

(2012) 09 DEL CK 0161
In the Delhi High Court
Case No : LPA No. 163 of 2012

BSES Rajdhani Power Ltd.

APPELLANT

Vs

Varinder Prasad and Others

RESPONDENT

Date of Decision : 03-09-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Motor Vehicles Act, 1988 — Section 2(24), 2(34)

Citation : (2012) 09 DEL CK 0161

Hon'ble Judges : A.K. Sikri, Acting C.J.;Rajiv Sahai Endlaw, J

Bench : Division Bench

Advocate : Sudhir Nandrajog with Mr. Samrat Nigam and Ms. Ankita Mahajan, for the Appellant; Aruna Mehta, Sanjeev Mehta for R-1 and R-2, Mr. Sumeet Pushkarna and Mr. N. Waziri, for R-4 GNCTD along with S.I. Tribhuvan Negi, I.O., for the Respondent

Judgement

A.K. Sikri, Acting Chief Justice

1. The Appellant BSES Rajdhani Ltd. has filed this intra Court appeal challenging the decision of the learned Single Judge awarding compensation of Rs. 15,26,000/- to the respondents No. 1 and 2 herein. The said compensation is given in the writ filed by the respondents No. 1 and 2 under Article 226 of the Constitution of India. This writ petition was filed seeking compensation for death of their ten years old son Ajay Kumar due to the collapse of the shed (chhajja) of a house situated at DESU Colony, Najafgarh on 16.6.2007. Respondent No. 1 is working as electrician with Delhi Transco Ltd., respondent No. 3 herein. The factum of accident in which Sh. Ajay Kumar died is not in dispute. It is also not in dispute that that incident occurred in the DESU colony, Najafgarh. Facts which have emerged on record show that Sh. Ajay Kumar with his friend Mohit Sharma were playing in the park of DESU colony. Suddenly at about 6:30 AM, it started raining and in order to protect themselves from the rain, both the children took shelter under the shed of House No. 1, Type-V in DESU colony, Najafgarh. Suddenly, the said shed collapsed and Ajay got buried under the debris. One

Smt. Kamlesh who was doing her morning walk in the area reached the spot and picked up Ajay from the debris. By that time, he had already succumbed to the injuries. It is also a matter of record that respondents No. 1 and 2 are residents of the same colony where the residential accommodation is allotted to them by the employer and their son was playing within that colony.

2. The learned Single Judge, in the detailed judgment, has found that the house in question was poorly maintained by the officials of the appellant BSES Rajdhani Ltd. It was in dilapidated condition and due to this reason, the shed collapsed. On this basis and other reasons given in the order, the learned Single Judge has come to the conclusion that principles of *Res ipsa loquitur* are clearly applicable taking note of the following facts:

29. Now coming to present case, the incident in question has not been disputed by the respondents, nor the factum of death of Master Ajay Kumar due to the falling of the chajja upon him is in dispute. The occurrence of the said incidence has been recorded in the FIR and the cause of the death has also been verified by the post mortem report. Though respondent Nos. 1 and 2 are shifting the liability for the maintenance of the said flat on each other, they do not dispute that one or the other of them is indeed responsible for acting negligently in not maintaining the said flat. There can be no dispute or denying the fact that one of them, if not both the respondents, owed a duty of care to the general public, so that no action or inaction of theirs causes harm to the public at large. There can be no quarrel that the flat should have been maintained, so that no part of it fell suddenly on its own, only on account of some rain. The falling of the shed (chajja) is *prima facie* evidence of negligence. Nothing has been brought out by the respondents, to suggest that the shed fell despite the respondents taking proper care of the flat, or for some other cogent reason. Therefore, in my view, the principle of strict liability will be squarely applicable in this case, and the irresistible conclusion is that the respondent Nos. 1 and 2 were negligent in the maintenance of the said flat, due to which the chajja fell on the deceased, and he died.

3. Thereafter, the learned Single Judge went into the exercise of quantification of compensation and applying the principle laid down by this Court in *Smt. Kamla Devi Vs. Government of NCT of Delhi and Another*, the compensation in question has been worked out.

4. It would be pertinent to mention that in the writ proceeding, the defence of the appellant was that responsibility to maintain the said shed and the house, if any, was that of the respondent No. 3. On the other hand, respondent No. 3 shifted the onus on to the appellant. Thus, to that extent, there was an inter se dispute between the appellant and respondent No. 3. The learned Single Judge noted that because of this reason alone, it cannot be said that petition under Article 226 is not maintainable and gave following reasons in support:

31. Consequently, I have no hesitation in concluding that the present being a

case of glaring and evident negligence, to which the maxim *Res Ipsa Loquitur* applies, the present writ petition under Article 226 of the Constitution of India is maintainable as the said negligence has led to complete infraction of the fundamental right to life of the deceased. The inter se dispute between the two respondents, i.e. respondent Nos. 1 and 2, would not come in the way of the petitioners for claiming compensation for breach of the fundamental rights of the deceased Ajay Kumar. The tendency of the public authorities, when more than one of them is involved, to shift the burden on each other is not new. Same was the position in *Darshan (supra)*, and *Ram Kishore (supra)* and *Swarn Singh (supra)*. The said inter se dispute was held, not be disentitle the petitioner from claiming relief under Article 226 of the Constitution of India, as negligence, resulting in breach of fundamental rights was held to have been established in each of these cases. The Court shall, however, *prima facie* examine the aspect of responsibility, only with a view to fix the responsibility of one of the respondents to pay the awarded compensation, leaving it open to the respondents to battle out and settle their inter se liability in appropriate proceedings.

5. However, this aspect is taken care of in the impugned judgment by making following observations:

38. Since the liability of maintenance of the said flat is being disputed by both respondent No. 1 and respondent No. 2, it would not be appropriate to decide the inter se liability of maintenance of the flat in this petition. Without deciding this issue, it is deemed appropriate that respondent No. 1 i.e. BSES Rajdhani Power Ltd. should pay the aforesaid amount of compensation to the petitioners, as the possession of the flat in question had been delivered to respondent No. 1 BSES Rajdhani Power Ltd. The amount shall carry simple interest at the rate of 9% per annum from the date of filing of this petition till the date of payment. Respondent No. 1 may, it is so advised, stake its claim against respondent No. 2. If such a claim is made, the same shall be independently adjudicated, without being influenced, in any manner, by this decision.

6. Mr. Sudhir Nandrajog, learned senior counsel appearing for the appellant has made two-fold submissions challenging the findings of the learned Single Judge. In the first instance, it is stated that the petition raised all disputed questions of fact, particularly relating to "public place". According to him, the house in question where the two boys rushed after the rain started was a private house and cannot be treated as "public place". At the most, this issue raised disputed question and, therefore, writ was not maintainable. It was more so when the respondents No. 1 and 2 had themselves laid their claim on the principle of tortious liability. Second contention of Mr. Nandrajog is that all the flats of the said colony in question belong to Delhi Vidyut Board and the said property vests with Government of NCT of Delhi. These properties were given on lease to the transmission companies, including the appellant and the responsibility to maintain was of the Transco company, namely, respondent No. 3 herein and, therefore, could not be fastened with any liability.

7. We are not convinced with any of the aforesaid arguments. As pointed out above, respondents No. 1 and 2 are the residents of the said DESU colony. The children were playing within their own colony and had not trespassed into a different colony. Further, Section 2(34) of the Motor Vehicles Act defines "public place" as under:

(34) "public place" means a road, street, way or other place, whether a thoroughfare or not, to which the public have a right of access, and includes any place or stand at which passengers are picked up or set down by a stage carriage.

8. There are various judgments interpreting the aforesaid definition. In *New India Assurance Company Ltd. v. Smt. Sunita Bhandari & Ors.*, 2008 X AD 605 (Delhi), accident took place inside the school and it was contended by the Insurance Company that such a place could not be treated as "public place". This contention was negated following Division Bench judgment of Madras High Court in *G. Bhuvaneswari and 3 others Vs. M. Sornakumar and 2 others*, and *United India Insurance Co. Ltd. Vs. Parvathi Devi & Ors.*, (1999) ALT 1520. In *Parvathi Devi* (supra), the legal position was explained as under:

16. The definition of "public place" is very wide. A perusal of the same reveals that the public at large has a right to access though that right is regulated or restricted. It is also seen that this Act is beneficial legislation, so also the law of interpretation has to be construed in the benefit of public. In the overall legal position and the fact that if the language is simple and unambiguous, it has to be construed in the benefit of the public, we are of the view that the word "public place", wherever used as a right or controlled in any manner whatsoever, would attract Section 2(24) of the Act. In view of this, as stated, the private place used with permission or without permission would amount to be a "public place".

17. In view of what we have discussed above, we hold that the expression "public place" for the purpose of Chapter VIII of the Motor Vehicles Act, 1939 will cover all places including those of private ownership where members of the public have an access whether free or controlled in any manner whatsoever.

Apart from the above, it is also very pertinent to highlight that such a contention was not even taken in the writ proceedings. We, therefore, reject this contention of the learned senior counsel. As far as second contention concerned, it relates to inter se dispute between the appellant and respondent No. 3. We are of the opinion that it is adequately taken care of by the learned Single Judge. Additionally, we may also point out that as per the documents, it prima facie appears that the liability to maintain the colony was that of the appellant. Possession of this colony was also given to the appellant. Office Order dated 12.11.2001 and communication dated 29.1.2003 are placed on record to this effect. Finding no merit in this appeal, it is accordingly dismissed.