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

% ***Reserved on : 1st August, 2018***
Date of decision : 3rd August, 2018

\+ **W.P.(C) 12326/2015**

COURT ON ITS OWN MOTION ..... Petitioner
Through: *Court on its own motion.*

versus

GOVT. OF NCT OF DELHI & ORS ..... Respondent
Through: *Mr. Satyakam, Addl. Standing Counsel for Govt. of NCT of Delhi.*

CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE C. HARI SHANKAR

JUDGMENT

GITA MITTAL, ACTING CHIEF JUSTICE

1. *Suo motu* cognizance was taken by this court on the basis of a news report in the *Hindustan Times* dated 22nd December, 2015 regarding the death of an 11 year old boy, who had gone on a school picnic, after falling into an uncovered rain water harvesting pit at the Millennium Park in Southeast Delhi.

2. The report titled as *"**Boy on school picnic falls in water harvesting pit, dies**"* reads as follows:-

NEW DELHI : An 11 year old boy who had gone for a

school picnic, died after falling inside a water harvesting pit that was left precariously open at Millennium Park in Southeast Delhi's Sarai Kale Khan area on Monday morning.

The pit, reportedly maintained by the Public Works Department, had a damaged lid and when the boy stepped on it, the lid crumbled and the boy fell inside it.

Labansh, a student of Class 8 raised an alarm and many passersby including his school friends and teachers accompanying him for the picnic, tried to rescue him but failed. The passerby then called the fire department and the police "The fire tender reached the spot and rescued the boy. He was then rushed to the hospital where he was admitted for treatment. A few minutes later the boy died. He had reportedly fallen unconscious inside the pit after trying his best to reach out to the base and come out" a senior police officer said The boy was studying at a boy's school in Lalita Park and was a resident of Laxmi Nagar.

*The police have registered a case of negligence in the matter and have written to several agencies including PWD to see whose responsibility was it to properly cover the pit. "**The lid of the pit was completely damaged. It was wearing off and the locals had reportedly made several complaints** regarding the same but no action was taken. We are finding out which agency is responsible for the maintenance of the pit and will definitely book them for negligence. The investigation in the matter is on "police said.*

Meanwhile, the police have sent the boy's body for post-mortem and also informed his parents about the death.

> *"The parents want strict action against the civic agency and the school authorities for not taking care of the boy during the picnic. We have noted down their statements and are verifying details. The investigation in the matter is on", police said."*
>
> *(Emphasis by us)*

3. Notice of the petition was accepted on behalf of the respondents being the Govt. of NCT, Delhi; the Public Works Department; the Engineer-in-Chief, Public Works Department and the SHO, PP Sarai Kale Khan.

Police investigation & action taken

4. An affidavit dated 8th February, 2016 which was filed under the signatures of Sh. OP Lekhwal, SHO, PS Sunlight Colony, exercising jurisdiction over Police Post Sarai Kale Khan, disloses the turn of events, as unfolded during the investigation, in the following terms:

> "*The Police Post Sarai Kalen Khan, P.S. Sunlight Colony received information from the police control room on 21/12/2015 at 14:10 hrs vide DD No.21 regarding a boy has fallen in a sewer near gate no.1 of I P Park. Immediately, the information was marked to SI Ram Kishore for inquiry and appropriate action in accordance with law who immediately reached the spot. At the same time, I alongwith Incharge, Police Post Sarai Kalen Khan with staff also rushed to the spot of incident. Upon arrival, it was learnt that the incident has occurred near water harvesting plant of PWD constructed near Gate No.4 of Indraprastha Park, Ring Road, Delhi.*

*3. Upon inquiry, it was learnt that **Master Lavansh**, **a boy aged 11-12 yrs**, who had come for a **school tour** had fallen in an **uncovered rain water harvesting tank**. Despite switching on the torch, nothing was visible as it was completely dark in the tank. Immediately, the rescue teams and senior officers were informed. Immediately, the fire brigade and senior officers reached at the spot. The officials of fire brigade entered the tank with the help of their accessories. After approximately 25 minutes of search, the boy was taken out from the tank in unconscious state. He was immediately taken by police to LNJP Hospital in CATSs ambulance. The ambulance reached to Lok Nayak Hospital and boy was shifted to Emergency. However, the Doctors declared him brought dead at 15:34 hrs vide MLC No.ECL-15045. The mother of the boy was also informed. She along with her relatives reached the hospital and identified the deceased as her son namely Lavansh S/o Arun Kumar R/o J-30, Gali No.5, Laxmi Nagar, Delhi. The body was shifted to Mortuary after following the due procedure.*

4. Subsequent thereto, the Investigation officer came back to the spot. The site was inspected by the crime team. The photographs of the spot were also taken. A rukka was prepared followed by registration of FIR bearing no.860/2015 dated 21.12.2015 under section 304A, IPC, P.S. Sunlight Colony.

*5. During the course of investigation, site plan was prepared and the sealed parcel containing clothes and other belongings were obtained from the doctor. The sample of water from the rain water harvesting tank was collected. Relevant seizure memos were prepared. The statements of witnesses were recorded and relevant documentary materials were obtained. During the **search conducted inside the tank, a part of broken cover has been recovered, which is being examined**.*

6. On 22.12.2015, post mortem of the body was conducted at Maulana Azad Medical College and Lok

Nayak Hospital, New Delhi and the report was obtained. In terms of the report bearing PM No.1111/2015, ***death occurred as a result of asphyxia consequent upon ante-mortem drowning****. During the post mortem, sample of sternum bone and tracheal aspirate were collected for Diatom test. The same were sealed and handed over to the investigating officer by the doctors. Thereafter, aforesaid samples and the water sample obtained earlier were submitted to FSL, Rohini, Delhi. The results are still awaited.*

7. The notices under Section 91, Cr.P.C., 1973 were issued to the Principal, Govt. Boys Senior Secondary School, Lalita Park, New Delhi, Executive Engineer, PWD, Division No.413, Ring Road, Bhairon Road, New Delhi and Delhi Development Authority, Vikas Sadan, New Delhi on 29/12/15. The concerned authorities sent their replies. The concerned school provided information about deceased including his ***date of birth*** *which is* ***15.02.2005****, the driver and bus used for transporatation of children and the teachers deputed for the tour on 31/12/15. The DDA vide their reply dated 29/12/15 informed that the said rain water harvesting tank does not come within their jurisdiction. The* ***Executive Engineer, M-413, PWD, Delhi*** *in his reply dated 3/2/16 informed that the* ***civil work for the area is being maintained by PWD*** *whereas* ***the green belt area is maintained by Deputy Director, Horticulture department, M-414, Division, PWD****. He further clarified that Ms. Garima Rai, JE Civil is responsible for maintenance of civil engineer works the area concerned.*

8. The ***concerned school teacher*** *namely Sh.* ***Devender Kumar*** *R/o Village Dabhora, Post Shahgarh, Dist-Aligarh, Uttar Pradesh working as guest TGT teacher with the concerned school under whose supervision the deceased was on tour* ***was interrogated and arrested*** *on 7/2/16. He was arrested as he was* ***negligent in performance of duty to take adequate care***

of child.

9. The investigation so far has revealed following facts :

a. The site where the water storage tank was constructed was left abandoned.

b. No sign board displaying existence of water storage tank was affixed.

c. The water storage tank having potential to cause mishappening of this magnitude was not adequately cordoned off by putting in place proper barricades around the water tank.

d. The manhole/opening of the water storage tank was missing. the tank was not cover.

e. The spot is constructed in the green belt area running parallel to ring road. The spot adjoins I P Park visited by hundreds of people on daily basis. During night, the place becomes dark. The spot was left accessible to people at large with no intimation of potential damage.

xxx xxx xxx."

(Emphasis supplied)

5. In continuation of the affidavit dated 8th February, 2016, another status report was filed on 16th May, 2016 under the signature of Pardeep Kumar Paliwal, SHO, PS Sunlight Colony, New Delhi, in which it stands stated that the concerned departments had intimated the investigating officer about the concerned officials by whom the concerned area as well as the concerned rain water storage tank was being maintained. It is disclosed therein that as per a report tendered by the PWD, the same was being maintained and looked after by Sh. Jai Prakash Singh, Section Officer, Horticulture Wing, PWD and that the Civil Engineering works and maintenance was being looked after by

Smt. Garima Raj, JE/Civil, PWD. It was further stated that the chargesheet had been prepared and was in the process of being filed.

6. During the hearing on the 30th September, 2016, a chargesheet was handed over by the police, which was taken on record.

7. The chargesheet stands filed under Section 304A of the IPC, against Sh. Devender Kumar (*the School Teacher who was accompanying the children on the picnic*), Sh. Jai Prakash Singh (*Section Officer, Horticulture Wing, PWD*) and Smt. Garima Raj, (*JE/Civil, PWD*).

Responsiblity over the area and for the manhole – duty of care and negligence

8. So what is the nature of responsibility, which was violated in leaving the manhole with a damaged cover? And who would be held responsible for the same?

9. An affidavit dated 9th February, 2016 also stands filed under the signatures of Sh. Mukesh Kumar, Superintendent Engineer, Public Works Department, Central/New Delhi – Circle (Maintenance), Government of NCT of Delhi. This affidavit makes for an interesting reading. The factual narration in paras 6 and 7 is to the following effect :

> *"6.* ***The place where this unfortunate incident took place on 21.12.2015 is near Indraprastha Millennium Park Gate No.4 and is in green belt area maintained by the Horticulture wing of the PWD Deputy Director Horticulture M-414****. Drawing demarcates the exact locality of the site of incident. The said drawing is*

annexed as ***Annexure 2****.*

7. ***The rain water storage tank was constructed prior to upcoming commonwealth games in 2010. Six manhole covers were provided on this water storage tank.*** *This stored water was to be used by the Horticulture wing of PWD in the Green Belt for plantation but* ***for some reasons the use of water from this tanks for plantation located in green belt was not used and thus this area did not required day to day care. Since the tank was not used it did not draw regular attention of the department. Over the roof of these tanks earth lies to the thickness of 60 cm making this storage tank invisible."***

(Emphasis by us)

10. Therefore, the PWD while admitting that it is responsible for the construction of the rain water harvesting storage tanks and has attempted to absolve itself of any responsibility for the following reasons:

(i) It admits that it was responsible for constructing the rain water storage tank but the water which was collected in the tank was not utilized for the intended purpose of the plantation in the adjacent green belt.

(ii) A further admission is made on behalf of PWD to absolve itself of any responsibility in the affidavit by making a submission that the area "*did not require day to day care*". At the same time PWD admits its responsibility for the unfortunate occurrence when it admits that the tank which lies uncovered "*did not draw regular attention of the department*" and thereby also admitting that the officials of

the PWD failed to perform their duty of attending to the area maintaining the tank and ensuring that the manholes were duly covered. An excuse is provided for its lack of attention when the PWD states that "*over the roof of these tanks earth lies to the thickness of 60 cm making this tank invisible*".

11. Having installed the rain water storage tank, it remained the bounden duty of the department to ensure that regular storage is maintained and that the water which collects is used for the purpose for which tank was installed. It was also the bounden duty of the PWD to ensure that there was regular maintenance of the tank and that any breakage in the manhole cover was immediately attended to, so that human life was not endangered.

12. The counter affidavit also establishes that fault has to be attributed to the PWD for failing to notice the uncovered manhole.

13. The affidavit states further reasons, each more unfortunate than the last, which can be summed up thus:

(i) the concerned sub-division looks after day to day maintenance of a large scattered area starting from the DND Flyover upto Burari and that the deficiencies noticed during routing visits or on specific complaints are attended by them.

(ii) the missing cover of the water tank was not noticed in the routine visits but since no complaint was received by the department and because of large scattered area, it was "*very difficult to notice each and every deficiency beyond the regular features of the road all the time*".

No details of the "*routine visits*" are mentioned.

It is astonishingly a serious matter, that a missing cover of the manhole on a water tank was "*difficult to notice*". If inspections, upkeep were diligently undertaken and the sites were regularly checked, even by the engineers concerned, it certainly would not have escaped attention,

(iii) The respondents were aware that there was unauthorized parking of vehicles, i.e., buses etc. To demarcate the area of the tank, kerb stones and RCC bollards had earlier been provided on the edge of green belt but found removed unauthorisedly from the site at the time of incident.

If this was so, the PWD should have taken immediate steps to restore the kerb stone as well as the RCC bollards. The PWD does not state why these were not immediately restored. It is difficult to believe that RCC bollards could actually be removed.

(iv) The respondents state that there was no need for day to day upkeep, which is referred to as "*unimaginable*" for the reason that tank was not used and it could not be conceived even at the remotest that the area where the incident occurred may *"be used by anybody*."

To say the least, such a submission with regard to a public park and space is nothing short of preposterous.

14. At the same time, we find that in para 16, the PWD admits that "*the only use could have been as a open space for sitting and resting...*". In case, the PWD intended that the open space where the rain water harvesting tank had been constructed, ought not to be

used by members of the public, it was for the PWD to secure it as a place which was out of public reach.

It is an admitted position that this was not done.

15. We also find that PWD admits that there was lack of vigilance and that the department should have been more vigilant and ought to have ensured that the tanks were fully covered.

16. The Supreme Court has taken serious note of the cases in which children had been trapped and fallen into borewells and tubewells and had taken *suo-motu* notice of the matter in ***(2010) 7 SCALE 184 In Re: Measure for Prevention of Fatal Accidents of Small Children due to their falling into abandoned Borewells and Tubewells.*** In its order dated 11th February, 2010, the court has issued safety measures and guidelines for all states to follow.

17. In ***192 (2012) DLT 100 Chob Singh v. Govt of NCT Delhi*** this court reiterated the applicability of the principle of *res ipsa loquitur* in the following terms :

> ***"20.*** *The Supreme Court in Pushpabhai Purshottam Udeshi v. Ranjit Ginning & Pressing Co. (P) Ltd., (1977) 2 SCC 745 has explained the doctrine of Res Ipsa Loquitor in the following words:*
>
> > *"The normal rule is that it is for the plaintiff to prove negligence but as in some cases considerable hardship is caused to the plaintiff as the true cause of the accident is not known to him but is solely within the knowledge of the defendant who caused it, the plaintiff can prove the accident but cannot prove how it happened to establish negligence on the part of the defendant. This hardship is sought to be avoided by applying*

the principle of res ipsa loquitur. The general purport of the words res ipsa loquitur is that the accident "speaks for itself" or tells its own story. There are cases in which the accident speaks for itself so that it is sufficient for the plaintiff to prove the accident and nothing more. It will then be for the defendant to establish that the accident happened due to some other cause than his own negligence. ***Salmond on the Law of Torts*** *(15th Ed.) at p. 306 states: "****The maxim res ipsa loquitur applies whenever it is so improbable that such an accident would have happened without the negligence of the defendant that a reasonable jury could find without further evidence that it was so caused****".*

21. *In Halsbury's Laws of England, 3rd Ed., Vol. 28, at page 77, the position is stated thus: "An exception to the general rule that the burden of proof of the alleged negligence is in the first instance on the plaintiff occurs wherever the facts already established are such that the proper and natural inference arising from them is that the injury complained of was caused by the defendant's negligence, or where the event charged as negligence 'tells its own story' of negligence on the part of the defendant, the story so told being clear and unambiguous". Where the maxim is applied the burden* ***is on the defendant to show either that in fact he was not negligent or that the accident might more probably have happened in a manner which did not connote negligence on his part.***

22. The mere fact that the entry was allowed was sheer negligence on the part of the respondents. As aforesaid, the respondents owed a duty of care to the said children by not permitting their entry into the compound as the same was a prohibited area*. The said area posed a high risk to any stranger - much more to small children, who may go into areas where poisonous gases were being produced and present.*

> ***23.*** *I, therefore, hold that the maxim Res Ipsa Loquitur is clearly attracted in the present case and the* ***incident*** *in question itself* ***establishes the negligence on the part of the respondents****. The* ***petitioners*** *are, therefore,* ***entitled to grant of compensation*** *in these proceedings for breach of the most basic fundamental right of Nand Kishore under Article 21 of the Constitution of India."*
>
> *(Emphasis supplied)*

18. The decision of this court in ***AIR 1997 Del 201 Klaus Mittelbachert v. East India Hotels Ltd*** is topical and the relevant extract thereof reads as follows:

> "***52. ...****Under the doctrine of res ipsa loquitur a plaintiff establishes a prima facie case of negligence where (1) it is not possible for him to prove precisely what was the relevant act or omission which set in train the events leading to the accident, and (2) on the evidence as it stands at the relevant time it is more likely than not that the effective cause of the accident was some act or omission of the defendant or of someone for whom the defendant is responsible, which act or omission constitutes a failure to take proper care for the plaintiff's safety. There must be reasonable evidence of negligence. However,* ***where the thing which causes the accident is shown to be under the management of the defendant or his employees, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of explanation by the defendant, that the accident arose from want of care. Three conditions*** *must be satisfied to attract applicability of* ***res ipsa loquitur : (i) the accident must be of a kind which does not ordinarily occur in the absence of someone's negligence; (ii) it must be caused by an agency or instrumentality within the exclusive control of the defendant; (iii) it must not have been due to any voluntary action or contribution on the part of the plaintiff.****"*

(Emphasis supplied)

19. A fact situation, similar as the present one, arose for consideration before the Supreme Court of Oklahoma in the judgment reported at ***402 P.2d 908 (1965) George W. Lane v. City of Tulsa.*** The court noted the facts and has held thus:

> *"The **plaintiff** was **injured by falling in the ditch while walking on the sidewalk.** As stated above, it was the **duty of the defendant City to exercise ordinary care and diligence to keep its sidewalk in a reasonably safe condition**. (**Williams v. City of Bristow**, Okl. 350 P.2d 484, 84 A.L.R. 2d 501) A municipality is charged with such duty at all times. **King v. J.E. Crosbie, Inc.,** 191 Okl. 525, 131 P.2d 105.*
>
> *The **liability of a municipality for injuries suffered by those using the public ways is based upon negligent failure to exercise ordinary care and diligence in keeping the public streets and walks in a reasonably safe condition for public use** **in the ordinary mode of travelling. Walker v. Reeves**, 204 Okl. 669, 233 P.2d 307."*
>
> *(Emphasis supplied)*

The court further held that *"The above authorities establish a **duty and an obligation to perform** that constitutes a **proprietary function.** Negligent performance would **render the defendant City liable.**"*

20. Significantly, in ***Williams v. City of Bristow, Okl., 350 P.2d 484, 84 A.L.R. 2d 501*** the Supreme Court of Oklahoma held that *"**it is the duty of a municipality to exercise ordinary care and diligence to keep its sidewalks and streets in a reasonably safe condition**. The municipality is not an insurer of safety of the*

traveling public and ***its liability is founded on negligence****."*

21. We find that the expression *'negligence'* is not defined statutorily.

22. Black's Law Dictionary (*8th Edn, 2004 at p.1061*) defines *'negligence'* as follows :

> *"**negligence,** n. **1.** The **failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation**; any conduct that falls below the legal standard established to protect others against unreasonable risk of harm, except for conduct that is intentionally, wantonly, or willfully disregardful to others' right. • The term denotes culpable carelessness."*
>
> *(Emphasis supplied)*

23. Stroud's Judicial Dictionary (*4th Edn, 1973 at p.1747*) defines *'negligence'* thus:

> ***"NEGLIGENCE.** (1) **"'Negligence' is not an affirmative word; it is a negative word; it is the absence of such care, skill, and diligence, as it was the duty of the person to bring to the performance of the work which he is said not to have performed"** (per Willes J., Grill v. General Iron Screw Collier Co., 35 L.J.C.P. 330).*
> *(2) **"Negligence is the omitting to do something that a reasonable man would do, or the doing something which a reasonable man would not do"** (per Alderson B., Blyth v. Birmingham Water Works Co., 11 Ex. 784)*
>
> *(Emphasis by us)*

24. In Halsbury's Laws of England (*Fifth Edition, Vol. 78, para 61)*, the duty of an occupier of the premises to the public is elucidated as follows:

> ***"61. Duty to the public in respect of premises.*** *An occupier of premises adjoining a highway or other public place is under an obligation to take reasonable care not to injure members of the public, and is liable if, in consequence of failing to exercise such case, a person is injured (1) where the occupier knew or ought reasonably to have known that the premises were in a state likely to cause injury to persons passing by…"*

25. In similar facts, the court in the case of ***Sattar Sheikh & Anr. v. Municipal Corporation of Delhi 2014 ACJ 489*** fastened liability for negligence on the MCD in the following terms:

> *"Thus, the* ***possibility of children playing on the said plot which was admittedly in disuse as a toilet, ought to have been in the comprehension of the respondent No. 1 MCD****. Moreover, it is* ***totally inexplicable as to why the plot and/or manholes were left uncovered****. Thus, a* ***case of negligence on the part of the respondent MCD is made out****."*
>
> *(Emphasis by us)*

26. So far as the remedy and relief to victims or their dependants for such acts of inaction, negligence or indifference by public authorities is concerned, it has been held that the same is actionable in public law and compensation is being increasingly awarded for compensation against the injuries caused.

27. In the case of ***Shakuntala v. Govt. of NCT of Delhi and Anr. 162 (2009) DLT 264,*** the court directed the MCD to pay compensation of Rs 10,00,000/- to the petitioner for the death of her husband due to being entangled between fighting bulls. Fastening liability for negligence and dereliction of public duty on

their part of the MCD. It was observed thus :

> ***"16.*** *The* ***relief of compensation*** *under* ***public law****, for injuries caused on* ***account of negligent action, or inaction or indifference of public functionaries*** ***or for the violation of fundamental rights*** *is a part of the evolving public law jurisprudence in India. xxx*
>
> *xxx xxx. The concept of* ***compensation under public*** *law must be understood as being* ***different from*** *the concept of* ***damages under private law****.* ***Compensation under public law must not be merely seen as the monetary equivalent for compensating towards the injury caused****, but also understood in the context of the* ***failure of the State or state agency, to protect the valuable rights of the citizens, particularly of the marginalized and the disempowered****. In the decision reported as State of A.P. v. Challa Ramakrishna Reddy and Ors. MANU/SC/0368/2000 : (2000)5SCC712 , the Supreme Court emphasized that the* ***nature of the proceedings*** *- through writ petitions or through other civil jurisdictions, would not make any difference, in applying the principles for award of damages in case of violation of a public law right or entitlement, of a citizen, or where he complains of violation of fundamental rights.*
>
> ***17.*** *It has been established now, for nearly three decades, that the right to life enshrined in Article 21 is not a right to mere vegetative ("animal") existence, but to a life with dignity and a decent standard of living.* ***The injury, suffered due to the state's or its agencies' neglect in the performance, or the wrongful performance of its duties, is as actionable in public law, as in tort. In this background the failure of the State to prevent the occurrence of negligent acts by its employees, or those who are accountable to it, within premises under its control, or in respect of zones of activities falling within their jurisdiction strikes at the root of the right to life, guaranteed under Article 21 of the Constitution of India.*** *"*

(Emphasis supplied)

28. The above enunciation of the applicable principles clearly declares that duty of maintenance of the manholes rests squarely and solely on the public authorities who built and control it.

29. We have extracted the counter affidavits filed on record. These clearly establish the fact that the area in question, more specifically the manhole, was under the maintenance and responsibility of the PWD which had failed to maintain the same. No negligence can be attributed to the victim for not noticing or spotting the uncovered manhole. The only possible conclusion from the admitted factual position is that the PWD had failed in its duty of exercising even ordinary care & diligence in maintaining a scrutiny over the manholes and keeping the surrounding area in a reasonably safe condition.

30. The blame for the ill-fated incident, in which a young 11 year old boy, who had gone for a happy outing as a school picnic, lost his life, therefore clearly lies with the PWD which failed to exercise due care.

31. The PWD has before us, attempted to abdicate its responsibility of saying that no manhole constructed by it is left uncovered. But clearly this is unacceptable. The effort to pin the blame solely on the horticultural wing of the PWD is also not correct. While the horticultural wing cannot absolve itself of blame, the wing of the PWD which built the water tank and the manhole, had the responsibility of regularly inspecting and

maintaining the same and failed to do so has to be held to have been equally negligent in performing their duties. The horticultural wing ought to have noticed the damage to the cover and ensured that it also informed the concerned authorities.

32. While attempting to avoid responsibility the respondents have stated that there was a thick cover of mud which made the manhole difficult to spot. The PWD is expected to have the location of its manholes mapped and to maintain a schedule of the site inspection.

33. An unfortunate aspect of the functioning of public authorities has been revealed on our records. It would appear that senior officers in all public organization evade all responsibility by fastening the blame on the junior most in the organisation. This is incorrect and completely impermissible and cannot be countenanced. No Chief Engineer or Directors (or even those placed higher) can avoid their responsibility when such incidents of negligence come to the fore. Such a culture of irresponsibility, indiscipline, inefficiency and apathy has come into existence only because senior officials are not discharging their public law obligations and duties which include close supervision, regulation and inspection over the performance of the subordinates in the organization, especially by spot visits where public facilities and places are concerned. This, in Delhi, has resulted in, for instance, encroachments on public land, of magnitudes indescribable even by the rich and mighty. It has resulted in rampant corruption, complete insensitivity to public woes as well as incidents as the

present. It is high time that the culpability was correctly apportioned and the senior most in the chain of authority is also held accountable for negligent and illegal acts of commission and omission by public authorities.

34. We find that, the above statements by the PWD and the photographs placed on record would show that had the child's teacher even been at the spot, even the teacher could have fallen into the tank with the broken lid. The school teacher therefore, cannot be held culpable in any manner for the incident let alone for commission of a criminal offence.

35. Given the admitted position regarding its responsibility on the part of the PWD, the school teacher who was accompanying the children cannot be held liable in any manner for having permitted the child to go the bus or for the uncovered manhole into which the child fell.

36. No teacher or person could have reasonably foreseen or expected that the authorities would leave an uncovered manhole or that, by letting the child go to the vehicle to obtain some article therefrom, in the open public park he could entail the risk of falling into a manhole.

37. The proposition that the teacher ought to be liable or guilty of negligence for letting the child proceed to the vehicle is akin to saying that the parents ought to have foreseen that there would be an open manhole in the park into which their child could have fallen. Therefore, they should not to have let the child go on the picnic and by doing so, acted negligently and consequently, ought

also to be held guilty of negligence and criminally prosecuted. Clearly, the prosecution of Shri Devender Kumar, the school teacher in the above circumstances is unwarranted and unfair.

Obligation of the High Court to award compensation for infringement of a Fundamental Right in exercise of jurisdiction under Article 226 of the Constitution of India

38. The Supreme Court has recognized its own powers as well as the powers of the High Courts under Articles 32 and 226 respectively for grant of compensation for violation of fundamental rights in the judgment reported at ***AIR 1993 SC 1960, Nilabati Behara v. State of Orissa.*** In the judgment authored by *J.S. Verma, J (for himself and Venkatchala, J.)* it was held as follows:

> ***"10.*** *In view of the* ***decisions of this Court*** *in Rudul Sah v. State of Bihar [(1983) 4 SCC 141 : 1983 SCC (Cri) 798 : (1983) 3 SCR 508] , Sebastian M. Hongray v. Union of India [(1984) 1 SCC 339 : 1984 SCC (Cri) 87 : (1984) 1 SCR 904(I)] , Sebastian M. Hongray v. Union of India [(1984) 3 SCC 82 : 1984 SCC (Cri) 407 : (1984) 3 SCR 544(II)] , Bhim Singh v. State of J & K [1984 Supp SCC 504 : 1985 SCC (Cri) 60] , Bhim Singh v. State of J & K [(1985) 4 SCC 677 : 1986 SCC (Cri) 47] , Saheli: A Women's Resources Centre v. Commissioner of Police, Delhi Police Headquarters [(1990) 1 SCC 422 : 1990 SCC (Cri) 145] and State of Maharashtrav. Ravikant S. Patil [(1991) 2 SCC 373 : 1991 SCC (Cri) 656] the* ***liability of the State*** *of Orissa in the present case* ***to pay the compensation cannot be doubted*** *and was rightly not disputed by the learned Additional Solicitor General.* ***It would, however, be appropriate to spell out clearly the principle on which the liability of the State***

arises in such cases for payment of compensation and the distinction between this liability and the liability in private law for payment of compensation in an action on tort*. It may be mentioned straightaway that* ***award of compensation*** *in a proceeding under Article 32 by this Court or* ***by the High Court under Article 226 of the Constitution is a remedy available in public law, based on strict liability for contravention of fundamental rights*** *to which the principle of sovereign immunity does not apply, even though it may be available as a defence in private law in an action based on tort. This is a distinction between the two remedies to be borne in mind which also indicates the basis on which compensation is awarded in such proceedings. We shall now refer to the earlier decisions of this Court as well as some other decisions before further discussion of this principle.*

11. *In* ***Rudul Sah*** *[(1983) 4 SCC 141 : 1983 SCC (Cri) 798 : (1983) 3 SCR 508] it was held that in a petition under Article 32 of the Constitution, this Court can grant* ***compensation for deprivation of a fundamental right****. That was a case of violation of the petitioner's right to personal liberty under Article 21 of the Constitution. Chandrachud, CJ., dealing with this aspect, stated as under: (SCC pp. 147-48, paras 9 and 10)*

> *"It is true that Article 32 cannot be used as a substitute for the enforcement of rights and obligations which can be enforced efficaciously through the ordinary processes of courts, civil and criminal. A money claim has therefore to be agitated in and adjudicated upon in a suit instituted in a court of lowest grade competent to try it. But the important question for our consideration is whether in the exercise of its jurisdiction under Article 32, this Court can pass an order for the payment of money if such an*

order is in the nature of compensation consequential upon the deprivation of a fundamental right. The instant case is illustrative of such cases ....

... The petitioner could have been relegated ***to the ordinary remedy*** *of a suit* ***if his claim to compensation was factually controversial****, in the sense that a civil court may or may not have upheld his claim. But we have* ***no doubt that if the petitioner files a suit*** *to recover damages for his illegal detention,* ***a decree for damages would have to be passed in that suit****, though it is not possible to predicate, in the absence of evidence, the precise amount which would be decreed in his favour.* ***In these circumstances, the refusal of this Court to pass an order of compensation in favour of the petitioner will be doing mere lip-service to his fundamental right to liberty which the State Government has so grossly violated. Article 21 which guarantees the right to life and liberty will be denuded of its significant content if the power of this Court were limited to passing orders to release from illegal detention. One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Article 21 secured, is to mulct its violators in the payment of monetary compensation. Administrative sclerosis leading to flagrant infringements of fundamental rights cannot be corrected by any other method open to the judiciary to adopt. The right to compensation is some palliative for the unlawful acts of instrumentalities which act in the name of public interest and which present for their protection the powers of the State as a shield. If civilisation is not to perish in this country as it has perished in some others too well known to suffer mention, it is necessary to***

educate ourselves into accepting that, respect for the rights of individuals is the true bastion of democracy. <u>Therefore, the State must repair the damage done by its officers to the petitioner's rights. It may have recourse against those officers.</u>*"*

(emphasis supplied) (SCR pp. 513-14)

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17. *It follows that '**a claim in public law for compensation' for contravention of human rights and fundamental freedoms**, the protection of which is guaranteed in the Constitution, is an **acknowledged remedy for enforcement and protection of such rights**, and such a **claim based on strict liability** made by resorting to a constitutional remedy provided for the enforcement of a fundamental right is 'distinct from, and in addition to, the remedy in private law for damages for the tort' resulting from the contravention of the fundamental right. **The defence of sovereign immunity being inapplicable, and alien to the concept of guarantee of fundamental rights, there can be no question of such a defence being available in the constitutional remedy.** It is this principle which justifies award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution, when that is the only practicable mode of redress available for the contravention made by the State or its servants in the purported exercise of their powers, and enforcement of the fundamental right is claimed by resort to the remedy in public law under the Constitution by recourse to Articles 32 and 226 of the Constitution. This is what was indicated in Rudul Sah [(1983) 4 SCC 141 : 1983 SCC (Cri) 798 : (1983) 3 SCR 508] and is the basis of the subsequent decisions in which compensation was awarded under Articles 32 and 226 of the Constitution, for contravention of fundamental rights.*

xxx xxx xxx

20. *We respectfully concur with the view that the court is not helpless and the wide powers given to this Court by Article 32, which itself is a fundamental right, imposes a constitutional obligation on this Court to forge such new tools, which may be necessary for doing complete justice and enforcing the fundamental rights guaranteed in the Constitution, which enable the award of monetary compensation in appropriate cases, where that is the only mode of redress available. The power available to this Court under Article 142 is also an enabling provision in this behalf. The contrary view would not merely render the court powerless and the constitutional guarantee a mirage, but may, in certain situations, be an incentive to extinguish life, if for the extreme contravention the court is powerless to grant any relief against the State, except by punishment of the wrongdoer for the resulting offence, and recovery of damages under private law, by the ordinary process. If the guarantee that deprivation of life and personal liberty cannot be made except in accordance with law, is to be real, the enforcement of the right in case of every contravention must also be possible in the constitutional scheme, the mode of redress being that which is appropriate in the facts of each case.* ***This remedy in public law has to be more readily available when invoked by the have-nots, who are not possessed of the wherewithal for enforcement of their rights in private law, even though its exercise is to be tempered by judicial restraint to avoid circumvention of private law remedies, where more appropriate.***

xxx xxx xxx

22. *The above discussion indicates the principle on which the* ***court's power under Articles 32 and 226 of the Constitution is exercised to award monetary compensation for contravention of a fundamental right****..."*

(Emphasis by us)

39. In his separate, but concurring view, *Dr.AS Anand, J* held thus:

> ***"30.*** *On basis of the above conclusion, we have now to examine whether to seek the* ***right of redressal under Article 32 of the Constitution, which is without prejudice to any other action with respect to the same matter which may be lawfully available, extends merely to a declaration that there has been contravention and infringement of the guaranteed fundamental rights and rest content at that by relegating the party to seek relief through civil and criminal proceedings or can it go further and grant redress also by the only practicable form of redress — by awarding monetary damages for the infraction of the right to life****.*
>
> ***31.*** *It is axiomatic that convicts, prisoners or undertrials are not denuded of their fundamental rights under Article 21 and it is only such restrictions, as are permitted by law, which can be imposed on the enjoyment of the fundamental right by such persons. It is an obligation of the State to ensure that there is no infringement of the indefeasible rights of a citizen to life, except in accordance with law, while the citizen is in its custody. The precious right guaranteed by Article 21 of the Constitution of India cannot be denied to convicts, undertrials or other prisoners in custody, except according to procedure established by law. There is a great responsibility on the police or prison authorities to ensure that the citizen in its custody is not deprived of his right to life. His liberty is in the very nature of things circumscribed by the very fact of his confinement and therefore his interest in the limited liberty left to him is rather precious.* ***The duty of care on the part of the State is strict and admits of no exceptions. The wrongdoer is accountable and the State is responsible if the person in custody of the police is deprived of his***

life except according to the procedure established by law*. I agree with Brother Verma, J. that the defence of "sovereign immunity" in such cases is not available to the State and in fairness to Mr Altaf Ahmed it may be recorded that he raised no such defence either.*

32. *Adverting to the grant of relief to the heirs of a victim of custodial death for the infraction or invasion of his rights guaranteed under Article 21 of the Constitution of India, it is not always enough to relegate him to the ordinary remedy of a civil suit to claim damages for the tortious act of the State as that remedy in private law indeed is available to the aggrieved party.* ***The citizen complaining of the infringement of the indefeasible right under Article 21 of the Constitution cannot be told that for the established violation of the fundamental right to life, he cannot get any relief under the public law by the courts exercising writ jurisdiction. The primary source of the public law proceedings stems from the prerogative writs and the courts have, therefore, to evolve 'new tools' to give relief in public law by moulding it according to the situation with a view to preserve and protect the Rule of Law.*** *While concluding his first Hamlyn Lecture in 1949 under the title "Freedom under the Law" Lord Denning in his own style warned:*

> *"No one can suppose that the executive will never be guilty of the sins that are common to all of us. You may be sure that they will sometimes do things which they ought not to do: and will not do things that they ought to do. But if and when wrongs are thereby suffered by any of us what is the remedy? Our procedure for securing our personal freedom is efficient, our procedure for preventing the abuse of power is not. Just as the pick and shovel is no longer suitable for the winning of coal, so also the procedure of mandamus, certiorari, and actions on the case*

are not suitable for the winning of freedom in the new age. They must be replaced by new and up-to date machinery, by declarations, injunctions and actions for negligence…. This is not the task for Parliament ... the courts must do this. Of all the great tasks that lie ahead this is the greatest. Properly exercised the new powers of the executive lead to the welfare state; but abused they lead to a totalitarian state. None such must ever be allowed in this country."

33. *The old doctrine of only relegating the aggrieved to the remedies available in civil law limits the role of the courts too much as protector and guarantor of the indefeasible rights of the citizens. The courts have the obligation to satisfy the social aspirations of the citizens because the courts and the law are for the people and expected to respond to their aspirations.*

34. *The public law proceedings serve a different purpose than the private law proceedings.* ***The relief of monetary compensation, as exemplary damages, in proceedings under Article 32 by this Court or under Article 226 by the High Courts, for established infringement of the indefeasible right guaranteed under Article 21 of the Constitution is a remedy available in public law and is based on the strict liability for contravention of the guaranteed basic and indefeasible rights of the citizen. The purpose of public law is not only to civilize public power but also to assure the citizen that they live under a legal system which aims to protect their interests and preserve their rights. Therefore, when the court moulds the relief by granting "compensation" in proceedings under Article 32 or 226 of the Constitution seeking enforcement or protection of fundamental rights, it does so under the public law by way of penalising the wrongdoer and fixing the liability for the public wrong on the State***

which has failed in its public duty to protect the fundamental rights of the citizen. The payment of compensation in such cases is not to be understood, as it is generally understood in a civil action for damages under the private law but in the broader sense of providing relief by an order of making 'monetary amends' under the public law for the wrong done due to breach of public duty, of not protecting the fundamental rights of the citizen. The compensation is in the nature of 'exemplary damages' awarded against the wrongdoer for the breach of its public law duty and is independent of the rights available to the aggrieved party to claim compensation under the private law in an action based on tort, through a suit instituted in a court of competent jurisdiction or/and prosecute the offender under the penal law.

35. This Court and the High Courts, being the protectors of the civil liberties *of* ***the citizen, have not only the power and jurisdiction but also an obligation to grant relief in exercise of its jurisdiction under Articles 32 and 226 of the Constitution to the victim or the heir of the victim whose fundamental rights under Article 21 of the Constitution of India are established to have been flagrantly infringed by calling upon the State to repair the damage done by its officers to the fundamental rights of the citizen, notwithstanding the right of the citizen to the remedy by way of a civil suit or criminal proceedings.*** *The* ***State****, of course* ***has the right to be indemnified by and take such action as may be available to it against the wrongdoer in accordance with law*** *— through appropriate proceedings. Of course,* ***relief*** *in exercise of the power under Article 32 or 226 would be* ***granted only once it is established that there has been an infringement of the fundamental rights of the citizen and no other form of appropriate redressal by the court in the facts and circumstances of the case, is possible****. The decisions of this Court in the*

line of cases starting with Rudul Sah v. State of Bihar [(1983) 4 SCC 141 : 1983 SCC (Cri) 798 : (1983) 3 SCR 508] granted monetary relief to the victims for deprivation of their fundamental rights in proceedings through petitions filed under Article 32 or 226 of the Constitution of India, notwithstanding the rights available under the civil law to the aggrieved party where the courts found that grant of such relief was warranted. It is a sound policy to punish the wrongdoer and it is in that spirit that the courts have moulded the relief by granting compensation to the victims in exercise of their writ jurisdiction. In doing so ***the courts take into account not only the interest of the applicant and the respondent but also the interests of the public as a whole with a view to ensure that public bodies or officials do not act unlawfully and do perform their public duties properly particularly where the fundamental right of a citizen under Article 21 is concerned****. Law is in the process of development and the process necessitates developing separate public law procedures as also public law principles. It may be necessary to identify the situations to which separate proceedings and principles apply and* ***the courts have to act firmly but with certain amount of circumspection and self-restraint****, lest proceedings under Article 32 or 226 are misused as a disguised substitute for civil action in private law. Some of those situations have been identified by this Court in the cases referred to by Brother Verma, J."*

(Emphasis by us)

40. This enunciation of law was cited with approval by the Supreme Court in ***(1997) 1 SCC 416 D.K. Basu v. Union of India.***

41. In the pronouncement reported at ***(1999) 6 SCC 667 Common Cause v. Union of India ,*** the Supreme Court has held that:

> ***"55.*** *Thus, where* ***public functionaries are involved*** *and* ***matter relates to the violation of fundamental rights or the enforcement of public duties*** *etc., the* ***remedy would lie****, at the* ***option of the petitioner****,* ***under the public law*** *notwithstanding that damages are also claimed in those proceedings."*
>
> *(Emphasis by us)*

42. In ***Darshan & Ors. v. Union of India 2000 ACJ 578***, the Delhi High Court granted the public law remedy through issuance of a writ, in a claim, for compensation for death of a bus-driver, Sh. Skattar Singh, who was stated to have fallen in an uncovered manhole in Delhi. Allowing the writ petition, the court observed as follows:

> *"**11.** ...Coming to instant case, it is one of res ipsa loquitur, where the* ***negligence of the instrumentalities of the State and dereliction of duty is writ large on the Red Fort in leaving the manhole uncovered. The dereliction of duty on their part in leaving a death trap on a public road led to the untimely death of Skattar Singh****. It deprived him of his fundamental right under Article 21 of the Constitution of India. The scope and ambit of Article 21 is wide and far reaching. It would,* ***undoubtedly, cover a case where the State or its instrumentality failed to discharge its duty of care cast upon it, resulting in deprivation of life*** *or limb of a person. Accordingly, Article 21 of the Constitution is attracted and the petitioners are entitled to invoke Article 226 to claim monetary compensation as such a remedy is available in public law, based on strict liability for breach of fundamental rights.*
>
> *xxx xxx xxx*
>
> ***16.****...Relief to the unfortunate victims of the accident cannot be allowed to be lost in the quagmire or morass of a protracted civil trial, where inter se liability*

between the respondents is to be determined. We, therefore, direct that the amount of compensation awarded, together with interest, in the first instance be paid by respondent No. 4. Respondent No. 4 may, if so advised, seek to recover the amount of compensation from respondent No. 2 by initiating appropriate proceedings based on its claim that the manhole in question was under the jurisdiction of and maintained by respondent No. 2."

It deserves to be noted that in ***Darshan's*** case, which judgment was rendered way back in the year 1999 the court ordered award of compensation in the sum of ₹2,00,000/- plus interest.

43. The view in ***Darshan's*** case stands reiterated in a decision of the Punjab and Haryana High Court reported at ***2012 ACJ 2486 Anand Sagar Ahluwalia & Ors v. The State of Punjab & Ors*** and by this court in ***124 (2005) DLT 218 Raj Kumar v.Union of India*** and in ***2007 (97) DRJ 445 Ram Kishore v Municipal Corporation of Delhi*** (Para 8). In ***Ram Kishore's case*** the court observed as follows:

"In view of the above settled position in law, there can be no question that in its writ jurisdiction under Article 226 this Court can grant the relief of compensation based on the strict liability principle in a situation where there is a breach of a public duty. On the given facts of a case, liability would lie with the state if the claimant is able to show that the state acted negligently or that the 'State or its instrumentality failed to discharge the duty of care cast upon it, resulting in deprivation of life or limb of a person.' In discharging the burden of proving negligence it would be open to the claimant, if the facts and circumstances so permit, to

invoke the rest ipsa loquitur doctrine."

44. It is, therefore, trite that for a wrong done due to breach of public duty of not protecting the rights of a citizen, the relief of monetary compensation, as exemplary damages for established infringement of the guaranteed indefeasible fundamental rights under the Constitution, is a remedy available in public law. Therefore, the High Courts in exercise of the jurisdiction under Article 226 of the Constitution have not only the power and jurisdiction, but an obligation to grant such relief to the victims or the heirs of the victims of such violation.

Compensation

45. In the present case failure of public authorities to carry out their duties and negligence in taking care, young Lavansh lost his life.

46. We are informed by Mr. Satyakam, ld. ASC that no compensation has been paid to the family members of the victim.

47. It, therefore, becomes out duty to assess a fair monetary compensation to the family of the victim for his unfortunate & untimely demise.

Who would be entitled to payment of compensation in the present case

48. Pursuant to orders passed by us, a status report with regard to the status of the family of the deceased child has been filed by Inspector Rajesh Dogra, SHO, PS Sunlight Colony. This report

depicts an unfortunate state of affairs and deserves to be reproduced:

> *"It is submitted that* ***family of deceased Lavansh*** *is living at J-30, Gali No.5, Laxmi Nagar, New Delhi. This is a* ***parental flat at measuring an area approximately 50 Sq. meters****. His* ***father had expired in 2009****, who* ***before his death was running a tea stall****,* ***sister of deceased namely Vishu is married*** *and one* ***brother namely Harsh is a student of 11th class in Govt. Boys Sr.Sec.School****, Lalita park, Laxmi Nagar, New Delhi.* ***Mother of Lavansh works as a maid in different houses and earns approximately Rs.5000/- per months. Family status of deceased is economically weak.***
>
> *The undersigned shall to abide by the order passed by this Hon'ble Court."*

49. Mr. Satyakam, ld. ASC for the GNCTD has informed us that the mother of Lavansh has been identified as Smt. Saroj Rani, w/o Late Sh. Arun Kumar, r/o J-39, Gali No. 5, Laxmi Nagar, New Delhi (Mob: 7503224344). The police report states that his father has predeceased him.

50. In view of the above, compensation would be payable only to Smt. Saroj Rani, the mother of Lavansh.

Quantification of compensation

51. No legislative prescription to enable this court to fairly quantify adequate compensation to the mother who has lost her eleven year old son because of the negligence of public authorities is available. However, some guidance is provided by the legally

prescribed and judicially approved principles of computing compensation.

52. In ***Kamla Devi v. Govt. of NCT of Delhi 114 (2004) DLT 57,*** it was held:

> *"**5.** The **compensation to be awarded** by the Courts, based on international norms and previous decisions of the Supreme Court, comprises of two parts:—*
> *(a) '**standard compensation**' or the so-called '**conventional amount**' (or sum) **for non-pecuniary losses such as loss of consortium, loss of parent, pain and suffering and loss of amenities**; and*
> *(b) **Compensation for pecuniary loss of dependency**.*
> ***6.** The '**standard compensation**' or the 'conventional amount has to be revised from time to time to counter inflation and the consequent erosion of the value of the rupee. Keeping this in mind, in case of death, the standard compensation in 1996 is worked out at Rs. 97,700/-. This needs to be updated for subsequent years on the basis of the Consumer Price Index for Industrial Workers (CPI-IW) brought out by the Labour Bureau, Government of India.*
> ***7. Compensation for pecuniary loss of dependency** is to be computed on the basis of loss of earnings for which the multiplier method is to be employed. The table given in Schedule II of the MV Act, 1988 cannot be relied upon, however, the appropriate multiplier can be taken therefrom. The multiplicand is the yearly income of the deceased less the amount he would have spent upon himself. This is calculated by dividing the family into units - 2 for each adult member and 1 for each minor. The yearly income is then to be divided by the total number of units to get the value of each unit. The annual dependency loss is then calculated by multiplying the value of each unit by the number of units excluding the two units for the deceased adult member. This becomes*

the multiplicand and is multiplied by the appropriate multiplier to arrive at the figure for compensation of pecuniary loss of dependency.

8. *The total amount paid under 6 and 7 above is to be awarded by the Court along with simple interest thereon calculated on the basis of the inflation rate based on the Consumer Prices as disclosed by the Government of India for the period commencing from the date of death of the deceased till the date of payment by the State."*

53. The above principle of computation has been applied by this court in ***Ram Kishore v. Municipal Corporation of Delhi 2007 (97) DRJ 445*** and in the case of ***Chob Singh v. Govt of New Delhi 192 (2012) DLT 100***.

54. In ***Varinder Prasad v. B.S.E.S. Rajdhani Power Ltd. & Ors. 190 (2012) DLT 293***, it was held:

*"...**As far as the pecuniary compensation is concerned, the income of parents can be taken as a standard measure for arriving at the expected annual income of the children. The method of calculating the compensation for pecuniary loss of dependency depends upon the potential earning capacity of the deceased had he attained adulthood**. A multiplication factor of 1.5 to counter inflation and erosion of the value of the money shall be applied. It can be assumed that the deceased would have, at least, earned what his father was earning, if not more. Therefore, the multiplicand would be the expected annual income, less what he required for himself. As the deceased would have grown up, his personal expenses would have only risen. The contribution to the household would not have exceeded half of the income."*

55. In ***2014 ACJ 1908 Subramanium & Anr. v. Delhi Metro Rail Corporation & Ors.***, it was held:

> ***"15.1.****The standard compensation needs to be corrected to counter inflation. This correction could be carried out by taking into account the Consumer Price Index of Industrial Workers [CPI(IW)] obtaining in the year when the incident occurred. As noted in* ***Kishan Lal's case****, which in turn is based on the judgment in the case of* ***Smt. Kamla Devi v. Govt. of NCT of Delhi & Anr. 114 (2004) DLT 57****, the standard compensation in 1989 was Rs.50,000/-, when the average CPI (IW) was 171…"*

56. Let us attempt a calculation of the compensation as approved in the above pronouncements as well as the time tested and judicially approved principles governing grant of compensation to victims of motor accidents.

(A) Standard Compensation

57. As per the mandate of ***Kamla Devi***, the standard compensation, stated to be ₹50,000/- in the year 1989, is to be revised from time to time to counter inflation and the consequent erosion of the value of the rupee and the amount needs to be updated for subsequent years on the basis of the Consumer Price Index for Industrial Workers (CPI-IW) brought out by the Labour Bureau, Government of India.

58. The average CPI (IW) with respect to Base Year 1982, in 1989, was 171 (*Ref: Kamla Devi's case*)

59. As per the website of the Labour Bureau, Government of the India, in December 2015 (i.e. *the month when the child died*) the

CPI (IW) was pegged at 269 (*with respect to Base Year 2001*).[1]

60. We would have to rework the index with regard to Base Year 1982 using the linking factor.

61. As per the website of the Labour Bureau, Government of the India, the '*All India and Centre-wise Linking factors between New Series of Consumer Price Index Numbers for Industrial Workers on base 2001 = 100 and the previous series on base 1982=100 (General Index) linking factor'* is 4.63[2].

62. Therefore, the CPI(IW) in December 2015, with respect to Base Year 1982, would be calculated as:

269 x 4.63 = 1245.47

63. Therefore, the mother of Lavansh would be entitled to standard compensation. The standard compensation would be worked out in the following manner :

₹50,000 x 1245.47/171 = ₹3,64,172/-

(B) Pecuniary Losses

64. As regards, pecuniary losses, the method adopted in ***Kamla Devi, Ram Kishore, Subramanium and Varinder Prasad*** would be applied. In ***Varinder Prasad*** the computation of the pecuniary loss of dependency was based on the premise that '*the income of parents can be taken as a standard measure for arriving at the expected annual income of the children'* and was also multiplied by a factor of 1.5 '*to counter inflation and erosion of the value of the*

[1] *http://labourbureaunew.gov.in/CPI_gp_subgp_indices_2015.pdf*
[2] *http://labourbureaunew.gov.in/LBO_LinkingFactors.htm*

money'.

65. The multiplier method is a method, which is used to compute the loss of dependency under the Motor Vehicles Act. We would take assistance from these principles to calculate the amount of pecuniary loss in this case.

66. The monthly income earned by Smt. Saroj Rani, the mother of the deceased, as disclosed in the report filed by the police, is pegged at ₹5000/-. Multiplying the same, with a factor of 1.5, the resultant figure would be ₹7500/- . The annual loss of dependency would therefore be ₹90,000/- (*₹7500/- x 12*).

67. In ***Varinder's*** case it was noted that as the deceased *'would have grown up, his personal expenses would have only risen. The contribution to the household would not have exceeded half of the income.'*

68. As per ***Varinder's*** case dividing the figure of ₹90,000/-, as arrived at, into two parts, the same would be ₹45,000/-. This would be treated as the *multiplicand.*

69. Since, the victim was less than 15 years of age, the multiplier of 15 would be applicable if we were to refer to the second schedule appended to the Motor Vehicles Act, 1988. Applying the multiplier of 15, the pecuniary loss would work out as follows:

₹6,75,000/- (₹45,000/- x 15)

70. The total compensation payable would, therefore, be the total of ₹3,64,181 (*being the standard compensation*) and ₹6,75,000 (*being the pecuniary losses of dependency*), totalling to

₹10,39,181/-.

71. Judicial precedents also shed some guidance on the manner in which compensation in a public law remedy would be awarded.

72. In ***Municipal Corporation of Delhi v. Association of Victims of Uphaar Tragedy, AIR 2012 SC 100*** with regard to an incident of fire in the *Uphaar Cinema* in 1997, the Supreme Court awarded compensation of ₹7,50,000/- to the victims below 20 years and ₹10 lakh to victims above 20 years of age by applying the multiplier method. The relevant portion of the Supreme Court judgment is as under:

> *"38. ... It can be by way of making monetary amounts for the wrong done or by way of exemplary damages, exclusive of any amount recoverable in a civil action based on tortuous liability. But in such a case it is improper to assume admittedly without any basis, that every person who visits a cinema theatre and purchases a balcony ticket should be of a high income group person. In the year 1997, Rs. 15,000 per month was rather a high income. The movie was a new movie with patriotic undertones. It is known that zealous movie goers, even from low income groups, would not mind purchasing a balcony ticket to enjoy the film on the first day itself. To make a sweeping assumption that every person who purchased a balcony class ticket in 1997 should have had a monthly income of Rs. 15,000 and on that basis apply high multiplier of 15 to determine the compensation at a uniform rate of Rs. 18 lakhs in the case of persons above the age of 20 years and Rs. 15 lakhs for persons below that age, as a public law remedy, may not be proper. While awarding compensation to a large group of persons, by way of public law remedy, it will be unsafe to use a high income as the determinative factor. The reliance upon Neelabati Behera (AIR 1993 SC 1960) in this behalf is of no assistance as that case related to a*

single individual and there was specific evidence available in regard to the income. Therefore, the proper course would be to award a uniform amount keeping in view the principles relating to award of compensation in public law remedy cases reserving liberty to the legal heirs of deceased victims to claim additional amount wherever they were not satisfied with the amount awarded. ***Taking note of the facts and circumstances, the amount of compensation awarded in public law remedy cases, and the need to provide a deterrent, we are of the view that award of Rs. 10 lakhs in the case of persons aged above 20 years and Rs. 7.5 lakhs in regard to those who were 20 years or below as on the date of the incident, would be appropriate.*** *We do not propose to disturb the award of Rs. 1 lakh each in the case of injured.* ***The amount awarded as compensation will carry interest at the rate of 9% per annum*** *from the date of writ petition as ordered by the High Court, reserve liberty to the victims or the LRs. of the victims as the case may be to seek higher remedy wherever they are not satisfied with the compensation. Any increase shall be borne by the Licensee (theatre owner) exclusively."*

(Emphasis by us)

73. In ***UPSRTC v. R.K. Sachdeva***, MAC. APP. 182/2008, this court decided on 23rd December, 2016, this Court, applying Uphaar Tragedy case, enhanced the compensation in respect of a 18 year old child from ₹3,42,000/- to ₹10 lakh considering that Uphaar Tragedy took place in the year 1997 whereas the accident in question took place on 04th May, 2003.

74. Again in ***Chiranji Lal v. DDA***, W.P.(C) 12087/2015 decided on 13th July, 2017 relates to the death of a minor child aged 11 years due to the falling of an iron gate of a DDA park on him. Vide order dated 21st July, 2016, this Court constituted a Committee

presided by Mr. Sanjay Jain, learned ASG to consider formulating a policy guidelines for payment of a fixed ex-gratia compensation in such cases. The Committee appointed by this Court recommended the payment of compensation of ₹10 lakh in death cases and ₹5 lakh in case of permanent disability in pursuant to which DDA approved the payment of ex-gratia compensation of ₹10 lakh to the petitioners on no fault liability and the said amount has been disbursed to the parents of the deceased.

75. Our attention stands drawn to the decision in ***Sohan Lal v. Government of NCT of Delhi***, W.P.(C) 2584/2008 decided on 23rd November, 2017 relates to the death of a 6 year old child and injury to a 4 year old child playing in the street by electrocution. This Court awarded compensation of ₹10 lakh in respect of the death of a 6 year old child and ₹1,50,000/- to the injured child.

The accident in the present case is of the year 2015

76. We are of the view that in the present case, the respondents should pay a sum of ₹10,00,000/- alongwith interest to Smt. Saroj Rani as compensation for the unfortunate death of her son Lavansh.

Result

77. In view of the totality of the circumstances, we direct as follows:

(i) The PWD shall deposit a sum of ₹10,00,000/- alongwith interest at 9% per annum (*i.e., ₹7,500/- per month*) from the date of death (*i.e. December, 2015*) within one month as compensation to Smt. Saroj Rani, mother of the deceased

Lavansh. As such an amount of ₹12,47,500/- would be payable till 31st August, 2018

(ii) The aforestated amount shall be deposited with the Registrar General of this court within four weeks from today.

(iii) The Secretary, District State Legal Services Authority (South-East District) shall ensure that a saving bank account of Smt. Saroj Rani is opened at the bank nearest to her place of residence, as well as that the Aadhaar and PAN Card details of Smt. Saroj Rani are sent to the Registrar General of this court.

(iv) The Registrar General of this court, upon receipt of the said amount, is directed to disburse the same to the mother of the deceased by instructing UCO Bank, Delhi High Court Branch as under:-

a. The amount of ₹2,47,500/- shall be transferred to the said bank account of Smt. Saroj Rani.

b. The balance of ₹10,00,000/- be kept in 100 FDRs of ₹10,000/- each, in the name of the mother of the deceased, Smt. Saroj Rani, for the period 1 month to 100 months, respectively with cumulative interest.

c. The balance amount, after keeping ₹10,00,000/- in FDRs, be transferred to the individual savings bank account of the mother of the deceased near her place of residence.

d. The concerned bank of mother of the deceased is directed not to issue any cheque book or debit card to her and if the same have already been issued, the bank is directed to cancel the same and make an endorsement on her passbook to this effect.

e. The mother of the deceased shall produce the copy of this order to the concerned bank, whereupon the bank shall make an endorsement on her passbook that no cheque book and/or debit card shall be issued to her without the permission of this Court. However, the concerned bank shall permit her to withdraw money from her savings bank account by means of a withdrawal form.

f. The mother of the deceased is directed to produce before the UCO Bank, Delhi High Court Branch her PAN card, Aadhaar card and the passbook of his/her savings bank account near the place of her residence along with the abovementioned endorsement whereupon the UCO Bank, Delhi High Court Branch shall disburse the amount to her after verifying the endorsement on the passbook of her savings bank account.

g. All the original FDRs shall remain with UCO Bank, Delhi High Court Branch. However, a statement containing FDR number, amount, date of maturity and maturity amount shall be furnished by UCO Bank, Delhi High Court Branch to the mother of the deceased.

h. The maturity amounts of the FDRs be transferred to the mother of the deceased in her said individual savings bank account.

i. No loan or advance or pre-mature discharge shall be permitted without the permission of this Court.

j. The mother of the deceased is at liberty to approach this Court for release of further amount in case of any financial exigency.

(v) It shall be the duty of the SHO, PS Sunlight Colony, South-east District, to produce Smt Saroj Rani, before the

Secretary, District State Legal Services Authority (South-East District) who shall explain the contents of this order to her and also before the Registrar General of this court to facilitate payment of the compensation.

(vi) All public authorities and land owning agencies, including the Chief Secretary, Government of NCT of Delhi; the CPWD; DDA; PWD; Municipal Corporations; Delhi Cantonment Board; New Delhi Municipal Council; Delhi Jal Board; Electricity Companies; Telephone Companies; Commissioner of Police etc shall ensure strict compliance of the following directions:

a. The sites of all manholes, pits, holes, tanks or any other opening in the ground of any kinds shall be regularly inspected and maintained.
b. Schedule and protocols of inspections and maintenance shall be drawn up and notified by all departments,
c. These sites shall be cordoned off to render them inaccessible to the public.
d. The existence of these sites shall be clearly & visibly marked by the display of signboards/signages.
e. If they are required to be covered, the authorities shall ensure that the covers are in place.
f. Responsibility for compliance shall be fixed of the senior officers not below the rank of Executive Engineers concerned or equivalent thereto.

(vii) Let a copy of this order be sent to the heads of all of the concerned departments in Delhi by the Registrar General of this court; the SHO P.S. Sunlight Colony and the Secretary,

District State Legal Services Authority (South-East District) to ensure immediate compliance.

(viii) In case of any difficulty in working this order, the Registrar General of this court may bring the same to the notice of this court.

(ix) This writ petition is disposed of in the above terms.

ACTING CHIEF JUSTICE

C.HARI SHANKAR, J

AUGUST 03, 2018
mk/aj