
(2016) 12 UK CK 0007
In the Uttarakhand High Court
Case No : Special Appeal No. 315 of 2014

Bablu @ Peter

APPELLANT

Vs

State of Uttarakhand

RESPONDENT

Date of Decision : 05-12-2016

Acts Referred:

Citation : (2017) 121 ALR 155

Hon'ble Judges : Rajiv Sharma and Alok Singh, JJ.

Bench : Division Bench

Advocate : Mr. T.A. Khan, Senior Advocate assisted by Mr. A.K. Arya, Advocate, for the Appellant; Mr. Vikas Pandey, Standing Counsel, for the State

Final Decision : Allowed

Judgement

Rajiv Sharma, J.—This Special Appeal is instituted against the judgment and order dated 19.12.2012 rendered by learned Single Judge of this Court in Writ Petition No.623 of 2007 (S/S).

2. Key facts, necessary for adjudication of this Special Appeal, are that the appellant's mother was an employee as Home Guard since 1989 in the Police Station Lalkuan, District Nainital. On 20.04.2003, there was a weekly day for cleaning the firearms at Police Station Lalkuan. The weapons were spread over a blanket in the campus of police station Lalkuan. One Kishan Ram HC-16 CP/HM found some technical problem in the magazine of Government Pistol No.15172677. He sought the assistance of one Madhav Ram HC 49 to open the magazine of the pistol. While trying to open the magazine of the pistol by HC 49 Madhav Ram, accidentally a bullet was fired from the pistol which hit the appellant's mother on her neck. She was rushed to the hospital at Haldwani. She was declared brought dead.

3. The matter was reported to the police station Lalkuan and the first information report was registered. Being a dependent upon his mother, appellant made several representations to the respondents-authorities for his appointment on

compassionate grounds under Dying in harness Rules. He also claimed benefit under Group Insurance Scheme.

4. Learned counsel for the appellants submits that the appellant was only paid a sum of Rs.50,000/- as an ex-gratia interim relief on 18.07.20105 from the Chief Minister's Discretionary Funds.

5. Appellant filed a Writ Petition No.623 of 2007(S/S) before this Court. This Court disposed of the writ petition by holding that the employment of Home Guard is not a regular employment. Members of Home guard are not protected by any service rules. Thus, it was held that the service rendered by the appellant's mother could not be treated as service with the police force.

6. Under these circumstances, the writ petition was disposed of and the appellant was directed to make a representation for appropriate relief and it was directed that the same may be considered by the Government.

7. Learned counsel for the appellant also submits that the service of appellant's mother is governed under U.P. Home Guards Act, 1963. Section 4 of the said Act provides for the acts to be performed by the Home Guards viz. the Home Guards will help the police force to maintain law and peace and will render the service to the different natural calamities. The mode of appointment of the officers of Home guards is provided under Section 5 of the Act. The services of home guard are controlled by the State Government under Section 6 of the Act.

8. It is not in dispute that appellant's mother died on 20.04.2003 by an accidental fire shot from the pistol. The case of the appellant was also recommended by various authorities to the State Government. A legal notice was also served to Commandant Home Guards, copy thereof was sent to the District Magistrate, Nainital vide letter dated 29.08.2005. Notice was replied on 27.3.2006.

9. The gist of reply filed by the State government is that the group insurance scheme came into existence on 04.02.2004 and appellant's mother died on 20.04.2003. It is also stated that appellant could not be given appointment on compassionate ground since there was no scheme available for giving appointment under the Dying in Harness Rules.

10. However, the fact of the matter is that appellant lost his mother due to negligent act of constables who were cleaning pistol. She was serving in Home Guard Department. The appellant may not be given benefit of group insurance scheme since the scheme was not in existence at the time of death of his mother.

11. The members of home guard are employed for police help and maintaining the law and peace where they are deputed.

12. Appellant's mother served in the Home guard department since 1989 and after death of his mother, he was paid only 50,000/-. His mother was getting honorarium as Rs.2250/- per month.

13. Respondents should have redressed the grievance of the appellant immediately. Appellant lost his mother on 20.04.3003. He has been paid meager compensation of Rs.50,000/-. His mother was an employee of home guard and she was getting honorarium of Rs.2250/- per month. She has died due to negligent act of constables. Constables should have taken necessary precaution while cleaning the arms. The accident had happened in the police station. Petitioner's mother was serving as Home guard in the police station Lalkuan. She was Dalit. State Government should have special consideration for the weaker sections of the society. Only sum of Rs.50,000/- was paid to the appellant towards compensation for the death of his mother which is inadequate. Compensation should be just and fair. Appellant's mother was only 50 years of age at the time of her death. Appellant would not be entitled to the benefit of group insurance scheme since scheme was not applicable at the time of death of his mother.

14. Their Lordships of Hon'ble Supreme Court in the case of State of Rajasthan v. Mst. Vidhyawati and another, AIR 1962 SC 933 have held that State can be made vicariously liable for the tortious act, like any other employer. In the instant case, it is also admitted fact that appellant lost his mother by bullet fired from pistol which was cleaned by the constables in police station. Their Lordships have also held as under :-

15. Viewing the case from the point of view of first principles, there should be no difficulty in holding that the State should be as much liable for tort in respect of a tortious act committed by its servant within the scope of his employment and functioning as such, as any other employer. The immunity of the Crown in the United Kingdom was based on the old feudalistic notions of justice, namely, that the King was incapable of doing a wrong, and, therefore, of authorising or instigating one, and that he could not be sued in his own courts. In India, ever since the time of East India Company, the sovereign has been held liable to be sued in tort or in contract, and the common law immunity never operated in India. Now that we have, by our Constitution, established a Republican form of Government, and one of the objectives is to establish a Socialistic State with its varied industrial and other activities, employing a large army of servants, there is no justification, in principle, or in public interest, that the State should not be held liable vicariously for the tortious act of its servant. This Court has deliberately departed from the common law rule that a civil servant cannot maintain a suit against the Crown. In the case of State of Bihar v. Abdul Majid, AIR 1954 SC 245 this Court has recognised the right of a government servant to sue the Government for recovery of arrears of salary. When the rule of immunity in favour of the Crown, based on common law in the United Kingdom, has disappeared from the land of its birth, there is no legal warrant for holding that it has any validity in this country, particularly after the Constitution. As the cause of action in this case arose after the coming into effect of the Constitution, in our opinion, it would be only recognising the old established rule, going back to more than 100 years at least, if we uphold the various liability of the State. Article 300

of the Constitution itself has saved the right of Parliament or the legislature of a State to enact such law as it may think fit and proper in this behalf. But so long as the legislature has not expressed its intention to the contrary, it must be held that the law is what it has been ever since the days of East India Company.

15. Their Lordships of Hon^{ble} Supreme Court in the case of Rudal Sah v. State of Bihar and another, AIR 1983 SC 1086 have held that Article 21 which guarantees the right to life and liberty will be denuded of its significant content if the powers of the Supreme Court were limited to passing orders of release from illegal detention. In this matter, Hon. Supreme Court awarded a sum of Rs.30,000/- as an interim measure to the victim by way of compensation. Their Lordships have held as under :-

10. We cannot resist this argument. We see no effective answer to it save the stale and sterile objection that the petitioner may, if so advised, file a suit to recover damages from the State Government. Happily, the State's counsel has not raised that objection. 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 of 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. Therefore, the State must repair the damage done by its officers to the petitioner's rights. It may have recourse against those officers.

16. Their Lordships of Hon^{ble} Supreme Court in the case of Bhim Singh, MLA v. State of J & K and others, AIR 1986 SC 494 have held that victim can be compensated by awarding suitable compensation. In this matter, Rs.50,000/- was awarded to the petitioner as the petitioner was a member of the Legislative Assembly and he was arrested while en route to seat of Assembly and in

consequence, he was deprived of his constitutional rights to attend the Assembly Session. Their Lordships have held as under :-

"However the two police officers, the one who arrested him and the one who obtained the orders of remand, are but minions, in the lower rungs of the ladder. We do not have the slightest doubt that the responsibility lies elsewhere and with the higher echelons of the Government of Jammu and Kashmir but it is not possible to say precisely where and with whom, on the material now before us. We have no doubt that the constitutional rights of Shri Bhim Singh were violated with impunity. Since he is now not in detention, there is no need to make any order to set him at liberty, but suitably and adequately compensated, he must be. That we have the right to award monetary compensation by way of exemplary costs or otherwise is now established by the decisions of this Court in *Rudul Sah v. State of Bihar* (1983) 3 SCR 508 : (AIR 1983 SC 1086) and *Sebastian M. Hongray v. Union of India* AIR 1984 SC 1026. When a person comes to us with the complaint that he has been arrested and imprisoned with mischievous or malicious intent and that his constitutional and legal rights were invaded, the mischief or malice and the invasion may not be washed away or wished away by his being set free. In appropriate cases we have the jurisdiction to compensate the victim by awarding suitable monetary compensation. We consider this an appropriate case. We direct the first respondent, the State of Jammu and Kashmir to pay to Shri Bhim Singh a sum of Rs 50,000 within two months from today. The amount will be deposited with the Registrar of this Court and paid to Shri Bhim Singh."

17. Their Lordships of Hon"ble Supreme Court in the case of *Saheli, a Women's Resources Centre v. Commission of Police, Delhi and others*, AIR 1990 SC 513, have directed to pay Rs.75,000/- as compensation to the mother of victim. Since the death was due to police atrocities, therefore, State was liable to pay compensation. Their Lordships have held as under :-

10. It is now apparent from the report dated December 5, 1987 of the Inspector of the Crime Branch, Delhi as well as the counter-affidavit of the Deputy Commissioner of Police, Delhi on behalf of the Commissioner of Police, Delhi and also from the fact that the prosecution has been launched in connection with the death of Naresh, son of Kamlesh Kumari showing that Naresh was done to death on account of the beating and assault by the agency of the sovereign power acting in violation and excess of the power vested in such agency. The mother of the child, Kamlesh Kumari, in our considered opinion, is so entitled to get compensation for the death of her son from respondent 2, Delhi Administration.

11. An action for damages lies for bodily harm which includes battery, assault, false imprisonment, physical injuries and death. In case of assault, battery and false imprisonment the damages are at large and represent a solatium for the mental pain, distress, indignity, loss of liberty and death. As we have held hereinbefore that the son of Kamlesh Kumari aged 9 years died due to beating and assault by the SHO, Lal Singh and as such she is entitled to get the damages

for the death of her son. It is well settled now that the State is responsible for the tortious acts of its employees. Respondent 2, Delhi Administration is liable for payment of compensation to Smt. Kamlesh Kumari for the death of her son due to beating by the SHO of Anand Parbat Police Station, Shri Lal Singh.

15. On a conspectus of these decisions we deem it just and proper to direct the Delhi Administration, respondent 2 to pay compensation to Kamlesh Kumari, mother of the deceased, Naresh a sum of Rs 75,000 within a period of four weeks from the date of this judgment. The Delhi Administration may take appropriate steps for recovery of the amount paid as compensation or part thereof from the officers who will be found responsible, if they are so advised. As the police officers are not parties before us, we state that any observation made by us in justification of this order shall not have any bearing in any proceedings specially criminal prosecution pending against the police officials in connection with the death of Naresh. The writ petitions are disposed of accordingly.

18. Their Lordships of Hon^{ble} Supreme Court in the case of Kumari (Smt.) v. State of Tamil Nadu and others, (1992) 2 SCC 223 have set aside the judgment of High Court and awarded a sum of Rs.50,000/- to the victim as compensation. Their Lordships have held as under :-

"3. In the facts and circumstances of this case we set aside the High Court judgment and direct that respondent 1, the State of Tamil Nadu shall pay to the appellant a sum of Rs 50,000 (Rupees fifty thousand) with interest at 12 per cent per annum from January 1, 1990 till the date of payment. The amount shall be paid within six weeks from today. It will be open to the State of Tamil Nadu to take appropriate proceedings to claim the said amount or any part thereof from any of the respondents or any other authority which might be responsible for keeping the sewerage tank open. The claim, if made, will be decided in accordance with law. The appeal is allowed in the above terms. There will be no order as to costs."

19. Their Lordships of Hon^{ble} Supreme Court in the case of Lucknow Development Authority v. M.K. Gupta, (1994) 1 SCC 243 have held that the State Government is liable to compensate for loss or injury suffered by a citizen due to arbitrary actions of its employees. Their Lordships have also held as under :-

"9. Facts in Civil Appeal No. 6237 of 1990 may now be adverted to as it is the only appeal in which the National Commission while exercising its appellate power under the Act not only affirmed the finding of State Commission directing the appellant to pay the value of deficiency in service but even directed to pay compensation for harassment and agony to the respondent. The Lucknow Development Authority with a view to ease the acute housing problem in the city of Lucknow undertook development of land and formed plots of different categories/sizes and constructed dwelling units for people belonging to different income groups. After the construction was complete the authority invited

applications from persons desirous of purchasing plots or dwelling houses. The respondent applied on the prescribed form for registration for allotment of a flat in the category of Middle Income Group (MIG) in Gomti Nagar Scheme in Lucknow on cash down basis. Since the number of applicants was more, the authority decided to draw lots in which flat No. II/75 in Vinay Khand-II was allotted to the respondent on April 26, 1988. He deposited a sum of Rs 6132 on July 2, 1988 and a sum of Rs 1,09,975 on July 29, 1988. Since the entire payment was made in July 1988 the flat was registered on August 18, 1988. Thereafter the appellant by a letter dated August 23, 1988 directed its Executive Engineer-VII to hand over the possession of the flat to the respondent. This information was given to him on November 30, 1988, yet the flat was not delivered as the construction work was not complete. The respondent approached the authority but no steps were taken nor possession was handed over. Consequently he filed a complaint before the District Forum that even after payment of entire amount in respect of cash down scheme the appellant was not handing over possession nor they were completing the formalities and the work was still incomplete. The State Commission by its order dated February 15, 1990 directed the appellant to pay 12% annual simple interest upon the deposit made by the respondent for the period January 1, 1989 to February 15, 1990. The appellant was further directed to hand over possession of the flat without delay after completing construction work up to June 1990. The Commission further directed that if it was not possible for the appellant to complete the construction then it should hand over possession of the flat to the respondent by April 5, 1990 after determining the deficiencies and the estimated cost of such deficient construction shall be refunded to the respondent latest by April 20, 1990. The appellant instead of complying with the order approached the National Commission and raised the question of jurisdiction. It was overruled. And the appeal was dismissed. But the cross-appeal of the respondent was allowed and it was directed that since the architect of the appellant had estimated in October 1989 the cost of completing construction at Rs 44,615 the appellant shall pay the same to the respondent. The Commission further held that the action of the appellant amounted to harassment, mental torture and agony of the respondent, therefore, it directed the appellant to pay a sum of Rs 10,000 as compensation.

10. Who should pay the amount determined by the Commission for harassment and agony, the statutory authority or should it be realised from those who were responsible for it? Compensation as explained includes both the just equivalent for loss of goods or services and also for sufferance of injustice. For instance in Civil Appeal No. ? of 1993 arising out of SLP (Civil) No. 659 of 1991 the Commission directed the Bangalore Development Authority to pay Rs 2446 to the consumer for the expenses incurred by him in getting the lease-cum-sale agreement registered as it was additional expenditure for alternative site allotted to him. No misfeasance was found. The moment the authority came to know of the mistake committed by it, it took immediate action by allotting alternative site to the respondent. It was compensation for exact loss suffered by the

respondent. It arose in due discharge of duties. For such acts or omissions the loss suffered has to be made good by the authority itself. But when the sufferance is due to mala fide or oppressive or capricious acts etc. of a public servant, then the nature of liability changes. The Commission under the Act could determine such amount if in its opinion the consumer suffered injury due to what is called misfeasance of the officers by the English Courts. Even in England where award of exemplary or aggravated damages for insult etc. to a person has now been held to be punitive, exception has been carved out if the injury is due to, "oppressive, arbitrary or unconstitutional action by servants of the Government" (Salmond and Heuston on the Law of Torts). Misfeasance in public office is explained by Wade in his book on Administrative Law thus:

"Even where there is no ministerial duty as above, and even where no recognised tort such as trespass, nuisance, or negligence is committed, public authorities or officers may be liable in damages for malicious, deliberate or injurious wrongdoing. There is thus a tort which has been called misfeasance in public office, and which includes malicious abuse of power, deliberate maladministration, and perhaps also other unlawful acts causing injury." (p. 777)

The jurisdiction and power of the courts to indemnify a citizen for injury suffered due to abuse of power by public authorities is founded as observed by Lord Hailsham in *Cassell & Co. Ltd. v. Broome*, 1972 (2) W.L.R. 645 on the principle that, "an award of exemplary damages can serve a useful purpose in vindicating the strength of law". An ordinary citizen or a common man is hardly equipped to match the might of the State or its instrumentalities. That is provided by the rule of law. It acts as a check on arbitrary and capricious exercise of power. In *Rookes v. Barnard* it was observed by Lord Devlin, "the servants of the government are also the servants of the people and the use of their power must always be subordinate to their duty of service". A public functionary if he acts maliciously or oppressively and the exercise of power results in harassment and agony then it is not an exercise of power but its abuse. No law provides protection against it. He who is responsible for it must suffer it. Compensation or damage as explained earlier may arise even when the officer discharges his duty honestly and bona fide. But when it arises due to arbitrary or capricious behaviour then it loses its individual character and assumes social significance. Harassment of a common man by public authorities is socially abhorring and legally impermissible. It may harm him personally but the injury to society is far more grievous. Crime and corruption thrive and prosper in the society due to lack of public resistance. Nothing is more damaging than the feeling of helplessness. An ordinary citizen instead of complaining and fighting succumbs to the pressure of undesirable functioning in offices instead of standing against it. Therefore the award of compensation for harassment by public authorities not only compensates the individual, satisfies him personally but helps in curing social evil. It may result in improving the work culture and help in changing the outlook. Wade in his book *Administrative Law* has observed that it is to the credit of public authorities that there are simply few reported English decisions on this form of malpractice,

namely, misfeasance in public offices which includes malicious use of power, deliberate maladministration and perhaps also other unlawful acts causing injury. One of the reasons for this appears to be development of law which, apart, from other factors succeeded in keeping a salutary check on the functioning in the government or semi-government offices by holding the officers personally responsible for their capricious or even ultra vires action resulting in injury or loss to a citizen by awarding damages against them. Various decisions rendered from time to time have been referred to by Wade on Misfeasance by Public Authorities. We shall refer to some of them to demonstrate how necessary it is for our society. In *Ashby v. White* the House of Lords invoked the principle of *ubi jus ibi remedium* in favour of an elector who was wrongfully prevented from voting and decreed the claim of damages. The ratio of this decision has been applied and extended by English Courts in various situations. In *Roncarelli v. Duplessis* the Supreme Court of Canada awarded damages against the Prime Minister of Quebec personally for directing the cancellation of a restaurant-owner's liquor licence solely because the licensee provided bail on many occasions for fellow members of the sect of Jehovah's Witnesses, which was then unpopular with the authorities. It was observed that, "what could be more malicious than to punish this licensee for having done what he had an absolute right to do in a matter utterly irrelevant to the Alcoholic Liquor Act? Malice in the proper sense is simply acting for a reason and purpose knowingly foreign to the administration, to which was added here the element of intentional punishment by what was virtually vocation outlawry." In *Smith v. East Elloe Rural District Council* the House of Lords held that an action for damages might proceed against the clerk of a local authority personally on the ground that he had procured the compulsory purchase of the plaintiff's property wrongfully and in bad faith. In *Farrington v. Thomson* the Supreme Court of Victoria awarded damages for exercising a power the authorities knew they did not possess. A licensing inspector and a police officer ordered the plaintiff to close his hotel and cease supplying liquor. He obeyed and filed a suit for the resultant loss. The Court observed:

"Now I take it to be perfectly clear, that if a public officer abuses his office, either by an act of omission or commission, and the consequence of that is an injury to an individual, an action may be maintained against such public officer."

In *Wood v. Blair*, a dairy farmer's manageress contracted typhoid fever and the local authority served notices forbidding him to sell milk, except under certain conditions. These notices were void, and the farmer was awarded damages on the ground that the notices were invalid and that the plaintiff was entitled to damages for misfeasance. This was done even though the finding was that the officers had acted from the best motives."

20. Their Lordships of Hon^{ble} Supreme Court in the case of *Murti Devi v. State of Delhi and others*, (1998) 9 SCC 604 have directed to pay Rs.2,50,000/- to the deceased's mother by the State due to gross negligence of police authorities.

Their Lordships have held as under :-

1. Heard Mr Sodhi, learned counsel appearing for the appellant and Mr Subba Rao, the learned counsel for the respondent-State of Delhi. This writ petition has been presented by the petitioner Murti Devi for appropriate compensation for the death of an undertrial prisoner Raj Kumar who while kept in judicial custody in Tihar Jail had been seriously assaulted inside the jail and on account of injuries suffered by him died after being admitted in a Delhi hospital. Initially, the jail authorities made an attempt to assert that the said undertrial prisoner Raj Kumar was a drug addict and presumably as a consequence of withdrawal symptoms had suffered some injuries and also on account of an old injury in kidney, he had died. Such case of the jail authorities had been demonstrated to be false by the post-mortem report indicating that there were no such withdrawal symptoms and the doctor who held post-mortem examination had noticed a number of injuries on the person of the deceased. It appears that later on the jail authorities came up with a case that the said undertrial prisoner was assaulted by some of the convicts in the jail for which a criminal case has been initiated against the offending convicts. It has also been established that prompt and appropriate action in rendering medical aid in a hospital was also not given to the said deceased. Whether the said undertrial prisoner had really been assaulted by the convicts or he was assaulted by the Jail Warden and his associates may be ultimately decided in the criminal case stated to be pending. We may only indicate that the pending criminal case should be conducted with utmost seriousness and should be completed as early as practicable. There is no manner of doubt that because of the gross negligence on the part of the jail authorities, the said Raj Kumar, an undertrial prisoner in Tihar Jail, was subjected to serious injuries inside the jail which ultimately caused his death. It has been stated by the petitioner, Murti Devi, the mother of the said deceased, that the said Raj Kumar was the only bread-earner in the family and today she has become a helpless widow with three sons to be maintained. As it was the bounden duty of the jail authorities to protect the life of an undertrial prisoner lodged in the jail and as in the instant case such authorities had failed to ensure safety and security to the said unfortunate undertrial accused, we direct the respondent to pay a sum of Rs 2,50,000 to the petitioner Murti Devi within a period of six weeks from today. Out of the said amount, rupees two lakhs should be kept in fixed deposit in the name of the said Murti Devi in a nationalised bank for a period of five years so that she can maintain herself and members of the family out of the interest accruing on the said fixed deposit. The balance sum of Rs 50,000 should be handed over to the said Murti Devi within the period of six weeks from today against proper receipts. After the said period of five years the petitioner Murti Devi or her legal heirs and successors as the case may be will be free to utilise the said sum of rupees two lakhs according to their desire.

21. Their Lordships of Hon''ble Supreme Court in the case of Chairman, Railway Board and others v. Chandrima Das (Mrs.) and others, (2000) 2 SCC 465 have held that it cannot be accepted that victim should have approached the civil court

for damages and the matter should not have been considered in a petition under Article 226 of the Constitution of India. In this matter, a practicing Advocate filed a writ petition before the High Court against the appellants claiming compensation for the victim. Their Lordships have also held that it was not a mere matter of violation of an ordinary right of a person but the violation of fundamental rights which was involved. "Rape" is an offence which is violative of the fundamental rights of a person guaranteed under Article 21 of the Constitution. Where public functionaries are involved and the matter relates to the violation of fundamental rights or the enforcement of public duties, the remedy would still be available under the public law notwithstanding that a suit could be filed for damages under private law. Their Lordships have also held as under :-

9. Various aspects of the public law field were considered. It was found that though initially a petition under Article 226 of the Constitution relating to contractual matters was held not to lie, the law underwent a change by subsequent decisions and it was noticed that even though the petition may relate essentially to a contractual matter, it would still be amenable to the writ jurisdiction of the High Court under Article 226. The public law remedies have also been extended to the realm of tort. This Court, in its various decisions, has entertained petitions under Article 32 of the Constitution on a number of occasions and has awarded compensation to the petitioners who had suffered personal injuries at the hands of the officers of the Government. The causing of injuries, which amounted to tortious act, was compensated by this Court in many of its decisions beginning from *Rudul Sah v. State of Bihar*. (See also *Bhim Singh v. State of J&K*, *Peoples' Union for Democratic Rights v. State of Bihar*, *Peoples' Union for Democratic Rights v. Police Commr., Delhi Police Headquarters*, *Saheli, A Women's Resources Centre v. Commr. of Police*, *Arvinder Singh Bagga v. State of U.P.*, *P. Rathinam v. Union of India*, *Death of Sawinder Singh Grower In re, Inder Singh v. State of Punjab* and *D.K. Basu v. State of W.B.*)

10. In cases relating to custodial deaths and those relating to medical negligence, this Court awarded compensation under the public law domain in *Nilabati Behera v. State of Orissa*, *State of M.P. v. Shyamsunder Trivedi*, *People's Union for Civil Liberties v. Union of India* and *Kaushalya v. State of Punjab*, *Supreme Court Legal Aid Committee v. State of Bihar*, *Jacob George (Dr) v. State of Kerala*, *Paschim Banga Khet Mazdoor Samity v. State of W.B.* and *Manju Bhatia v. New Delhi Municipal Council*.

22. In the instant case, life of petitioner's mother is taken away by the negligent act of the police constables who have failed to take necessary precautions while cleaning the weapons.

23. The life expectancy in India has gone up to almost 75 years. Appellant's family has been deprived love and affection of their mother. They have been deprived of the company of their mother. The appellant's family has undergone pain and suffering. The mother of the appellant was only 50 years of age. Her

salary was bound to increase. State Government is required to take necessary precautions while cleaning the weapons by declaring the area where weapons are cleaned "out of bound area".

24. The Court can take judicial note of the fact that atrocities on Dalits are increasing day by day. The State Government should take necessary preventive measures to prevent the atrocities on Dalits. In case of death/injury of Dalit due to atrocities committed upon him, the aggrieved family members should be duly compensated and the matter should be investigated by the SDM concerned of the area.

25. According to the Section 4 of the U.P. Home Guards Act, 1963, the Home guards assist the police in maintaining the law and order and can also be called out during the natural calamities. Maintaining law and order is sovereign/legal function. Home guards assist the police force for discharge of their sovereign duties. They are only being paid meager honorarium @ Rs.400/- per day w.e.f. 01.06.2016. They are entitled to at least living wage to maintain their families. In the instant case, appellant's mother was only being paid Rs.2250/- per month as honorarium.

26. Accordingly, the special appeal is allowed and impugned judgment and order dated 19.12.2012 passed by learned Single Judge of this Court in Writ Petition No.623 of 2007(S/S) is hereby set aside. The following directions are issued :-

1. Respondents are directed to pay compensation of Rs.25 lakhs to the appellant within a period of eight weeks from today.
2. Respondents are also directed to consider the case of the appellant for compassionate appointment either in police department or home guard, within a period of six months from today.
3. Respondents are also directed to consider the payment of living wages to the members of Home guard organization by enhancing their honorarium from Rs.400/- per day to Rs.750/- per day, within a period of twelve weeks from today.
4. State Government is also directed to pay interim compensation of Rs.5.00 lakhs in every case of death of Dalit due to atrocities and Rs. 2.50 lakhs in case, he receives grievous injuries.
5. The SDM concerned shall conduct time bound enquiry in the matter, where the atrocities on Dalit take place and shall also fix the responsibility on the person who is responsible for the atrocities committed upon him.