

(1999) 05 DEL CK 0006

In the Delhi High Court

Case No : Civil Writ Petition No. 656 of 1995

Darshan and Others (Smt.)

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 01-05-1999

Acts Referred:

Citation : (2000) ACJ 578 : (1999) 4 AD 209 : (1999) 4 CivCC 212 : (1999) 79 DLT 432 : (1999) 49 DRJ 655 : (1999) 122 PLR 5 : (1999) 4 RCR(Civil) 1 : (2001) 1 RCR(Criminal) 5

Hon'ble Judges : Manmohan Sarin, J;Arun Kumar, J

Bench : Division Bench

Advocate : Ms. Aruna Mehta, for the Appellant; Ms. Anjana Gosain and Mr. Ajay Kumar, for the Respondent

Judgement

Manmohan Sarin, J.—Rules D.B.

Petitioners are the widow and minor children of deceased Skattar Singh, bus driver, who is stated to have fallen into an open manhole and died of drowning on 8.9.1994. Petitioners are seeking a writ of mandamus directing the respondents to pay compensation of Rs. 9,00,000.00 (rupees nine lacs only) since the deceased was deprived of his life due to the negligence of the respondents in leaving the manhole uncovered. The open manhole was near the bunker wall at Bharat Nagar, Delhi.

2. Petitioner had initially impleaded only the Union of India and the Municipal Corporation of Delhi as the respondents. The Municipal Corporation in its counter affidavit claimed that the manhole in question was of a storm water drain, constructed and maintained by the Public Works Department of Delhi Administration, now the National Capital Territory of Delhi. The Municipal Corporation claimed that it was not concerned with the case. Petitioner, accordingly, moved the Court for impleadment of the Public Works Department of the Delhi Administration through its Executive Engineer, P.W.D. 10, through Chief Secretary, Delhi Administration and the Delhi Administration through Chief

Secretary as respondents 3 & 4, which was allowed.

3. Respondents 3 & 4 in their counter affidavit claimed that the death occurred by a fall in the manhole belonging to the Municipal Corporation, which was left uncovered. It would be seen that respondents have not denied the factum of the death of the deceased by a fall in an open manhole. The only defense taken is that the manhole did not pertain to the respective drains maintained by them and did not fall in their jurisdiction.

4. The counter affidavits filed by the respondents make an interest reading. It is a classic case of passing the buck and shifting the burden. It is worthwhile reproducing extracts there from:

Extracts from the affidavit filed on behalf of respondent No.2 (M.C.D.)

"2. That the alleged site of accident has been inspected and it is noticed that the manhole in question of the storm water drain comes under the jurisdiction of Executive Engineer, PWD-10, National Capital Territory of Delhi, 13th Floor, MSO Building, Police Headquater, New Delhi. That it is reported that the said storm water drain has been constructed by the above said division of P.W.D. which is being maintained by them.

3. That the respondent No. 2, M.C.D., is nowhere concerned with the case."

Extracts from the counter affidavit filed on behalf of respondents 3 & 4 :

(PWD & NCT)

"3. In reply to para 3, it is submitted that the manholes located on PWD X Road No.38 are of very shallow depth, about 3" to 5" ft. and they are provided with manhole covers. Moreover all the times these manholes are dry even in rainy season, as such drowning in these manholes is quite surprising one. However, manholes running parallel to Road No. 38 are very deep about 18" to 20" and are always seen lying open without covers, till date they are uncovered. These belong to M.C.D. Hence question of drowning in PWD X manholes is baseless and in this para petitioner herself admitted that the deceased was found lying dead in the open deep manhole. (A rough sketch of the site is enclosed herewith as annexure "Z").

5. In reply to this para 5 it is submitted that manholes under the control and supervision of the answering respondents were fully covered and there was no chance of such kind of accident. The facts show that dead body was lying in M.C.D. manhole which is also near the wall running parallel to PWD Road No. 38 as shown in sketch (Z)."

5. Petitioners have produced on record a copy of the post-mortem report which gives the cause of death as by drowning. Petitioners have also filed on record certain photographs which show the body lying in the manhole and also out-side, beside the manhole. No injuries or fractures were found on the body of the deceased. Muddy water is stated to have been found in the liver. Petitioners,

Along with the rejoinder, have produced a sketch, identifying the manhole near the bunker wall belonging to and maintained by respondents 3 & 4, wherein the deceased is stated to have fallen. The site plan, sketches and the photographs produced and the muddy water found in the liver support petitioners' view that death occurred by falling in the open manhole belonging to and maintained by respondents 3 & 4. In any case, the question of determination of inter se liability between the respondents cannot be used to delay or deny relief to the petitioners.

6. Learned counsel for the respondents had vainly attempted to urge that the writ petition was not maintainable since petitioners' remedy was by way of a suit claiming damages. Beside it was urged that disputed questions of fact entailing evidence were required to be adjudicated, which could not be done in writ proceedings.

7. The question of maintainability of the writ petition, where breach of fundamental rights is involved has been considered by the Apex Court and this Court in a number of decisions. In *Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others*, , the Apex Court after noticing its earlier decisions in *Rudal Sah Vs. State of Bihar* etc observed as under :

"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 defense 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.

Reference may usefully be made to judgment of the Apex Court in *D.K. Basu Vs. State of West Bengal*, where the Court held as under:

"43. Till about two decades ago the liability of the Government for tortuous acts of its public servants was generally limited and the person affected could enforce his right in tort by filing a civil suit and there again the defense of sovereign immunity was allowed to have its play. For the violation of the fundamental right to life or the basic human rights, however, this court has taken the view that the defense of sovereign immunity is not available to the State for tortuous acts of the public servants and for the established violation of the rights guaranteed by Article 21 of the Constitution of India.....

The claim in public law for compensation for unconstitutional deprivation of fundamental right to life and liberty, the protection of which is guaranteed under the Constitution, is a claim based on strict liability and is in addition to the claim available in private law for damages for tortuous acts of the public servants. Public law proceedings serve a different purpose than the private law proceedings. Award of compensation for established infringement of the

indefeasible rights guaranteed under Article 21 of the Constitution is a remedy available in public law since the purpose of public law is not only to civilise public power but also to assure the citizens that they live under a legal system wherein their rights and interests shall be protected and preserved. Grant of compensation in proceedings under Article 32 or Article 226 of the Constitution of India for the established violation of the fundamental rights guaranteed under Article 21, is an exercise of the courts under the public law jurisdiction for penalising the wrongdoer and fixing the liability for the public wrong on the State which failed in the discharge of its public duty to protect the fundamental rights of the citizen.

The old doctrine of only relegating the aggrieved to the remedies available in civil law limits the role of the courts too much, as the protector and custodian of the indefeasible rights of the citizens. The courts have the obligation to satisfy the social aspirations of citizens because the courts and the law are for the people and expected to respond to their aspirations. A court of law cannot close its consciousness and aliveness to stark realities. Mere punishment of the offender cannot give much solace to the family of the victim-civil action for damages is a long drawn and a cumbersome judicial process. Monetary compensation for redressal by the court finding the infringement of the indefeasible right to life of the citizen is, Therefore, useful and at times perhaps the only effective remedy to apply balm to the wounds of the family members of the deceased victim, who may have been the breadwinner of the family."

8. More recently, the Apex Court in P.A. Narayanan Vs. Union of India (UOI) and Others, awarded compensation of Rs. 2.0 lacs to the appellant for the death of his wife. Deceased was returning by a local train from her office when she was criminally assaulted and robbed of her ornaments and wrist watch. She had pulled the alarm chain. The railway guard and the attendant motor man of the train did not stop the train. Appellant's wife had succumbed to her injuries. The High Court declined to interfere under the writ jurisdiction and the LPA was also dismissed. The Apex Court, while awarding compensation, observed as under:

"8. There is a common law duty of taking reasonable care which must be attached to all carriers, including the Railways. In this case, there has been a breach of that duty and the negligence on the part of the railway staff is writ large. Had the train been stopped and first-aid provided when the chain was pulled, the possibility that the deceased may not have met her death, even after the assault in the course of robbery, is a possibility which we cannot totally rule out. The manner in which the guard and the motorman acted exposes a total casual approach on their part. Because of the failure of those railway officials, a precious life has been lost."

"10.We do not wish to go into that question in this case and leave that issue open. We are resting our case on the breach of common law duty of reasonable care, which lies upon all carriers including the Railways. The standard of care is high and strict. It is not a case where the omission on the part of the

railway officials can be said to be wholly unforeseen or beyond their control. Here there has been a complete dereliction of duty which resulted in a precious life being taken away, rendering the guarantee under Article 21 of the constitution illusory....."

9. A Division Bench of this Court in *Shyama Devi & Ors. Vs. National Capital Territory of Delhi* also awarded compensation under Article 226 of the Constitution in a case where there was negligence in not defusing a rocket, resulting in the death of a Constable.

Compensation had also been awarded by this Court as well as by the Apex Court in writ jurisdiction in several cases of custodial deaths. 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 record 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.

10. From the foregoing, it is clear that the present writ petition for grant of compensation in the case of breach of public duty by instrumentality of the State, resulting in deprivation of life, would be maintainable under Article 21 of the Constitution of India.

11. The deceased was a driver by profession, aged 40 years, drawing a salary of Rs.1,600/- per month. He is survived by his widow and three minor children, then aged 5, 3 and 1 years respectively. A salary certificate showing the monthly salary @Rs.1,600/- per month and the driving license of the deceased have been produced on record. Respondents have not disputed any of these averments. The age of the deceased as 40 years is mentioned in the post mortem report as well as in the First Information Report.

12. Keeping in view the foregoing and based on the principles for determination of just compensation under the Motor Vehicles Act, in our view, the just compensation for the petitioners would be Rs.2.0 lacs. We direct payment of the said amount of Rs.2.0 lacs to the petitioners. Petitioners would also be entitled to interest @ 12% per annum from the date of filing the petition till payment is made.

Out of the amount of compensation awarded, a sum of Rs. 80,000/- would be payable to the wife of deceased, petitioner No.1 Along with the interest awarded. The balance amount of Rs.1,20,000/- would be kept in a nationalized bank in, three separate fixed deposits in the names of the minor children, i.e. petitioners

2 to 4, under the guardianship of petitioner No.1 till the time they attain majority. The interest accruing on the said deposits be paid to petitioner No.1 quarterly.

13. Learned counsel for the respondents had also urged before us that the issue whether the open manhole belonged to respondents No.1 & 2 or respondents No.3 & 4, required evidence and detailed enquiry which was not feasible in these proceedings. This and other disputed questions, it was submitted, ought to be determined in a regular civil trial. As noted by us earlier, the factum of death by fall in the manhole left uncovered by the instrumentality of the State is not denied. We have taken a prima facie view that death had occurred by a fall in manhole belonging to and maintained by respondents No. 3 & 4. 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 and maintained by respondent No. 2.

The writ petition is allowed in the above terms.