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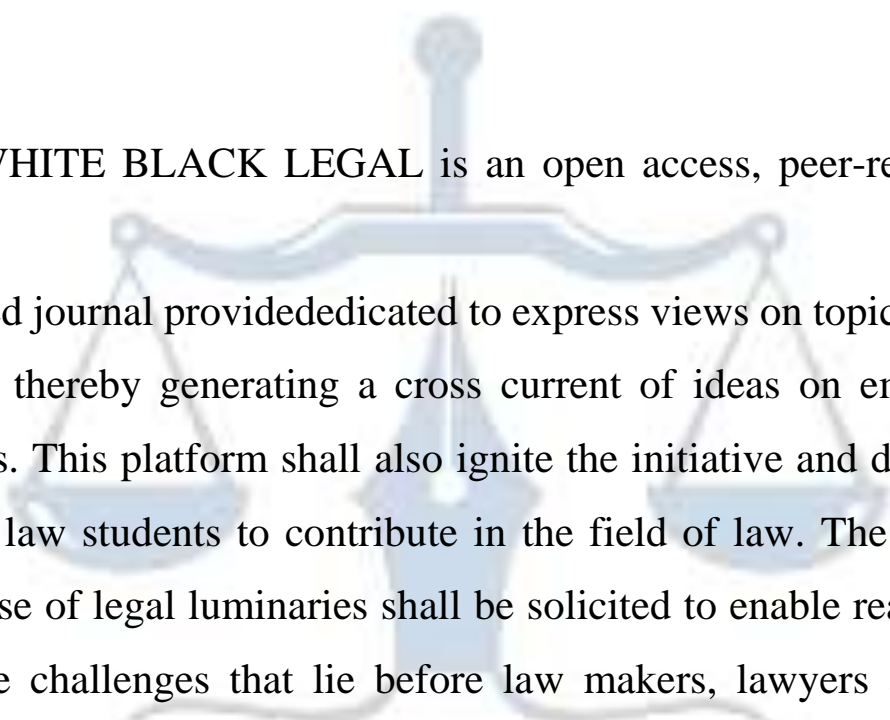


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ABOUT US



WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

CASE COMMENTARY ON M.P. ELECTRICITY BOARD VS. SHAIL KUMARI AIR 2002, SC, 551

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M.P. Electricity Board Vs. Shail Kumari, AIR 2002, SC, 551

Appellant: M.P. Electricity Board

Respondent: Shail Kumari

Date of the judgement: 11.01.2002

Bench: Justice K.T. Thomas, Justice S.N. Phukan

Introduction:

¹M.P. Electricity Board Vs. Shail Kumari deals with negligence and strict liability. This case had clearly stated the difference between negligence and strict liability. It is considered as an important case and has been further referred to and cited in various other judgements.

Facts of the case:

A live wire had snapped and fell to the ground and it was inundated with rain water. Jogendra Singh was returning from the factory (his workplace) and didn't notice the live wire and rode over the live wire. As a result, he fell down and was electrocuted, he died within minutes. His wife and son had made claims for damages. However, the Electricity Board had denied the claims for the damages on the grounds that a third party, Hari Gaikwad had secretly and without the knowledge of the electricity board siphoned the electric energy from the supply line, this had led to the accident because of which the plaintiff was electrocuted. Hari Gaikwad the third party had also denied the claims made by the electricity board, he denied siphoning the electric energy from the supply line. The High Court was of the opinion that Rupees 4.34 lakhs to the claimant. The Electricity Board thus filed an appeal at the Supreme Court challenging the decision of the High Court.

¹ M.P. Electricity Board Vs. Shail Kumari, AIR 2002, SC, 551

Issues:

1. Whether the appellant is liable under negligence or the doctrine of strict liability.
2. Whether the “An Act by a Stranger” could be used as a defence against “strict liability” in this case.

Rules:

The Tort Laws referred to in this case:

- 1) “Doctrine of Strict Liability”
- 2) Negligence

The Statutes referred to in this case:

- 1)²Section 5 of Indian Electricity Supply Act, 1948

The Precedents referred to in this case are as follows:

1)³Kaushnuma Begum Vs. New India Assurance Co. Ltd: This case was referred to in the judgement as the case also deals with the doctrine of Strict Liability.

⁴2)W.B.SEB Vs. Sachin Banerjee: This case was mentioned in the judgement as it also dealt with pilferage however strict liability was not used in this case.

3)⁵Charan Lal Sahu Vs Union Of India: This case was referred to in the judgement as the case also deals with the “Doctrine of Strict Liability”.

4)⁶Gujarat SRTC Vs Ramanbhai Prabhatbhai: This case was referred to in the judgement as the case also deals with the “Doctrine of Strict Liability”.

5)⁷M.C. Mehta Vs Union Of India: This case has been discussed to differentiate between absolute liability and strict liability.

6)⁸Northwestern Utilities Vs London Guarantee and Accident co. Ltd.: This case was referred to as it also talks about strict liability.

7)⁹Quebec Railway Vs Light Heat and Power co. ltd.: It was held in this case that the company is liable even without proof of the company’s negligence. This case has been referred to as the background of the case is almost similar and the same principles have been invoked.

² Indian Electricity (Supply) Act, 1948, §5, Act 54, Acts of Parliament, 1948

³ 2001, SCR 8

⁴ 1999, 9SCC 21

⁵ AIR 1990, SC 1480

⁶ 1987, 3SCR 404

⁷ 1987, 1SCR 819

⁸ 1936, Appl Cases 108

⁹ 1920, LRAC 662

8)¹⁰Ryland Vs Fletcher: This case is regarded as one of the landmark judgements, it had laid down the principle of strict liability. Thus, the judges had referred to this case.

Analysis

The Arguments advanced from the side of the appellant (M.P. Electricity Board):

The arguments put forward from the appellant board was that the act was caused by the actions of the third party. They had contended that they had exercised the defence of “an act of a stranger”. They contended that Hari Gaikwad had siphoned off energy from the electric supply in an unauthorized manner that lead to the electrocution of Jogender Singh. They claimed that they had exercised due and reasonable care.

Observations made by the judges:

The judges had laid down a few observations to explain the concept of Strict liability with Clarity. The judgement of Ryland Vs. Fletcher’s case was re-iterated and the observation made by Lord Black Burn,¹¹“the rule of law is that the person who, for his own purpose, brings on his lands and collects and keeps there anything likely to do mischief if it escapes must keep it at his peril, and if he does so he is prima facie answerable for all the damage which is the natural consequence of its escape” was also taken into consideration by the judges. The judges had further made clarifications about the Doctrine of Strict Liability. The judges were of the view that the basis for the Doctrine of Strict liability is that the risk was already for-seeable and inherent in the very nature of the activity.

The difference between the concepts of negligence and strict liability. The judges were of the opinion that negligence can be avoided by practicing necessary and reasonable precaution. If the defendant had exercised due care, he cannot be held liable but in cases of strict liability this is not how things work. In strict liability, even if the necessary precautions have been taken by the authorities and any person undertaking any hazardous job has been injured, the authority is going to be liable. The main difference that was considered by the judges is that there is no consideration in case of strict liability, the authorities are liable even if sufficient precautions

¹⁰ 1868, LR (3)

¹¹ Ryland Vs Fletchers, 1868 LR (3)

have been exercised, this is not the case in negligence. There are a few defences available for exemption in Strict Liability and one such defence has also been discussed.

The judges observed that it was the responsibility of the Electricity Board to supply energy in a particular locality. Thus, the electricity board is going to be held liable if the energy that is being transmitted escapes and causes an injury or death of an individual. The Electricity Board should compensate the victim in such a scenario. If the voltage of electricity that is being transmitted through the wires is high the electricity board should have taken necessary precautions to ensure the electricity doesn't escape and even if the wire snaps the wire shouldn't remain live on the road at leads to accidents. "Act of a stranger" also cannot be considered as a defence in such cases, as the court held that it was the duty of the board to ensure that mischief should be prevented and the board is liable if any such pilferage happens. It was further added that authorities who handle hazardous substances should take extra care and precaution.

The Verdict:

The court did not see any reasonable prospect of going ahead with the appeal, thus they didn't issue a notice to the respondents.

Madhya Pradesh Electricity Board was held strictly liable and entitled to pay the damages claimed by the respondents. It was also held that the defence of "act of a stranger" cannot be taken into consideration. The Appeal was thus dismissed by the court.

Conclusion

M.P Electricity Board Vs. Shail Kumari has been discussed and referred to in many cases. In ¹²Pashchim Gujarat Viji Co. Ltd. Vs. Heirs of Chandrakaben Harpalsinh, this case had upheld the decision of the court in M.P. Electricity Board Vs. Shail Kumari. They had discussed this case and upheld the observations of the judges about strict liability. In another case, ¹³S.D.O. Grid Corporation of Orissa Ltd. And Others Vs. Timudu Oram. The appellants in this case had cited this judgement to support their case, The Supreme Court further referred to this argument and remarked on the basis on which the judgement had been made. He was of the

¹² AIR 2017, Gujarat 177

¹³ AIR 2005, SC 3971

opinion that the respondents had received the compensation as there was no basis and real argument on the side of the appellant, they were just trying to evade the liability. All the courts that have referred to this judgement has upheld the decision of the case and also referred to the distinction made between negligence and strict liability in this case.

Thus, it can be inferred that this case is an important case and also clarifies the distinction between Strict Liability and Negligence.

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- 4) W.B.SEB Vs. Sachin Banerjee, 1999, 9SCC 21
- 5) Charan Lal Sahu Vs Union Of India
- 6) Gujarat SRTC Vs Ramanbhai Prabhatbhai
- 7) M.C. Mehta Vs Union Of India
- 8) Northwestern Utilities Vs London Guarantee and Accident co. Ltd.,1936, Appl Cases 108
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- 12) S.D.O. Grid Corporation of Orissa Ltd. And Others Vs. Timudu Oram, AIR 2005, SC 3971”