

(2020) 05 DEL CK 0090

In the Delhi High Court

Case No : Civil Writ Petition No. 10779 Of 2016

Dheeraj Kumar & Anr

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 18-05-2020

Acts Referred:

Constitution Of India, 1950 — Article 21, 226
Indian Penal Code, 1860 — Section 279, 337

Citation : (2020) 05 DEL CK 0090

Hon'ble Judges : Navin Chawla, J

Bench : Single Bench

Advocate : Pankaj Vivek, Bidyarani, Harshit Chopra, Rajendra Sahu, Karan Seth, Gautam Narayan, Shivani Vij, Dacchita Shahi

Final Decision : Allowed

Judgement

Navin Chawla, J

1. This petition has been filed by the petitioners praying for a direction to the respondents to compensate the petitioners towards refund of medical expenses, loss of income/dependency, loss of prospects, continuing future needs as also for the pain and suffering suffered due to the accident of the petitioner no.1.

2. It is the case of the petitioners that the petitioner no.1, aged about 21 years, was pursuing his studies in B.Sc. Hons. (Electrical Engg.) from Delhi University.

3. On 05.12.2015, he had gone to attend a marriage function in the vicinity of Paschim Vihar, Village Madipur. At around 1.30 A.M. on 6. 12.2015, he telephoned to say that he was about to leave the venue of the marriage function and would reach home by 2.30 A.M. or 3.00 A.M.

4. Around 5.00 A.M., a Police Constable from the nearby Police Station informed the petitioner no.2 that his son, petitioner no.1, had suffered a road accident and was admitted to the Safdarjung Hospital.

5. The petitioner no.2 later learnt that initially the petitioner no.1 was taken to the Acharya Bhikshu Hospital, where the Medico-Legal Certificate was prepared and was thereafter shifted to the Safdarjung Hospital. He had suffered enormous injuries on his body and head. It is further asserted that the petitioner no.1 had suffered a haematoma (i.e. an internal injury in the brain) and his skull was operated to remove the haematoma and to relieve the intra-cranial pressure. The surgery termed as "fronto-temporo-parietal decompressive craniotomy" was performed and a portion of the skull bone was removed and the free bone flap was kept in the abdominal wall. As the petitioner no.1 was facing difficulty in respiration, tracheostomy was performed for keeping him on a ventilator.

6. The petitioner no.1 was discharged from the hospital in a state of unconsciousness on 14.01.2016. The Discharge Summary Record stated that the petitioner no.1 was in a state of "altered sensorium, eye opening to pain, not opening to commands". It is stated that the petitioner no.1 continues to remain in the same state.

7. Curiously, an FIR bearing No. 1263/15 was registered against the petitioner no.1 by respondent no.2 under Sections 279 and 337, IPC for rash and negligent driving.

8. It is not disputed that the petitioner no.1 had suffered an accident after colliding with the barricades that were placed by the respondent no.2 at the Road no.66, near Dhanwantri Ayurvedic Hospital, North Avenue Road, West Punjabi Bagh, New Delhi-110026. It is further not disputed that these barricades were chained together so as to cordon off the road/street completely.

9. The respondent no.2, however, asserts that these barricades were placed in a well-illuminated area and were visible from a considerable distance. It has been asserted by the respondent no.2, that the accident appears to have taken place as the petitioner no.1 was speeding and was unable to brake in time to avoid colliding with the barricades. It is further asserted that the petitioner no.1 seems to have tried to slip through the gap in between the barriers and owing to the speed at which the vehicle was travelling, he was unable to spot the chain linking the barricades. It is further asserted that as no helmet or any protective gear of any sort was found at the site of the accident, the petitioner no. 1 was in violation of the provisions of Section 129 of the Motor Vehicles Act, 1988 which mandates every person driving or riding a motorcycle to wear protective headgear conforming to the standards of the Bureau of Indian Standards. It is asserted that in the above manner, the accident occurred due to contributory negligence of the petitioner no.1.

10. The petitioners dispute the above assertions and have placed on record photographs of the site to show that the barricades were placed at a spot which was not well illuminated and therefore, could not be visible from afar. It is further asserted that the petitioner no.1 was wearing a helmet/headgear at the time of the accident.

11. The learned counsel for the respondent no.2, placing reliance on the judgment of the Supreme Court in *Chairman, Grid Corporation of Orissa Ltd. (GRIDCO) & Ors. vs. Sukamani Das (Smt) & Anr.* (1999) 7 SCC 298 and *SDO, Grid Corporation of Orissa Ltd. & Ors. vs. Timudu Oram* (2005) 6 SCC 156, submits that as there are disputed questions of facts raised in the present petition, the writ petition under Article 226 would not be a proper remedy for the petitioners.

12. I have considered the submissions made by the learned counsels for the parties. Placing of barricades by the respondent no.2, though, may be for valid reasons of security, also casts a duty on the respondents to ensure that they do not cause accidents due to their non-maintenance. The respondent no.2 has issued Standing Order No.329/2007 dated 6.11.2007 for the "Procurement, Maintenance, Repairs and Operational Usage of Delhi Police Mobile Barricades" (hereinafter referred to as the "Standing Order").

13. Clause 6 of the Standing Order mandates that all barricades must have necessary fluorescent paint as well as blinkers so that they are visible from a long distance. Clause 10 of the Standing Order further mandates that the barricades, under no circumstances, should be left unmanned.

14. Clause 6 and Clause 10 of the Standing Order are reproduced hereinunder:

"6. All barricades must have necessary fluorescent paint as well as blinkers so that they are visible from a long distance. It is the responsibility of the ACP Incharge of the Sub Division and SHO to ensure that all barricades have such facilities"

"10. The barricades, under no circumstances, should be left unmanned. They should be removed from the carriageway, when not in use, so that they do not cause any traffic hindrance."

15. It is admitted by the respondents that the barricades in question were not manned. There was no police officer posted with the barricades. Photographs filed by the petitioners further show that the area where the barricade had been placed was not properly illuminated and, in any case, the same did not have proper blinkers or other warning signs for the motorcyclists. Clearly, the chains tying these barricades together could under no circumstances be visible to a motorist from far.

16. The Standing Order states in Clause 9 that the alignment of the barricades should be done in such a way to ensure that the traffic halts for checking, but at the same time, is able to negotiate through them. Clearly chaining of such barricades was not permissible under the Standing Order.

17. This Court in *Darshan & Ors. vs. Union of India & Ors.* MANU/DE/0103/1999, while considering the claim of the petitioners, who were a widow and minor children of a person who fell into an open manhole and died of drowning, held that where the negligence of the Instrumentalities of the State and dereliction of

duty is writ large leading to deprivation of life or limb of a person, Article 21 of the Constitution of India is attracted and the petitioners are entitled to invoke Article 226 of the Constitution to claim monetary compensation as such a remedy is available in public law, based on the strict liability for breach of fundamental rights. A claim of compensation in case of a breach of public duty by an Instrumentality of the State resulting in deprivation of life, would be maintainable under Article 21 of the Constitution of India.

18. In *Ram Kishore & Ors. vs. Municipal Corporation of Delhi & Ors.*, MANU/DE/8223/2007, this Court reiterated that 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. 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, the Court shall have the power to grant compensation in exercise of its jurisdiction under Article 226 of the Constitution. In discharging the burden of proving negligence, it would be open to the claimant, if the facts and circumstances so permit, to invoke the *res ipsa loquitur* doctrine.

19. In *Madhu Kaur vs. Govt. of NCT of Delhi & Ors.*, MANU/DE/1007/2009, this Court relying upon public law doctrine, reiterated that when a power is given to do some act, it also implies duty to act properly. The principles of Strict Liability would apply in such circumstances.

20. The Allahabad High Court in *C.B.Singh vs. The Cantonment Board, Agra* MANU/UP/0041/1974, while considering the claim for damages against the respondents for having constructed a traffic island at a place where there were no overhead lights nor taking other measures for warning the vehicles of the traffic island, resulting in an accident, held that if a danger is created or suffered to be created by a local authority, it would be liable to pay damages for its negligence. It was further held that the negligence is nothing but a breach of a duty to take care. The basic duty of care or precaution is always implied where a danger has been created by a person or authority, irrespective of the fact as to whether the Legislature has authorized or not the creation of such a danger.

21. The Court of Appeal in *Polkinghorn vs. Lambeth Borough Council* (1938) 1 All England Law Reports 339, has held that the defendant Council, having erected the refuge and bollards, were under a continuing duty to keep them adequately lighted. They were therefore, liable to the plaintiff in respect of the injury he had sustained because the light was found extinguished for any reason.

22. In *Foster vs. Gillingham Corporation* (1942) 1 All England Law Reports 304, the Court of Appeal held that the local Authority, having statutory authority to erect the particular obstacle, was under a duty to light it after dark, for otherwise it could be said that such power would be exercised not so as to prevent but to promote accidents.

23. Similar is the position here. While the respondents claims and it is accepted that placing of the barricades at various places in the city is for public good, at the same time, it casts a duty on the respondent no.2 to ensure that they do not become a cause for accidents.

24. In the present case, it is evident from the record that the place where the barricades were kept was not properly lighted. It is not shown that the barricades had adequate reflectors or blinkers so as to make them visible from a long distance. In any case, they were chained and therefore, did not allow vehicles to pass through. Such chains could not have been visible to the motorist from a distance. They were also unmanned. Merely because no helmet was shown to have been recovered from the site, cannot lead to a conclusion that the petitioner no.1 was not wearing a helmet at the time of the accident or was driving his motorcycle at a high speed or rashly. It is not disputed that no one was present at the site of the accident at the time of the accident. In any case, the petitioners are held entitled to their claim of damages for the negligence and failure of the respondent no.2 to discharge its duty that is provided in the Standing Order and as enumerated above.

25. As far as the claim of damages is concerned, this Court in *Purshotam Dass, vs. New India Asso. Co. Ltd. & Ors.* MANU/DE/1876/2011 has held as under:

"19. To sum up, in accident claims relating to injuries, the victim is entitled to pecuniary as well as non-pecuniary damages. The pecuniary damages such as expenditure on treatment, special diet, conveyance, attendant, loss of income etc. are based on documentary evidence produced by the claimant. The non-pecuniary damages such as pain and suffering, loss of amenities of life, disfiguration and matrimonial prospects are conventional and depend upon the nature of injuries suffered and are based on comparable awards to maintain uniformity and predictability. In cases of permanent disablement, the claimant is also entitled to loss of earning capacity. The permanent disability is assessed on the basis of the certificate issued by the medical board. Every permanent disability does not result in loss of earning capacity. The loss of earning capacity is determined according to the principles laid down by the Hon'ble Supreme Court in the case of *Raj Kumar (supra)*."

26. In *Subulaxmi vs. M.D., Tamil Nadu State Transport Corporation and Ors.*, MANU/SC/0927/2012, the law of award of compensation in case of permanent disability, was stated as under:-

"5. At the outset, it is requisite to be stated that the facts as have been adumbrated are not in dispute. Therefore, first we shall advert to the issue whether the High Court was justified in awarding compensation on a singular head relating to permanent disability and loss of future earning. In *K. Suresh v. New India Assurance Co. Ltd. and Another* (2012) 10 SCALE 516, after referring to *Ramesh Chandra v. Randhir Singh* (1990) 3 SCC 723 and *B. Kothandapani v. Tamil Nadu State Transport Corporation Ltd.*, (2011) 6 SCC 420, this Court

expressed the view that compensation can be granted towards permanent disability as well as loss of future earnings, for one head relates to the impairment of person's capacity and the other relates to the sphere of pain and suffering and loss of enjoyment of life by the person himself. The Bench also relied upon *Laxman v. Divisional Manager, Oriental Insurance Co. Ltd. and Another*, 2012 ACJ 191 wherein it has been laid down thus: -

"The ratio of the above noted judgments is that if the victim of an accident suffers permanent or temporary disability, then efforts should always be made to award adequate compensation not only for the physical injury and treatment, but also for the pain, suffering and trauma caused due to accident, loss of earnings and victim's inability to lead a normal life and enjoy amenities, which he would have enjoyed but for the disability caused due to the accident."

Thus, the view expressed by the High Court on this score is not sustainable.

6. Be it noted, the High Court has granted Rs.20,000/- for pain and suffering and Rs.10,000/- for loss of amenities. In this context, we may profitably refer to *Govind Yadav v. New India Insurance Company Limited* (2011) 10 SCC 683, wherein this Court after referring to the pronouncements in *R.D. Hattangadi v. Pest Control (India) (P) Ltd.* (1951) 1 SCC 551, *Nizam's Institute of Medical Sciences v. Prasanth S. Dhananka* (2009) 6 SCC 1, *Reshma Kumari v. Madan Mohan* (2009) 13 SCC 422, *Arvind Kumar Mishra v. New India Assurance Co. Ltd.* (2010) 10 SCC 254 and *Raj Kumar v. Ajay Kumar* (2011) 1 SCC 343 has laid down as under: -

"In our view, the principles laid down in *Arvind Kumar Mishra v. New India Assurance Co. Ltd.* and *Raj Kumar v. Ajay Kumar* must be followed by all the Tribunals and the High Courts in determining the quantum of compensation payable to the victims of accident, who are disabled either permanently or temporarily. If the victim of the accident suffers permanent disability, then efforts should always be made to award adequate compensation not only for the physical injury and treatment, but also for the loss of earning and his inability to lead a normal life and enjoy amenities, which he would have enjoyed but for the disability caused due to the accident."

Thereafter, the Bench proceeded to state whether in the said case, the compensation awarded to the claimant-victim was just and reasonable or he was entitled to enhanced compensation under certain heads, namely, (i) Loss of earning and other gains due to the amputation of leg; (ii) Loss of future earnings on account of permanent disability; (iii) Future medical expenses; (iv) Compensation for pain, suffering and trauma caused due to the amputation of leg; (v) Loss of amenities including loss of the prospects of marriage; and (vi) Loss of expectation of life."

27. In *National Insurance Company Ltd. vs. Pranay Sethi & Ors.*, MANU/SC/1366/2017, the Supreme Court approved of notional increase of 50% of actual salary while determining the income of the deceased below the age of 40

years as also a multiplier of 18, where the victim is in the age group of 21 to 25 years.

28. In the present case, the petitioners have claimed an amount of Rs.18 lacs as compensation for the medical expenses incurred by the petitioner no.1. The petition was filed in November, 2016. The petitioner no.1 has suffered the injury which has been described hereinabove and is stated to be in a vegetative state requiring constant care and further treatment. At the time of the accident, the petitioner no. 1 was 21 years old and was pursuing his studies in B.Sc. Hons. (Electrical Engg.) in Delhi University.

29. Keeping in view all the facts and circumstances of the case and the law relating to award of compensation, a total compensation of Rs.75 lacs is found just and payable to the petitioners by the respondent no.2. Such amount be deposited by the respondent no.2 with the Registrar General of this Court within a period of four weeks from the receipt of the copy of this order, failing which the respondent no. 2 shall pay interest of 9% per annum for the period of delay.

30. Out of the amount so deposited, an amount of Rs.30 lacs shall be released in favour of the petitioner no.2, while the remaining amount shall be invested in Fixed Deposits of 9 equal instalments, with each instalment becoming due and payable at the end of the succeeding year. To explain, out of the remaining Rs.45 lacs, Fixed Deposit of Rs.5 lacs will be created for a period of one year; Rs. 5 lakhs for a period of two years; Rs. 5 lakhs for three years; and so on, and on their maturity, the principle along with interest amount of that particular Fixed Deposit shall be released to the petitioner no. 2. The petitioner no. 2 shall ensure that proper medical care is provided to the petitioner no. 1 from the amount so received. In case the petitioner no. 1 recovers consciousness, the amount in the Fixed Deposits shall be directly released in favour of the petitioner no. 1 on their maturity.

31. The petition is allowed in the above terms. There shall be no order as to costs.