the veil which had accidentally fallen on the 11 KV line, which would indicate that the accident had occurred due to the negligence of the petitioner. Such defence cannot be accepted and result in absolving the respondent.

(iv) The receipt of compensation in the nature of solatium would not absolve the respondent from further liability. The recommendation of the KSCPCR and the order of the Government on such recommendation granting Rs.2,50,000/- as solatium would not have the effect of defeating the right to claim compensation.

(v) The report of Electrical Inspector would support the conclusion that the accident has been caused when the child came within the Arcing Zone."

So, the plea of Sri. Sriranga in imputing negligence on the husband of respondent No.1 in WA No.861/2022 and respondents No.1 in WAs No.868 and 865 of 2022 have no basis and the learned Single Judge has rightly concluded in favour of respondents No.1 in these appeals.

81. One of the submissions of Sri. Sriranga was, on the contributory negligence of the children i.e., respondents No.1 in WAs No.865 and 868 of 2022. The learned Single Judge by relying upon the judgments of the Supreme Court

in ***Sudhir Kumar Rana -Vs.- Surinder Singh [(2008) 12 SCC 436]*** and ***M.P. State Road Transport Corporation -Vs.- Abdul Rahman [AIR 1997 MP 248]***, has rightly held that there cannot be any contributory negligence in respect of children. In other words, it cannot be said that, the child ought to have exercised due care and caution in not going near the high-tension electric line and coming within the induction zone or not to carry any objects under the high-tension electrical line as a child could not be expected to take a considered decision of taking of precautions as is expected of adults.

Forum Shopping:

82. One of the submissions of Sri. Sriranga is that, the filing of the writ petition by respondent No.1 in all the appeals were not maintainable as respondent No.1 in WA No.865/2022 has availed interim compensation from various quarters including the appellant herein. He has also referred to grant of compensation of Rs.5,00,000/- to respondent No.1 in WA No.865/2022 and Rs.6,50,000/- to respondent No.1 in WA No.868/2022 and as such, the learned Single Judge should have relegated respondents

No.1 in all the appeals to work out the actual damages which they would be entitled to. In this regard, the plea of learned counsel for respondent No.1 was that, in one of the writ petitions being WP No.26329/2020 filed by the appellant challenging the order of the Child Rights Commission, this Court had observed that, anything said in the order of the Commission shall not effect any claim by the victim made by way of filing a writ petition before the Court seeking compensation. According to the counsel, the said observation is a permission to the respondent No.1 to file a writ petition and as such, the writ petition shall be maintainable for a further claim for damages apart from what has been given. In any case, the submission is, the compensation of Rs.5,00,000/- and Rs.2,50,000/- cannot be determined as final determination when the accident led to the death and serious injuries to the spouse of respondent No.1/respondent No.1 in the other appeals. Moreover, the compensation granted has been adjusted from the amount granted.

83. The reliance placed by Sri. Sriranga on the judgments in the cases of ***Gurdev Singh*** (supra) and ***Gorle***

Gouri Naidu (supra) are concerned, the same have been seen by us and they have no applicability in the facts of this case. In the said cases, the Courts were concerned with a service dispute/suit for partition and not a case where upon being granted partial/interim compensation, the claim for higher compensation was barred in a writ petition. In any case, the observation of Writ Court as highlighted by the counsel for respondent No.1 becomes relevant as it indicates the right of respondent No.1 in these appeals to file writ petitions was not foreclosed.

84. Insofar as the plea of Sri. Sriranga that no material was available to apply the principles for grant of compensation under the Motor Vehicles Act and no basis for compensation determined is concerned, both the submissions are unmerited. The justification for the learned Single Judge to apply the principles of Motor Vehicles Act has not been contested. It is also settled law that principles governing the grant of compensation under the Motor Vehicles Act may be a guiding factor for awarding compensation in cases of this nature. The counsel for respondent No.1 are justified in stating that in the case of

Smt. Bhagyabai (supra) which was upheld by the Supreme Court in ***BESCOM -Vs.- Bhagyabai*** (supra), the principles laid down in ***Sarla Verma*** (supra) and ***Kajal*** (supra) have been applied. So in that sense, there were guiding principles which were followed by the learned Single Judge in awarding compensation. At this stage, it is important to reproduce the relevant paragraphs of the judgment of the learned Single Judge justifying the award of compensation in the manner done by him in the impugned order, more specifically paragraph No.44, which is reproduced as under:

> *"44. In light of the above principles the calculation would be as under:*
>
> *44.1* ***W.P.No.1383/2020***
>
> | | |
> |---|---|
> | *1. Age of the victim* | *: 36 years* |
> | *2. Occupation* | *: Agricultural worker* |
> | *3. No. of Dependents* | *: Wife (34yr); three unmarried daughters 12,15,17yrs); son (9yr)* |
> | *4. Monthly income* | *: Rs.13,500/- (Claimed Income)* |
> | *5. Multiplier* | *: 15* |
> | *6. Loss of dependency* | *: ¼* |
>
> *Calculation of Compensation are as follows:*

(i) Towards loss of Income/salary:

The incident had occurred in the year 2018 and the notional income in the year 2018 as per the Schedule of Income notified by the Lok Adalath was Rs.12,500/-. Deduction towards Personal and living expenditure shall be 1/4th of Rs.12,500 i.e., Rs.9,375/-, following the law laid down by the Apex Court in Sarla Verma (supra), wherein the Apex Court has held that the deduction towards personal and living expenses of the deceased should be one-fourth (1/4th) where the number of dependent family members is 4 to 6. Therefore the compensation under the head shall be calculated by using the formula [Monthly wages after deduction x Multiplier x 12] i.e., 9,375 x 12 x 15 = 16,87,500. Therefore compensation amount of Rs.16,87,500/- is awarded under this head.

(ii) Towards Future Prospects:

In light of law laid down in Pranay Sethi (supra) addition of 40% shall be made towards income i.e., 16,87,500 x 40% = 6,75,000. Therefore compensation amount of Rs. 6,75,000/- is awarded under this head.

(iii) Loss Of Estate, Loss Of Consortium And Funeral Expenses:

The compensation under the head shall be awarded as follows:

Loss Of Estate	*: Rs.15,000/-*
Funeral Expenses	*: Rs.15,000/-*
Spousal consortium	*: Rs.40,000/-*

Parental consortium : Rs.1,20,000/- (40,000 x 3)

Total : Rs.1,90,000/-

Sl. No	*Heads*	*Amount Rs.*
1.	*Loss of Income including Deduction from Personal Expenses*	*16,87,500/-*
2.	*Future prospects*	*6,75,000/-*
3.	*Loss of estate, Loss of consortium and Funeral expenses*	*1,90,000/-*
	Total Rs.	***25,52,500/-***

44.2 ***W.P. No.6087/2019***

1. Age of the victim : 5 years 8 months

2. Disability : 80% burn with 40% deep burn

3. Amount received : BBMP Mayor Fund - 50,000/-
Wakfs Board - 1,00,000/-
2nd Respondent- 5,00,000/-
(Annexure- D, E, R4)

Calculation of Compensation are as follows:

(i) Expenses relating to treatment, hospitalisation, medicines, transportation, etc.:

The child was treated as inpatient for nearly one and a half months for the following period from 16.09.2017 to 12.10.2017; 17.10.2017 to 18.10.2017; 24.10.2017 to 25.10.2017; 31.10.2017; 06.11.2017 to 09.11.2017; 14.112014; 21.11.2017; 28.11.2017. Records reveal the following:

i. 80% burn with 40% deep burn

ii. On ventilation till 23.09.2017

iii. Frequent debridement and dressing of wounds

iv. Medicines

Following the observation made in Kajal (supra) the amount of compensation payable for the actual medical expenditure incurred will be Rs.4,50,000/- and transportation charges incurred during the period of treatment would be Rs.50,000/-. Therefore the total compensation awarded under this head is Rs.5,00,000/-.

(ii) Loss of earning:

The child has suffered 80% burn injuries with 40% deep injuries, the injuries suffered will affect future earning of the child when compared to a normal child. Therefore, the loss of earning can be determined by taking into consideration of Notional Income in terms of law laid down in Kajal's case. The electrical accident occurred in the year 2017 and the Notional Income for the year 2017 was Rs.11,000. In terms of the law laid down by the Apex Court in Sarla Verma (supra), multiplier of 18 can be adopted. With regards to deductions to be made on dependency, it is to be noted that from the present state of the child it is difficult to determine marriage of the child, therefore no deductions shall be made. Hence the compensation under the head works out to Rs.23,76,000/- (11,000 x 18 x 12).

(iii) Attendant charges:

The child was hospatilised for almost one and a half month, it is pertinent to note that the victim being a 6 year old child he would require an attendant to

carry out his daily routine. Therefore compensation amount of Rs.4,00,000/- is awarded under this head.

(iv) <u>Pain and Suffering and Compensation for Disfigurement</u>:

It is pertinent to note that the child had to undergo long term medical treatment. It is evident from Annexure- Z and Z (1,2,3,4,5) that the child requires to undergo skin grafting and plastic surgery. Therefore an amount of Rs.5,00,000/- is awarded for Disfigurement.

(v) <u>Loss of marriage prospects</u>:

Rs.3,00,000/- is awarded under this head.

(vi) <u>Future medical treatment</u> :

The petitioner through memo dated 21.03.2022 has produced an estimate of future medical treatment which amounts to Rs.10,06,050/-, therefore an amount of Rs.10,06,050/-, is awarded under this head.

Sl. No.	***Heads***	***Amount Rs.***
1.	*Expenses relating to treatment, hospitalisation, medicines, transportation, etc*	*5,00,000/-*
2.	*Loss of earnings*	*23,76,000/-*
3.	*Attendant charges*	*4,00,000/-*
4.	*Pain, suffering, Compensation for Disfigurement*	*5,00,000/-*
5.	*Loss of marriage prospects*	*3,00,000/-*
6.	*Future medical treatment*	*10,06,050/-*
	Total	***50,82,050/-***
	Amount already received	***6,50,000/-***
	Compensation awarded	***44,32,050/-***

44.3 ***W.P. No.53302/2018***

1. Age of the victim	*: 13yrs (annexure-D)*
2. Disability	*: 75% (annexure-F)*
3. Amount received	*: Rs.2,50,000/-*
	Annexure R8

Calculation of Compensation are as follows:

(i) Expenses relating to treatment, hospitalisation, medicines, transportation, etc.:

In annexure D (Report of Plastic Surgery Dept, Victoria Hospital) it is stated that the petitioner was hospatilised from 19.10.2017 to 27.11.2017. It further stated that the petitioner underwent elbow amputation. It is further submitted through memo Dated 08.07.2022 that a sum Rs.2,00,000/- was paid towards plastic surgeries. It was prescribed that post discharge the petitioner should attend regular dressing for two months. Therefore compensation amount of Rs.5,00,000/- transportation expenses. is awarded including

It is to be noted that the Apex Court in Mallikarjuna (supra), has held that in cases of disability additional compensation of Rs.4,00,000/- in addition to the actual expenditure incurred for treatment has to be awarded. Therefore the total compensation under the above head works out to Rs.9,00,000/-.

(ii) Loss of earning:

The child has suffered permanent disability of 75% with amputation of left hand. Therefore, the loss

of earning can be determined by taking into consideration of Notional Income in terms of law laid down in Kajal (supra). The electrical accident occurred in the year 2017 and the Notional Income for the year 2017 was Rs.11,000. In terms of the law laid down by the Apex Court in Sarla Verma (supra), multiplier of 18 can be adopted. With regards to deductions made on dependency, it is to be noted that from the present state of the child it is difficult to determine marriage of the child, therefore no deductions shall be made. Hence the compensation Rs.23,76,000/- (11,000 x 18 x 12) is awarded under this head.

(iii) Attendant charges:

The child was hospatilised for almost one month and her elbow was amputated therefore she would require an attendant to carry out her daily routine throughout her life. Hence compensation of Rs.5,00,000/- is awarded under this head.

(iv) Pain and Suffering and Compensation for Disfigurement:

Rs.5,00,000/- is awarded under this head.

(v) Loss of marriage prospects:

Rs.3,00,000/- is awarded under this head.

(vi) Future medical treatment:

The memo dated 21.03.2022 and 08.07.2022 provides the estimate of future medical treatment

along with the cost of robotic arm. It is further provided that the petitioner has to undergo two surgeries amounting to Rs.2,00,000/- and robotic arm amounting to Rs.2,90,000/-, also to be taken into consideration as expenses incurred on medication. Therefore, compensation amount of Rs.6,00,000/- is awarded under the above head.

Sl. No.	***Heads***	***Amount Rs.***
1.	*Expenses relating to treatment, hospitalisation, medicines, transportation, etc*	*9,00,000 /-*
2.	*Loss of earnings*	*23,76,000/-*
3.	*Attendant charges*	*5,00,000/-*
4.	*Pain, suffering, Compensation for Disfigurement*	*5,00,000/-*
5.	*Loss of marriage prospects*	*3,00,000/-*
6.	*Future medical treatment*	*6,00,000/-*
	Total	***51,76,000/-***
	Amount already received	***2,50,000/-***
	Compensation awarded	***49,26,000/-***

"

85. One of the submissions of Sri. Sriranga is, the compensation(s) which has been awarded to the respondents No.1 (in the appeals) is on the higher side and grant of such a compensation is uncalled for. We are not in agreement with this submission as well. The law is well settled by the Supreme Court in catena of judgments, including its latest opinion in the case of ***K.S. Muralidhar - Vs.- R. Subbulakshmi & Anr. [Civil Appeal*** *arising out of* ***SLP(C) No.18337/2021]***, wherein the Supreme Court has

on facts awarded/enhanced the compensation to Rs.1,02,29,241/- (much above to what has been granted in these appeals), by stating in paragraphs No.10 to 17 as under:

> *"10. It is submitted that the claimant-appellant's employment was permanent in nature, and as such, the loss of future income ought to be calculated, in terms of the above, at 50%. The High Court, in para 23 of the judgment, observes that the total income of the claimant-appellant was Rs.27,867/- per month. 50% thereof is Rs.13,933/- His income, therefore, comes to Rs.41,800/- (27,867 + 13,933). Considering the above-computed income, the compensation under the head loss of future prospects would be Rs.41,800 x 12 x 15 x 100% = Rs.75,24,000/- as opposed to Rs.70,22,520/- as calculated by the High Court.*
>
> *The total compensation as it stands at the moment would be Rs. 80,67,870/- + Rs.6,61,371/- = Rs.87,29,241/-.*
>
> *11. Let us now consider the claimant-appellant's prayer for enhancement of compensation under the head 'pain and suffering'. It cannot be disputed that the injuries sustained by the claimant-appellant are serious, and their effects on his life are long-lasting; one may even say lifelong. The examination of the doctor, namely, Dr. N.C. Prakash, forming part of record as Annexure P-5, dated 6th October 2010 reads as under:*

"5. I further state that recently I examined the patient on 30- 9-2010 for assessment of disability. He complains of the following:

a. No sensation to below the C-7 Dermatome.
b. Lost sensation of bowel and urinary system.
c. No control below the neck.
d. Needs assistance for every activity.

6. On examination I found the following:

At present he is in wheel chair bound with no movements (Grade 0/5) in both lower limbs, minimal movements in bilateral upper limb proximally with wrist being very weak (1/5 power) and grip is not possible. He has no urinary control, has no sensation of bowels and is on urinary catheter. He needs help for all his day to day activities. He was an Assistant Team Leader in LM Glass Fibers India Pvt. Ltd. and now can't do any work. He has almost no chance of further improvement and impairment is likely to be permanent. All put together he has a disability of about 85% to the whole body."

12. It is to be noted that both the Tribunal and the High Court have taken the disability suffered by the claimant-appellant to be at 100%. We find no ground to take a different view.

13. While acknowledging that 'pain and suffering', as a concept escapes definition, we may only refer to certain authorities, scholarly as also judicial wherein attempts have been made to set down the contours thereof.

13.1 The entry recording the term 'pain and suffering' in P. Ramanatha Iyer's Advanced Law Lexicon reads as under:-

> *"Pain and suffering. The term 'Pain and suffering' mean physical discomfort and distress and include mental and emotional trauma for which damages can be recovered in an accident claim.*
>
> *This expression has become almost a term of art, used without making fine distinction between pain and suffering. Pain and suffering which a person undergoes cannot be measured in terms of money by any mathematical calculation. Hence the Court awards a sum which is in the nature of a conventional award [Mediana, The (1900) AC 113, 116]"*

13.2 Eric Cassell, an American Physician and Bioethicist, defines 'pain' not only as a sensation but also 'as experience embedded in beliefs about causes and diseases and their consequences', and 'suffering' as 'the state of severe distress associated with events that threaten the intactness of person'.

13.3 In a recent article published in the journal of the International Association for the Study of Pain, it has been recorded that there is no consensus on what exactly the concept of pain-related suffering includes, and it is often not precisely operationalised in empirical studies. The authors in their systematic review analysed 111 articles across a variety of disciplines such as bioethics, medical ethics, psycho-oncology, anaesthesiology, philosophy, sociology etc., we may refer to few of them:

13.3.1 Eugene V. Boisaubin, who is currently a Professor at the University of Texas, at Houston, in a 1989 article defined it as "Suffering is experienced by individual and arises from threats to the integrity of the individual as a complex social and psychological entity."

13.3.2 Andrew Edgar, who is currently a Reader Emeritus in Philosophy at Cardiff University at UK has defined, in a 2007 article suffering as an "experience of life never getting better, revealing in the sufferer only vulnerability, futility, and impotence."

13.3.3 Arthur W. Frank, Professor Emeritus, Department of Sociology, University of Calgary in his well-known article "Can We Research Suffering?", published in 2001, observed that "at the core of suffering is the sense that something is irreparably wrong with our lives, and wrong is the negation of what could have been right. Suffering resists definition because it is the reality of what is not."

13.3.4 Daryl Pullman who currently serves as University research Professor, Bioethics at the Memorial University of Newfoundland, Canada in his 2002 article defined suffering as the "product of [physical], psychological, economic, or other factors that frustrate an individual in the pursuit of significant life projects."

13.4 The Judicial Studies Board, now known as the Judicial College in the United Kingdom, produced

guidelines in 1992 to produce greater consistency of awards and make the judicial scale of values more easily accessible. They have been deduced from a study of past cases, examining the range of awards therein. The latest edition of these guidelines was published in 2021 . They record the difficulty of computing 'pain and suffering' as under :-

> *"It is widely accepted that making of an award of general damages for pain and suffering is a somewhat artificial task. It involves the Judge seeking to convert the pain and suffering of a given claimant into a monetary award which he or she considers to be reasonable by way of compensation. That is a difficult task and one which has historically led to judges making widely varying awards of damages in respect of relatively comparable injuries a result which not only offends the principle of equality before law but results in unnecessary appeals and the incurring of additional cost, apart altogether from the burden that such appeals place on the Court's own scarce resources."*

13.5 In determining non-pecuniary damages, the artificial nature of computing compensation has been highlighted in Heil v. Rankin [(2001) QB 272], as referred to in Attorney General of St. Helena v. AB & Ors. [Privy Council Appeal No.0034 of 2018] as under:-

> *"23. This principle of 'full compensation' applies to pecuniary and non-pecuniary damage alike. But, as Dickson J indicated in the passage cited from his judgment in Andrews v Grand & Toy Alberta Ltd, 83 DLR (3d) 452, 475-476, this statement*

immediately raises a problem in a situation where what is in issue is what the appropriate level of 'full compensation' for non-pecuniary injury is when the compensation has to be expressed in pecuniary terms. There is no simple formula for converting the pain and suffering, the loss of function, the loss of amenity and disability which an injured person has sustained, into monetary terms. Any process of conversion must be essentially artificial. Lord Pearce expressed it well in H West & Son Ltd v Shephard [1964] AC 326, 364 when he said:

'The court has to perform the difficult and artificial task of converting into monetary damages the physical injury and deprivation and pain and to give judgment for what it considers to be a reasonable sum. It does not look beyond the judgment to the spending of the damages.'

24. The last part of this statement is undoubtedly right. The injured person may not even be in a position to enjoy the damages he receives because of the injury which he has sustained. Lord Clyde recognised this in Wells v Wells [1999] 1 AC 345, 394H when he said: 'One clear principle is that what the successful plaintiff will in the event actually do with the award is irrelevant."

13.6 In the context of the United States, the most important piece of legal literature regarding 'pain and suffering' is an article titled Valuing Life and Limb in Tort: Scheduling Pain and Suffering, published in the year 1989. Relevant extracts thereof read as under :

> *"Pain and suffering and other intangible or non-economic losses are even more problematic. Physical pain and attendant suffering have for centuries being recognised as legitimate elements of damages, and "modern" tort law has seen a marked expansion of the rights to recover for forms of mental anguish. Some Courts have even permitted recovery for emotional trauma unaccompanied by physical injury, including derivative losses stemming from injuries to family members. The precise elements of compensable non-economic loss vary by jurisdiction. Pain and suffering may be used as a catch-all category for the jury's consideration of all non-pecuniary losses in a case of a nonfatal injury, subsuming other qualitative categories such as mental anguish and humiliation. More commonly, though, other non-economic elements – such as "loss of enjoyment of life" are accorded independent standing …"*

Another important observation is that:

> *"Whatever the categories of non-economic damages allowed in a given jurisdiction, the law provides no objective benchmarks valuing them. As one commentator notes, "Courts have usually been content to say that pain and suffering damages should amount to 'fair compensation', or a 'reasonable amount', 'without any definite guide'."*

13.7 Consideration of the above, underlines that while each discipline has its own conception of the meaning of pain/suffering, within its confines, the commonality that emerges is that a person's understanding of oneself is shaken or compromised at its very root at

the hands of consistent suffering. In the present facts, it is unquestionable that the sense of something being irreparably wrong in life, as spoken by Frank (supra); vulnerability and futility, as spoken by Edgar, is present and such a feeling will be present for the remainder of his natural life.

14. In respect of 'pain and suffering' in cases where disability suffered is at 100%, we may notice a few decisions of this Court:-

14.1 In R.D Hattangadi v. Pest Control (India) (P) Ltd. [(1995) 1 SCC 551] It was observed :

> *"17. The claim under Sl. No. 16 for 'pain and suffering' and for loss of amenities of life under Sl. No. 17, are claims for non-pecuniary loss. The appellant has claimed lump sum amount of Rs.3,00,000 each under the two heads. The High Court has allowed Rs.1,00,000 against the claims of Rs.6,00,000. When compensation is to be awarded for 'pain and suffering' and loss of amenity of life, the special circumstances of the claimant have to be taken into account including his age, the unusual deprivation he has suffered, the effect thereof on his future life. The amount of compensation for non-pecuniary loss is not easy to determine but the award must reflect that different circumstances have been taken into consideration. According to us, as the appellant was an advocate having good practice in different courts and as because of the accident he has been crippled and can move only on wheelchair, the High Court should have allowed an amount of Rs.1,50,000 in respect of claim for 'pain and*

> *suffering' and Rs.1,50,000 in respect of loss of amenities of life. We direct payment of Rs.3,00,000 (Rupees three lakhs only) against the claim of Rs.6,00,000 under the heads "'pain and suffering'" and "Loss of amenities of life".*
>
> *(Emphasis Supplied)*

14.2 This Judgment was recently referred to by this Court in Sidram v. United India Insurance Company Ltd. [(2023) 3 SCC 439] reference was also made to Karnataka SRTC v. Mahadeva Shetty [(2003) 7 SCC 197] (irrespective of the percentage of disability incurred, the observations are instructive), wherein it was observed :

> *"18. A person not only suffers injuries on account of accident but also suffers in mind and body on account of the accident through out his life and a feeling is developed that his no more a normal man and cannot enjoy the amenities of life as another normal person can. While fixing compensation for pain and suffering as also for loss of amenities, features like his age, marital status and unusual deprivation he has undertaken in his life have to be reckoned."*

14.3 In Kajal v. Jagdish Chand [(2020) 4 SCC 413] considering the facts of the case, i.e., 100% disability, child being bedridden for life, her mental age being that of a nine-month-old for life - a vegetative existence, held that "even after taking a conservative view of the matter an amount payable for the 'pain and suffering' of this child should be at least Rs.15,00,000/-."

14.4 In Ayush v. Reliance General Insurance {(2022) 7 SCC 738] relying on Kajal (supra) the amount awarded in 'pain and suffering' was enhanced to Rs.10,00,000. The child who had suffered the accident was five years old and the Court noted in paragraph 2 that :

> *"As per the discharge certificate, the appellant is not able to move both his legs and had complete sensory loss in the legs, urinary incontinence, bowel constipation and bed sores. The appellant was aged about 5 years as on the date of the accident, hence has lost his childhood and is dependent on others for his routine work."*

14.5 In Lalan (supra) cited by the claimant-appellant, the Tribunal awarded Rs.30,000/- which was enhanced to Rs.40,000/- by the High Court. Considering the fact that the appellant therein has suffered extensive brain injury awarded compensation under 'pain and suffering' to the tune of Rs.3,00,000/-.

15. Keeping in view the above-referred judgments, the injuries suffered, the 'pain and suffering' caused, and the life-long nature of the disability afflicted upon the claimant-appellant, and the statement of the Doctor as reproduced above, we find the request of the claimant-appellant to be justified and as such, award Rs.15,00,000/- under the head 'pain and suffering', fully conscious of the fact that the prayer of the claimant–appellant for enhancement of compensation was by a sum of Rs. 10,00,000/-, we

find the compensation to be just, fair and reasonable at the amount so awarded.

16. It stands clarified that we have modified the Award, as given by the High Court, only on two counts, i.e., future prospects and 'pain and suffering'. The amount as enhanced, shall carry interest @ 6%, from the date of filing of the petition for special leave to appeal. According to paragraph 10, the compensation to be awarded stood at Rs.87,29,241/-. Consequent to the above discussion on 'pain and suffering', the total amount now payable is Rs.1,02,29,241/-.

17. The appeal is allowed as aforesaid. Pending applications, if any, stand disposed of."

Noting the aforesaid position of law and applying to the same to the facts of these cases, the grant of compensation by the learned Single Judge under different heads which are recognized in law, cannot be said to be on the higher side. In this regard, we reproduce the following paragraph of the judgment of the Supreme Court in the case of ***Atul Tiwari -Vs.- Regional Manager, Oriental Insurance Company Limited [2025 SCC OnLine SC 29]*** as under to highlight the compensation to be granted, has to be fair and just:

"35. It is well accepted norm that money cannot substitute a life lost but an effort has to be made for grant of just compensation so far as money can

compensate. This court in the case of Arvind Kumar Mishra v. New India Assurance Co. Ltd. & Anr. [(2010) 10 SCC 254] has observed that basis for assessment of all damages for person injury is compensation. Perfect compensation is hardly possible but one has to keep in mind that victim has suffered at the hands of the wrongdoer and court must take care to give him full and fair compensation for that he had suffered. In some cases for personal injury, the claim could be in respect of lifetime's earnings lost because, though he will live, he cannot earn his living. In others, the claim may be made for partial loss of earnings. Each case has to be considered in the light of its own facts and at the end, one must ask whether the sum awarded is a fair and reasonable sum. 36. In view of the above discussion and the law laid down by this Court in the aforesaid decisions, this court is of the view that High Court only to the extent of enhancing the compensation of the petitioner under the head - Loss of Income has not made any error. However, the High Court has utterly failed in not delving into the correctness of the compensation granted by MACT under other heads. Therefore, this court is inclined to enhance the amount of compensation to be granted to the petitioner to Rs. 48,00,000/- in toto, the same is hereby matched with the amount claimed by him in his application before the MACT."

86. In view of our aforesaid discussion, we hold, the present appeals filed by the appellants are without any merit and they are liable to be ***dismissed***, we order accordingly.

No costs.

Pending IAs are *disposed of* as infructuous.

Sd/-
(V KAMESWAR RAO)
JUDGE

Sd/-
(C M JOSHI)
JUDGE

PA