
(2012) 05 DEL CK 0454
In the Delhi High Court
Case No : Writ Petition (C) 14129 of 2009

Harinder Kaur

APPELLANT

Vs

Add.District and Sessions Judge and Others

RESPONDENT

Date of Decision : 04-05-2012

Acts Referred:

Constitution of India, 1950 — Article 21, 226
Penal Code, 1860 (IPC) — Section 143, 143, 144, 145, 145
Protection of Women From Domestic Violence Act, 2005 — Section 12

Citation : (2012) 7 AD 227 : (2012) 131 DRJ 63

Hon'ble Judges : Vipin Sanghi, J

Bench : Single Bench

Advocate : Pankaj Batra, for the Appellant; Avnish Ahlawat with Ms. Latika Chaudhary for R-1. Mr. L.K. Garg, for R-2 to 4 Mr. Mohit Mathur with Mr. Manoj Pant for R-5, for the Respondent

Final Decision : Disposed Off

Judgement

Vipin Sanghi, J.—The petitioner has preferred the present writ petition under Article 226 of the Constitution of India to claim exemplary compensation from the respondents of Rs. 10 lacs on account of her suffering permanent injuries due to their negligence and failure to fulfill their duty of care owed to the petitioner. The petitioner also claims an amount of Rs. 11,52,000/- towards expenses of her personal attendant that she would have to employ for the rest of her life; Rs. 15,000/- p.a. to meet her medical expenses, conveyance etc., and; compensation on account of loss of earning. Petitioner also claims litigation expenses of Rs. 50,000/- from the said respondents. The case of the petitioner is that she had gone to Rohini Court Complex on 26.05.2008 to attend her case arising from her matrimonial dispute with her husband. All of a sudden, the District Court Sign Board with the inscription "District Court Rohini", written both in English and Hindi, fell on her head from the top of the Court building. She was instantly taken to "Bhagwan Mahavir Hospital, Delhi" in drowsy and disoriented state. Various diagnostic tests were performed on her. She was shifted to "Park

Hospital, New Delhi" where further tests such as MRI of the Brain were performed. These tests established the extent of internal injury suffered by the petitioner. Thereafter, she was shifted to "Dr. Ram Manohar Lohia Hospital, New Delhi". An FIR was registered at Police Post Rohini Court by the SHO, Prashant Vihar Police Station vide FIR No. 318 on 26.05.2008 u/s 337 IPC against unknown persons. The petitioner has placed on record the copy of the FIR dated 26.05.2008. She has also filed the MLC recorded at Bhagwan Mahavir Hospital.

2. The FIR, inter alia, records that it was telephonically informed that near Rohini Court one sign board had fallen on a lady. The sign board was found in a totally broken condition on the ground, which was fastened at the 5th Floor of the Court building. Upon reaching Bhagwan Mahavir Hospital at Madhuban Chowk, the injured, i.e., the petitioner was found in a condition wherein she could not be questioned. The time of occurrence recorded in the FIR is 09.30 am on 26.05.2008. The place of occurrence recorded is Main Hall, Rohini Court Complex near Gate No.1. The MLC recorded at Bhagwan Mahavir Hospital, inter alia, states

Brought by some passerby Mr. Naveen and other from Distt. Court, Rohini

Alleged history of sustaining injury when a large board fell over the patient-Harvinder Kaur due to rains and wind

History of unconsciousness

Opinion and examination Drowsy, moving all 4 limbs

3. The petitioner has placed on record the site map prepared by the police authorities on 26.05.2008, which shows the location of the sign board before and after it fell on the ground. The petitioner has also filed on record photocopy of a photograph which shows the location where the sign board was affixed before it fell to the ground.

4. The petitioner has placed on record the certificate issued by "Dr. Ram Manohar Lohia Hospital, New Delhi" showing that she has suffered mental disability to the tune of 70%. This disability has been classified as permanent, which is not likely to improve. It also states that the petitioner cannot earn her livelihood and will remain dependant on her guardian all through her life. She needs regular treatment and follow up.

5. The petitioner has also placed on record her educational certificates. It appears that she passed the Delhi Secondary School Examination in the year 1986 and B.A. (Hons.) Political Science from Delhi University in the year 1991, obtaining second division. She obtained a degree of Master of Arts in the year 1993 also from the Delhi University in second division.

6. The submission of the petitioner is that the respondents are responsible for the said accident, wherein the petitioner suffered a serious injury. According to her, the present is a case of res ipsa loquitur i.e. where things speak for themselves. The petitioner places reliance on the report given by the Executive

Engineer (Electrical) of the PWD to the Inquiry Officer, Police Post, Rohini Court, Delhi on 02.06.2008. In this report, the Executive Engineer (Electrical) of the PWD had sought to distance himself from any liability, and squarely blamed the Junior Engineer and the contractor as being liable. In his report the Executive Engineer (Electrical), inter alia, stated as follows:-

1.The work was awarded to a contractor named as M/s Swastik Creations, M-31, Jagat Ram Park, Laxmi Nagar, Delhi vide agreement no.9/EE(E)/DCE(P)/2007-08 (Annexure I). The contractor was to supply & install neon sign board & allied works on the roof top of the Rohini Court. The contractor has dismantled the existing board & put up a new sign board which was in the scope of the contractor (please refer report of AE(E) (Annexure II). The running account payment was also made to the contractor during 09/2007. The work was still under progress & has not been completed by the contractor so far. The contractor was supposed to take the dismantled board from roof top & the same was to be deposited in the stores of J.E.(Elect.) PWD incharge of Rohini Court Complex, who was to take it into account & keep it in a safe custody. This was not done by the contractor.

2.The contractor is to take full responsibility for adequacy, suitability and safety of all the works and methods of construction clause 11 (Annexure III).

3.The contractor is to observe all safety measure as per clause 19C of the agreement (Annexure IV). Such type of works are carried out under the direct supervision of Junior Engineer, who has to take care of the safety of the building as per clause 1.6 of CPWD Manual 2000 (Annexure V).

He also discloses that the office of the Junior Engineer is located in the Rohini Court Complex itself.

7. The petitioner has also placed on record the report submitted on behalf of the Incharge, Rohini Courts, Delhi to the Chowki Incharge, Police Post, Rohini Courts, Delhi. In this report the incharge, inter alia, states as follows:-

A notice dated 28-05-08 u/s 91 Cr.PC has been received on the above noted matter whereby you sought certain information regarding responsibility of maintenance of Sign Board and its last date of maintenance. In this regard, it is submitted that Glow sign board involved in the alleged incident has been dismantled by M/s Swastik Creations against the work awarded by the Executive Engineer (Electrical) PWD, Div. M-354, under ISBT flyover, Delhi. It is also submitted that this glow sign board is replaced and installed new neon sign board by the same contractor concerned i.e. M/s Swastik Creation. As per the report of EE(Electrical) M-354, that I the work is still incomplete.

8. Learned counsel for the petitioner submits that the installation of the sign board at its location, from where it fell, itself was illegal. In this regard he places reliance upon the building bye-laws framed under the Delhi Municipal Corporation Act. He refers to Delhi Municipal Corporation Tax On Advertisements (Other Than

Advertisement Published In Newspapers) Bye-laws, 1996 and in particular to bye-law No.4 which reads as follows:-

4. Prohibition of erection, exhibition, fixation, retention or display of advertisement in without written permission of the commissioner. - No person shall erect, exhibit, fix or retain upon or over any land, building, wall, hoarding, frame, post, kiosk/Bill Board (to be displayed on electric pole) or structure or upon or in any vehicle, any advertisement or display any advertisement to public view in any manner whatsoever in any place within the jurisdiction of the Corporation without the prior written permission of the Commissioner.

9. It is also pointed out, by reference to the answer given by the PWD in response to a query under the Right to Information Act, that admittedly that the PWD had not obtained any prior permission for fixing the hoarding in the Rohini Courts building. The petitioner has also drawn the attention of the Court to bye-law 12, which provides that advertisement hoarding shall not be of more than 9.144 meters (30 ft.) height from the ground. No hoarding shall be permitted on roof tops or terraces. It is also provided that advertisement hoardings shall not project, or be on or over the public way beyond the general store of buildings in the street for which a regular line of street has been prescribed. It also provides that the advertisement shall not be put up or erected in the right of way of any road.

10. The petitioner submits that all these conditions were violated in as much, as, the hoarding had been fixed beyond the height of 30 ft and on the roof top of the court building. He further submits that the hoarding was installed above the passage in the Court complex, due to which the petitioner suffered the injury when the hoarding fell, while she was walking inside the court complex. Learned counsel has also drawn my attention to Sections 143 to 145 of the Delhi Municipal Corporation Act which read as follows:-

143. Prohibition of advertisements without written permission of the Commissioner. - (1) No advertisement shall be erected, exhibited, fixed or retained upon or over any land, building, wall, hoarding, frame, pose or structure or upon or in any vehicle or shall be displayed in any manner whatsoever in any place within Delhi without the written permission of the Commissioner granted in accordance with bye-laws made under this Act.

(2)The Commissioner shall not grant such permission if -

(a) the advertisement contravenes any bye-law made under this Act; or

(b)the tax, if any, due in respect of the advertisement has not been paid.

(3) Subject to the provisions of sub-section (2), in the case of an advertisement liable to the advertisement tax, the Commissioner shall grant permission for the period to which the payment of the tax relates and no fee shall be charged in respect of such permission.

144. Permission of the Commissioner to become void in certain cases. - The permission granted u/s 143 shall become void in the following cases, namely -

- (a) if the advertisement contravenes any bye-law made under this Act;
- (b) if any material change is made in the advertisement or any part thereof without the previous permission of the Commissioner;
- (c) if the advertisement or any part thereof falls otherwise than through accident
- (d) if any addition or alteration is made to, or in the building, wall, hoarding, frame, post or structure upon or over which the advertisement is erected, exhibited, fixed or retained if such addition or alteration involves the disturbance of the advertisement or any part thereof, and
- (e) if the building, wall, hoarding, frame, post or structure over which the advertisement is erected, exhibited, fixed or retained is demolished or destroyed.

145. Presumption in case of contravention. - Where any advertisement has been erected, exhibited, fixed or retained upon or over any land, building, wall, hoarding, frame, post or structure or upon or in any vehicle or displayed to public view from a public street or public place in contravention of the provisions of this Act or any bye-laws made thereunder, it shall be presumed, unless and until contrary is proved, that the contravention has been committed by the person or the persons on whose behalf the advertisement purports to be or the agents of such person or persons.

11. He submits that even the Commissioner cannot grant permission for installation of a hoarding in contravention of the bye-laws made under the Act. Section 145 raises a presumption that any advertisement erected in contravention of the Act and the bye-laws upon or over any building or displayed to public view from a public street or public place has been erected by the person on whose behalf the advertisement purports to be. Since the hoarding was placed on behalf of the District Judge, there is presumption of contravention of the Act and the bye-laws by him.

12. The submission of learned counsel for the petitioner is that it is entirely on account of highly negligent act and conduct of the respondent authorities that the petitioner suffered the head injury leading to her present state and condition.

13. Apart from the above, to establish that the present is a case of *res ipsa loquitor*, the petitioner refers to the MLC of the petitioner recorded soon after the incident which has the following notings:

(i) Patient found unfit for statement and being shifted to park Hospital" recorded at 10:30 AM on 27.05.2008.

(ii) "Patient is unfit for statement" recorded on 28.05.2008.

(iii) "Not fit for statement" recorded on 30.05.2008

- (iv) "Patient is not fit for any statement (having an irritable and drowsy behaviour)" recorded at 7.30 PM on 02.06.2008
- (v) "Patient not fit for any statement" recorded at 7:10 PM on 04.06.2008
- (vi) "Not fit for statement" recorded on 07.06.2008
- (vii) "Advice- Admission in ICU; Not fit for statement" recorded at 5:30 PM on 10.06.2008
- (viii) "Patient is not fit for statement" recorded on 16.06.2008
- (ix) "Patient is not fit for statement" recorded on 18.06.2008
- (x) "Patient has been referred for Psychiatric evaluation; CT showed grievous injury" recorded on 30.06.2008

14. The discharge summary of "Park Hospital, New Delhi" dated 23.06.2008 recorded the diagnosis of the petitioner as under:

Head Injury with LRTI with UTI with Typhoid Fever with Hyperthyroidism; C-7 Psychosis".

15. The petitioner also places reliance on the medical condition as reflected on the OPD registration card issued by Dr. Ram Manohar Lohia Hospital from time to time. The various observations recorded in the said OPD Card read as follows:-

- (i) "Argumentative" recorded on 08.08.2008
- (ii) "Repetitive speech. No Headache, unable to do any work, eat and sleep, abusive" recorded on 25.08.2008
- (iii) "Totally deteriorated" recorded on 19.09.2008
- (iv) "Wakes up nights, shouts talks to herself, very stubborn, poor self care" recorded on 21.01.2009

16. It is argued that since this is a case of *res ipsa loquitur* i.e., things speak for themselves, the petitioner is entitled to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India to claim damages in this regard. He places reliance on the decision of the Supreme Court in *M.C. Mehta and another Vs. Union of India and others*, . In *M.C. Mehta (supra)* the Supreme Court held that the concept of strict liability in India cannot be restricted by the limitations found in the decision of the English Courts in *Rylands vs. Fletcher*, 13 (1868) LR 3 HL 330. This position has been restated by the Supreme Court in the subsequent decision in *UOI vs. Prabhakaran Vijaya Kumar & Others*, 2008 3 SCC (Crl) 813, in the following words:-

37. In India the landmark Constitution Bench decision of the Supreme Court in *M.C. Mehta and another Vs. Union of India and others*, , has gone much further than *Rylands v. Fletcher*, 13 (1868) LR 3 HL 330, in imposing strict liability. The Court observed: (*M.C. Mehta case*, SCC p.421, para 31)

31. ... If the enterprise is permitted to carry on an hazardous or inherently dangerous activity for its profit, the law must presume that such permission is conditional on the enterprise absorbing the cost of any accident arising on account of such hazardous or inherently dangerous activity as an appropriate item of its overheads.

38.The Court also observed that this strict liability is not subject to any of the exceptions to the rule in *Rylands v. Fletcher*.

39.The decision in *M.C. Mehta* case related to a concern working for private profit. However, in our opinion the same principle will also apply to statutory authorities (like the Railways), public corporations or local bodies which may be social utility undertakings not working for private profit".

17. Respondent nos. 2 to 4 have filed their counter affidavit in which they state that the accident in question was an act of God. It is claimed that the storm and rain experienced on 26.05.2008 was unprecedented and it was very sudden. It is claimed that the storm was of very high velocity because of which entire Delhi was adversely affected. In support of this submission the said respondents have placed on record newspaper reports of the storm experienced on 26.05.2008. In these reports it is reported that an under construction building had collapsed in Burari in Delhi.

18. The submission of respondent nos. 2 to 4 is that the contract for replacement of the existing sign board with a neon sign board had been awarded to the contractor M/s Swastik Creations i.e., respondent no.5, and it was the obligation of the said contractor to remove and return the sign board in question to the department. It is stated that the contractor failed to remove the sign board from the terrace. Learned counsel for respondent nos. 2 to 4 points out the contractual clause contained in the schedule of work, which lays down the scope of works and responsibilities undertaken to be done and complied with by the contractor. The relevant clause reads "Dismantled material if any, have to be returned to the Deptt. by the contractor. Material shall be got Approved by the Engineer in charge at site before use." Reliance is also placed to the report made by the Executive Engineer on 02.06.2008, wherein the Executive Engineer has stated that the contractor is to take full responsibility for suitability and safety of all the works and methods of construction. It was also the obligation of the contractor to observe all safety measures as per clause 19(c) of the agreement.

19. Respondent no.1, the Additional District and Sessions Judge has also filed a short counter affidavit. It is disclosed that the responsibility of maintenance of the court building rests entirely with the PWD. It is stated that the PWD (Electrical) erects and maintains neon sign boards and they are liable, as the neon sign board involved in the accident was fixed by the PWD and was also maintained by them. A preliminary objection to the maintainability of the present writ petition has also been raised by them. The said respondents also invoke the defence of "Act of God".

20. Respondent No.5 also opposes this petition and seeks to wash his hands off from the accident. The case of respondent no.5 is that under the contractual terms and the scope of work, the said respondent was not obliged to deal with the old sign board, and it was the obligation of the PWD to take care of the same. In this regard he places reliance on the schedule of work placed on record.

21. In his rejoinder learned counsel for the petitioner has submitted that the defence of "Act of God" pleaded by the respondents has no merit. In support of his submission, and to explain as to what constitutes the "Act of God", the petitioner places reliance on the decision of the Supreme Court in *The Divisional Controller, KSRTC Vs. Mahadeva Shetty and Another*,

22. Before proceeding to deal with the various issues raised in the present petition, I shall at the outset deal with the question: whether courts can award compensation while exercising writ jurisdiction. The question has been dealt with extensively by the Supreme Court in *Rudul Shah (supra)*, *Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others*, , *Chairman, Grid Corporation of Orissa Ltd. (Gridco) and Others Vs. Smt. Sukamani Das and Another*, *Tamil Nadu Electricity Board Vs. Sumathi and Others*, , *S.P.S. Rathore Vs. State of Haryana and Others*,

23. The position that emerges from the afore-mentioned decisions is that the writ court may award compensation in appropriate cases, where the facts are not in dispute; there is established negligence in the acts and omissions of the respondent authority/authorities on the face of the record, and; there is consequent deprivation of a fundamental right of the petitioner or his legal representatives.

24. In the case of *Varinder Prasad v. BSES Rajdhani Power Ltd. and Others*, W.P. (C.) No. 8924/2007 decided on 18.01.2012, this Court took into account its earlier decision in *Ram Kishore Vs. Municipal Corporation of Delhi*, to hold that a writ petition to claim compensation is maintainable under Article 226 of the Constitution of India, in case there is violation of fundamental rights. In *Varinder Prasad (supra)* an unfortunate boy died in an accident, when the shed of the house, whereunder he was playing, collapsed on him.

25. In the present case, it is not in dispute that the petitioner was grievously injured by falling of the sign board. The occurrence of the incident, as put forth by the petitioner, has not been denied by any of the respondents. The same stands amply established by the documents placed on record by the petitioner, to which reference has been made above, including the FIR, the MLC, the PWD report etc.

26. The next question, therefore, that needs to be dealt with is whether the facts, as aforesaid, are sufficient to draw an inference that the injury complained of was caused by the respondent's negligence. In other words, whether the event "tells its own story" of negligence on the part of the respondents, so as to invoke the doctrine of "Res Ipsa Loquitur".

27. In *Municipal Corporation of Delhi Vs. Subhagwanti and Others*, the Supreme Court applied the maxim "*Res Ipsa Loquitor*", as the mere fact that the clock tower fell- told its own story, in raising the inference of negligence so as to establish a *prima facie* case against the Corporation. The Court applied the principle of strict liability and awarded compensation to the victim.

28. In *Darshan and Others (Smt.) Vs. Union of India and Others*, the deceased had died of drowning after falling into an open manhole. The Division Bench of this court held as follows:

Coming to the instant case. It is one of *res ipsa loquiter*, 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 untimely death of Skatter 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 derivation 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.

29. The Supreme Court in *Pushpabai Purshottam Udeshi and Others Vs. Ranjit Ginning and Pressing Co. (P) Ltd. and Another, ,* 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 loquitor*. The general purport of the words *res ipsa loquitor* 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 loquitor* 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.

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."

30. In the present case, the facts that the sign board in question was placed at the roof top of the Court building (in violation and contravention of the provisions of the Delhi Municipal Corporation Act and the bye-laws); the said sign board was dismantled and was being replaced by a new neon sign board; the said work was incomplete; and the said sign board fell on the petitioner on 26.05.2008 while she was in the Court premises at Rohini, are not disputed by any of the respondents herein. Further, the fact that the petitioner suffered grievous injuries by the falling of the sign board, which ultimately led to her present medical state, is also not disputed.

31. The aforementioned facts speak for themselves and tell their own story in raising the inference of negligence, so as to establish a prima facie case against the respondents. The negligence of the respondents herein and dereliction of duty on their part is writ large in the present case. In such circumstances it was for the respondents herein to establish that the incident took place due to some other cause, rather than their own negligence.

32. The respondents have shifted the liability from one to another, as evident from their submissions recorded hereinabove. The only other defence raised by them is that the incident took place due to an "Act of God", in view of the inclement weather on the day of the incident. To fortify their submissions, reliance has been placed on press reports dated 27.05.2011 which state that the city of Delhi, on 26.05.2011 (date of incident), received record rain fall accompanied with hailstorms and strong winds.

33. The Supreme Court in Divisional Controller KSRTC (supra) had the occasion to consider the concept of "Act of God", wherein it was observed as under:

The expression "act of god" signifies the operation of natural forces free from human intervention, such as lightning, storm etc. It may include such unexpected occurrences of nature such as severe gale, snowstorms, hurricanes, cyclones, tidal waves and the like. But every unexpected wind and storm does not operate as an excuse from liability, if there is a reasonable possibility of anticipating their happening. An act of God provides no excuse unless it is so unexpected that no reasonable human foresight could be presumed to anticipate the occurrence, having regard to the conditions of time and place known to be prevailing. For instance, where by experience of a number of years, preventive action can be taken, Lord Westbury, defined the act of god (*damnum fatale* in

Scottish Laws) as an occurrence which no human foresight can provide against and of which human prudence is not bound to recognize the possibility. This appears to be the nearest approach to the true meaning of an act of god. Lord Blancaburgh spoke of it as "an irresistible and unsearchable providence nullifying our human efforts. (emphasis supplied)

34. A party which has itself acted negligently, in complete disregard of the provisions of law, cannot absolve itself of the liability by shifting the blame of the incident on a natural calamity, or in other words, an "Act of God", no matter how severe it may be. The defence of "Act of God" is available only when there is no reasonable possibility of anticipating the happening of the occurrence in question. A party which has acted negligently cannot be said to have no such anticipation. By the act of being negligent, a party exposes itself to the risk of liability for wrongs/losses that may be caused.

35. In the present case, the display board was placed on the roof top in utter disregard of the provisions of the Delhi Municipal Corporation Act and the bye-laws. According to Bye Law 12(a) of the "Delhi Municipal Corporation Tax on Advertisements (Other than Advertisement published in newspapers) Bye-Laws, 1996, no advertisement hoarding shall be permitted on the roof-top. Further, Bye Law 12(d) provides that no advertisement hoarding shall be put up or erected in the right of way of any road.

36. Further, according to sections 143 to 145 of the Delhi Municipal Corporation Act, putting up of an advertisement board requires the prior written permission of the Commissioner. In the present case no such permission was granted by the Commissioner. Rather, in the facts of the present case, no such permission could have been granted by the Commissioner.

37. As observed hereinabove, it is not in dispute that the existing sign board was being dismantled and being replaced by a new neon sign board, and that the said work was incomplete. The said board was just tied to the iron angles of the new board, and nothing had been done to ensure its removal. The fact that the removed sign board had not been left loose on the terrace, but had been tied with wire shows that the respondents were conscious of the fact that the same could, by force of strong winds, have flown away and fallen to the ground, endangering the public frequenting the Court complex. Squalls, dust storms and rain, accompanied with strong winds are a regular and common feature that the city of Delhi experiences in the month of May practically each year, and judicial notice of the same can be taken by this Court. It is not the respondents case that in the month of May, such storms are never experienced in Delhi. The position, as aforesaid, is to the contrary.

38. In view of these facts and circumstances, negligence is writ large on the part of the respondents herein. They cannot, in the garb of inclement weather, as was observed on the day of the unfortunate incident, shirk away from their responsibility of complying with the provisions of law and taking reasonable

precautions so as to keep away all persons from harm by anything placed on the roof top of a building which was frequented by the public.

39. Since the respondents failed to take reasonable precaution to prevent the accident, the defence of "Act of God" is not available to them in the present case.

40. As mentioned hereinabove, the respondents have tried to pass on the buck of the afore-said negligence to each other, so as to avoid any liability resulting therefrom. I make it clear that the scope of the present proceedings is not to fix the inter-se liability of the respondents herein. It is open to the respondents to sort out their disputes regarding inter-se liability in independent proceedings. The purpose of the present proceeding is to decide whether the petitioner suffered any injury resulting in damages due to the conduct of the respondents herein, and if so, whether the conduct of the respondents amounted to negligence, which "tells its own story", and if so, to determine the amount of compensation to which the petitioner is entitled to.

41. Having answered the first two questions in the affirmative, I shall now proceed to deal with the quantum of compensation to which the petitioner is entitled to in the facts and circumstances of the present case.

42. The present petition has been filed through the petitioner's mother, who as per the petition, is about 65 years of age and is bed ridden with a knee problem. It is further stated that the petitioner's father, who was working as a Senior Assistant with the Ministry of Agriculture, retired on 31.01.2001 and expired on 10.12.2007, after which the petitioner's mother is receiving family pension @ Rs. 6,800/- per month approximately, which would be paid during her lifetime.

43. Learned counsel for the petitioner, by placing reliance on the educational certificates of the petitioner submits that the petitioner is highly educated and is a post graduate having done M.A. in Political Science from Delhi University. The petitioner, prior to the occurrence of the unfortunate incident was not employed, though it is submitted that on account of her qualifications, she would have drawn a salary of at least Rs. 17,000/- per month. It is also submitted that the petitioner has been deserted by her husband, and that the latter has also not paid any maintenance to her, till date. It is stated that on account of the injuries suffered by the petitioner, she is solely dependent on the family pension of her deceased father, which is being received by her mother.

44. In light of the aforementioned factual situation, the petitioner claims the following amounts as compensation:

Sl. No.	Head/ Type/ Kind of Compensation	Amount Claimed
1.	Loss of earning	

Total: Rs. 48,96,000/-

Basis of computation:

* Rs. 17000/- per month

[Minimum Salary which the petitioner could have earned on account of her Qualification]

* Rs. 2,04,000/- per annum [Rs. .17,000*12]

* Rs. 3,06,000/-

[Rs. 2,04,000+ 50% (on account of inflation)]

* Rs. 48,96,000/-

[Rs. 3,06,000*16 (corresponding multiplier)]

2.Expenses of personal attendantTotal : Rs. 11,52,000/-

Basis of Computation:

* Rs. 4,000/- per month

[Minimum Salary of Personal attendant]

* Rs. 48,000/- per annum

[Rs. 4,000*12]

* Rs. 72,000/-

[Rs. 48,000 + 50% (on account of inflation)]

* Rs. 11,52,000/-

[Rs. 72,000*16 (corresponding multiplier)]

3.Sufferings and injuries Total: Rs. 10,00,000/-4.Medical Expenses, Conveyance etc Rs. 15,000/- per annum- for the rest of the life of the petitioner5.Litigation Expenses Rs. 50,000/-

45. Before proceeding to deal with the aforesaid claims of the petitioner, it would be relevant to draw a distinction between compensation and damages. Reference may be made to decision of the Supreme Court in Yadava Kumar Vs. The Divisional Manager, National Insurance Co. Ltd. and Another, wherein it was observed as under:

17. The High Court and the Tribunal must realise that there is a distinction between compensation and damages. The expression compensation may include a claim for damages but compensation is more comprehensive. Normally damages are given for an injury which is suffered, whereas compensation stands on a slightly higher footing. It is given for the atonement of injury caused and the intention behind grant of compensation is to put back the injured party as far as possible in the same position, as if the injury has not taken place, by way of grant of pecuniary relief. Thus, in the matter of computation of compensation, the approach will be slightly more broad based than what is done in the matter of assessment of damages. At the same time it is true that there cannot be any

rigid or mathematical precision in the matter of determination of compensation. (emphasis supplied)

46. In *R.D. Hattangadi Vs. M/s. Pest Control (India) Pvt. Ltd. and Others*, the Supreme Court considered the question of grant of compensation and held as under:

9. Broadly speaking, while fixing the amount of compensation payable to a victim of an accident the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are capable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant; (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far as non-pecuniary damages are concerned, they may include (i) damages for mental and physical shock, pain and suffering already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters, i.e., on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e., on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life.

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11. In the case *Ward v. James* (1965) 1 All ER 563 it was said:

"Although you cannot give a man so gravely injured much for his "lost years", you can, however, compensate him for his loss during his shortened span, that is, during his expected "years of survival". You can compensate him for his loss of earnings during that time, and for the cost of treatment, nursing and attendance. But how can you compensate him for being rendered a helpless invalid? He may, owing to brain injury, be rendered unconscious for the rest of his days, or, owing to a back injury, be unable to rise from his bed. He has lost everything that makes life worthwhile. Money is no good to him. Yet judges and juries have to do the best they can and give him what they think is fair. No wonder they find it well nigh insoluble. They are being asked to calculate the incalculable. The figure is bound to be for the most part a conventional sum. The judges have worked out a pattern, and they keep it in line with the changes in the value of money.

12. In its very nature whenever a Tribunal or a Court is required to fix the amount of compensation in cases of accident, it involves some guess work, some hypothetical consideration, some amount of sympathy linked with the nature of the disability caused. But all the aforesaid elements have to be viewed with objective standards."

(Emphasis supplied)

47. The Supreme Court in a more recent decision, *Raj Kumar Vs. Ajay Kumar and Another*, , while dealing with a case of motor accident, considered the "General Principles relating to compensation in injury cases". It was observed as under:

General Principles relating to compensation in injury cases

5. The provision of the Motor Vehicles Act, 1988 ("the Act" for short) makes it clear that the award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The court or tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned. [See *C.K. Subramania Iyer and Others Vs. T. Kunhikuttan Nair and Others*, , *R.D. Hattangadi Vs. M/s. Pest Control (India) Pvt. Ltd. and Others*, and *Baker v. Willoughby*, 1970 AC 467.

6. The heads under which compensation is awarded in personal injury cases are the following:

Pecuniary damages (Special Damages)

(i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food, and miscellaneous expenditure.

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability.

(iii) Future medical expenses. Non-pecuniary damages (General Damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity).

In routine personal injury cases, compensation will be awarded only under heads (i), (ii) (a) and (iv). It is only in serious cases of injury, where there is specific

medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii) (b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life.

7. Assessment of pecuniary damages under item (i) and under item (ii)(a) do not pose much difficulty as they involve reimbursement of actuals and are easily ascertainable from the evidence. Award under the head of future medical expenses - item (iii) - depends upon specific medical evidence regarding need for further treatment and cost thereof. Assessment of non-pecuniary damages - items (iv), (v) and (vi) - involves determination of lump sum amounts with reference to circumstances such as age, nature of injury/deprivation/disability suffered by the claimant and the effect thereof on the future life of the claimant. Decision of this Court and High Courts contain necessary guidelines for award under these heads, if necessary. What usually poses some difficulty is the assessment of the loss of future earnings on account of permanent disability - item (ii)(a). We are concerned with that assessment in this case." (Emphasis supplied)

48. The principle governing grant of compensation in injury and death cases is to place the claimant in the same financial position as they were in, before the accident, so far as it is possible. In *Concord of India Insurance Co. Ltd. Vs. Smt. Nirmala Devi and Others*, the Supreme Court observed that the determination of compensation must be liberal, not niggardly since the law values life and limb in a free country in generous scales.

49. In *General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others*, , the Supreme Court held as under:-

5.....The determination of the quantum must answer what contemporary society "would deem to be a fair sum such as would allow the wrongdoer to hold up his head among his neighbours and say with their approval that he has done the fair thing". The amount awarded must not be niggardly since the law values life and limb in a free society in generous scales". All this means that the sum awarded must be fair and reasonable by accepted legal standards.

50. In *Oriental Insurance Co. Ltd. Vs. Ram Prasad Varma and Others*, the Supreme Court held that the expression "just" must be given its logical meaning. Though, the compensation awarded cannot be a bonanza or a source of profit but in considering as to what would be just and equitable, all facts and circumstances must be taken into consideration.

51. Keeping in view of the aforesaid Principles and objective of granting compensation; and the facts and circumstances of the present case, compensation can be computed under the following heads:

51.1 Pecuniary Damages (Special Damages)

(i) Expenses relating to treatment, hospitalization, medicines etc.

(a) The petitioner has placed on record the following claims:

* Expense for "NCCT Head Scan" at "Nasa Scan Centre" (26.05.2008)- Rs. 1400/-

* Medicinal Expenses upon prescription of "Bhagwan Mahavir Hospital, New Delhi" (26.05.2008)- Rs. 1916/- (Rs. 786/- + Rs. 760/- + Rs. 370)

* Treatment Expenses at "Bhagwan Mahavir Hospital, New Delhi" (26.05.2008 to 27.05.2008)- Rs. 5,350/-

(b) The total sum thus incurred by the petitioner under this head comes to be Rs. 8,666/-. The same is not specifically denied by the respondents and is accordingly awarded to the petitioner.

(ii) Loss of earnings which the injured would have made had she not been injured:

(a) It is an admitted fact that the petitioner was not employed/ earning at the time of her unfortunate injury. She, therefore, cannot be compensated for "loss of earning during the period of treatment". However, keeping in view the aforesaid "principles relating to compensation" the petitioner herein is not only to be compensated for the physical injury, but also for the loss which she suffered as a result of such injury. This means that she is to be compensated for her inability to lead a full life, her inability to enjoy those normal amenities which she would have enjoyed but for the injuries, and also for her inability to earn what she could have earned.

(b) Though the petitioner has claimed a total amount of Rs. 48,96,000/-under this head [on the basis that she could have earned Rs. 17000/- per month considering her qualifications]; but considering the fact, that there is nothing on record to show that the petitioner had ever been employed/worked post her completion of M.A. Political Science upto the date of her sustaining injuries, and also the fact there is no averment to the effect that she was desirous of working and had infact made efforts or taken steps towards securing an employment prior to the happening of the unfortunate incident- it would not be appropriate to grant her compensation for loss of earnings which she could have made on account of her qualifications. The petitioner not having availed of the benefit of her qualifications, for the purpose of securing employment with such remuneration as claimed above, for more than a decade after getting the qualifications, cannot now claim the same merely because of having being ill-fated. It cannot be said or claimed, in the aforesaid facts of the present case, that but for sustaining the injuries in question- she would have or could have sought employment which would match up with her qualifications.

(c) The compensation to be awarded cannot be a bonanza or a source of profit, which the claimant was otherwise not desirous of securing or could not have

secured in view of the facts and circumstances. The principle governing grant of compensation is to place the claimant in the same financial position as he/she would have been, but for the accident, as closely as possible. For such purposes, reference is made to the following provision of the Second Schedule of the Motor Vehicles Act, 1988.

6. Notional income for compensation to those who had no income prior to accident: Fatal and disability in non-fatal accidents:(a)Non-earning persons- Rs. 15,000/-p.a.(b)Spouse- Rs. 1/3rd of income of the earning/surviving spouse. In case of other injuries only "General Damage" as applicable." (Emphasis supplied)

(d) It is the petitioner's case that, though she was married at the time of the incident, she had been neglected and abandoned by her husband. The petitioner had filed a case against her husband u/s 12 of the Protection of Women Against Domestic Violence Act, 2005 alleging that her husband had, at the time of marriage, projected incorrect particulars about his education, earnings and wealth whereas in reality he was only an Auto Rickshaw driver. It was in pursuance of these proceedings that the petitioner has gone to the Court on the date of unfortunate incident. For these reasons, the petitioner herein, though married, would for the present purposes of computing compensation as regards notional income would have to be treated as a "Non-earning person" under clause (a), and not a spouse under clause (b). The petitioner's notional income for computing compensation under the head "Loss of earnings", would thus be Rs. 15,000/- p.a.

(e) For assessing the compensation, reference would have to be made to the multiplier method. The Supreme Court in General Manager, Kerala State Road Transport Corporation, Trivandrum (Supra), explained the concept and purpose of the multiplier method as under:

13. The multiplier method involves the ascertainment of the loss of dependency or the multiplicand having regard to the circumstances of the case and capitalising the multiplicand by an appropriate multiplier. The choice of the multiplier is determined by the age of the deceased (or that of the claimants whichever is higher) and by the calculation as to what capital sum, if invested at a rate of interest appropriate to a stable economy, would yield the multiplicand by way of annual interest. In ascertaining this, regard should also be had to the fact that ultimately the capital sum should also be consumed-up over the period for which the dependency is expected to last." 17. The multiplier represents the number of years" purchase on which the loss of dependency is capitalised. Take for instance a case where annual loss of dependency is Rs. 10,000. If a sum of Rs. 1,00,000 is invested at 10% annual interest, the interest will take care of the dependency, perpetually. The multiplier in this case works out to 10. If the rate of interest is 5% per annum and not 10% then the multiplier needed to capitalise the loss of the annual dependency at Rs 10,000 would be 20. Then the multiplier, i.e., the number of years" purchase of 20 will yield the annual dependency perpetually."

As the age of the petitioner herein was 37 years at the time of the incident, the multiplier applicable would be 16. [See the Second Schedule of the Motor Vehicles Act, 1988.]

(f) As per the "Certificate of disability", issued by the "Ram Manohar Lohia Hospital New Delhi"- where the petitioner herein was treated from June 2008 onwards, she "is mentally disabled and has 70% (seventy percent) permanent disability on IDEA SCALE in relation to her mental illness". It further states that "she cannot earn her livelihood and will remain dependent upon her guardians all through her life". The injury/disability suffered by the petitioner, as evident from the various medical records, is thus of a permanent nature.

(g) In view of such disability the petitioner cannot carry out her personal daily chores such as changing clothes, taking a bath, combing her hair and other such necessary routine works, let alone her inability to earn a living. On account of such permanent disability, the present case is a fit case- where the effect of the permanent disablement of the petitioner on her actual future earning capacity would be no less than a 100% (hundred percent).

(h) Computation of loss of future earning capacity would, thus, be as follows:

(i) Notional Income Rs. 15,000/- per annum(ii) Loss of future earning capacity 100% of expected annual income(iii) Multiplier applicable

The Loss of future earnings would therefore be Rs. 2,40,000/- [Rs. 15,000 * 16 * 100%]. The said amount is accordingly awarded to the petitioner under the head of loss of future earning capacity.

(iii) Future medical expenses

A. Medical Expenses (relating to treatment, medicines) including Special Diet and Conveyance

(a) The Supreme Court in Raj Kumar (supra) held that an award under the head of future medical expenses depends upon specific medical evidence regarding need for further treatment and cost thereof.

(b) In the present case, no specific evidence as such has been placed on record by the petitioner to claim compensation under this head, except the "Certificate of Disability". According to the certificate, the petitioner's condition is "not likely to improve". It is further stated that "Re-assessment is not recommended after a period of 5 (Five) years" and that the petitioner "needs regular treatment and follow up". The petitioner in the present case, as afore-mentioned, has claimed compensation of Rs. 15,000 per annum under this head- for the rest of her life.

(c) Keeping in view the aforesaid facts and circumstances and the petitioner's disability, a lump sum amount of Rs. 3,00,000/- is awarded to the petitioner.

B. Personal Attendant

(a) As aforementioned, the petitioner has suffered "Total permanent disability".

On account of such deplorable conditions, learned counsel for the petitioner submits that the petitioner warrants personal care and attention for the rest of her life- for taking care of her personal daily needs. For such purpose it is submitted that she requires a personal attendant.

(b) The petitioner would, thus, require domestic help/maid. The minimum wages of an unskilled worker on the date of the accident were Rs. 3,633/- per month. The annual expenditure of the petitioner in lieu of the services of a personal attendant would amount to Rs. 43,596 [Rs. 3,633*12]. Considering the upward revision in wages, and the concept of the multiplier, as aforesaid, compensation of Rs. 8,71,920/- is awarded under this head.

51.2 Non-pecuniary damages (General Damages)

(a) The Supreme Court in *Raj Kumar (Supra)* observed that "when compensation is awarded by treating the loss of future earning capacity as 100% (or even anything more than 50%), the need to award compensation separately under the head of loss of amenities or loss of expectation of life may disappear and as a result, only a token or nominal amount may have to be awarded under the head of loss of amenities or loss of expectation of life, as otherwise there may be a duplication in the award of compensation... "

(b) In *Oriental Insurance Co. Ltd. Vs. Vijay Kumar Mittal and Others*, this Court discussed the principles relating to the award of non-pecuniary compensation towards pain and suffering, loss of amenities of life and disfigurement. This Court examined all the previous judgments with respect to the non-pecuniary compensation awarded in the case of permanent disability and held that the courts have awarded about Rs. 3,00,000/- under the heads of non-pecuniary damages for permanent disability of 50% and above. The findings of this Court are as under:-

10. The possession of one's own body is the first and most valuable of all human rights and while awarding compensation for bodily injuries this primary element is to be kept in mind. Bodily injury is to be treated as a deprivation which entitles a claimant to damages. The amount of damages varies on account of gravity of bodily injury. Though it is impossible to equate money with human suffering, agony and personal deprivation, the Court and Tribunal should make an honest and serious attempt to award damages so far as money can compensate the loss. Regard must be given to the gravity and degree of deprivation as well as the degree of awareness of the deprivation. Damages awarded in personal injury cases must be substantial and not token damages.

11. The general principle which should govern the assessment of damages in personal injury cases is that the Court should award to injured person such a sum as will put him in the same position as he would have been in if he had not sustained the injuries.

12. Broadly speaking, while fixing an amount of compensation payable to a

victim of an accident, the damages have to be assessed separately as pecuniary damages and non pecuniary damages. Pecuniary damages are those which the victim has actually incurred and which is capable of being calculated in terms of money. Whereas, non pecuniary damages are those which are incapable of being assessed by arithmetical calculations.

13. Pecuniary loss may include the following:

- (i) Special damages or pre-trial pecuniary loss.
- (ii) Prospective loss of earnings and profits.
- (iii) Medicinal expenses.
- (iv) Cost of future care and other expenses.

14. Non pecuniary loss may include the following:

- (i) Pain and suffering.
- (ii) Damages for mental and physical shock.
- (iii) Loss of amenities of life which may include a variety of matters i.e. on account of injury the injured may not be able to walk, run or sit etc.
- (iv) Loss of expectation of life i.e. on account of injury normal longevity of the life of the person concerned is shortened.
- (v) Disfigurement.
- (vi) Discomfort or inconvenience, hardship, disappointment, frustration and mental stress in life."

(c) The Court then went on to cite various examples from decided cases wherein non-pecuniary damages had been awarded in varied circumstances. These instances show that in leg injury, the non-pecuniary damages have varied between Rs. 2.80 lakhs to Rs. 4.0 Lakhs. Considering that these cases pertain to the decade 1990, the petitioner is awarded non-pecuniary compensation of Rs. 4 Lakhs, under the following heads:

- (i) Damages for pain, suffering and trauma as a consequence of the injuries Rs. 2,00,000/-
 - (ii) Loss of amenities Rs. 1,00,000/-
 - (iii) Loss of expectation of life Rs. 1,00,000/-
- Total: Rs. 4,00,000/-

52. The total amount of compensation awarded to the petitioner in the present case, is summed up as under:

Sl. No.	Head/Type/Kind of Compensation	Amount Awarded
1.	Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food, and miscellaneous expenditure.	Rs. 8,666/-
2.	Loss of earnings	Rs. 2,40,000/-
3.	Future medical expenses	

A. Medical Expenses (relating to treatment, medicines) including Special Diet and

Conveyance.

B. Personal Attendant

Rs. 3,00,000/-

Rs. 8,71,920/-4.Non-pecuniary damages (General Damages) Rs. 4,00,000/-5.Litigation Expenses Rs. 50,000/-Total Rs. Rs. 18,70,586/-

53. The aforesaid amounts shall carry a rate of interest of 6% per annum from the date of filing of the petition till the date of realisation.

54. The awarded amount along with up to date interest be deposited by the respondents with UCO Bank within three months by means of cheque in an account in the name of Harinder Kaur. Upon the aforesaid amount being deposited, UCO Bank is directed to release 10% of the amount to petitioner by transferring the same to her Account and the remaining amount be kept in Fixed Deposit in the name of the petitioner in the following manner:-

- (i) Fixed deposit of 10% of the award amount for a period of one year.
- (ii) Fixed deposit of 10% of the award amount for a period of two years.
- (iii) Fixed deposit of 10% of the award amount for a period of three years.
- (iv) Fixed deposit of 10% of the award amount for a period of four years.
- (v) Fixed deposit of 10% of the award amount for a period of five years.
- (vi) Fixed deposit of 10% of the award amount for a period of six years.
- (vii) Fixed deposit of 10% of the award amount for a period of seven years.
- (viii) Fixed deposit of 10% of the award amount for a period of eight years.
- (ix) Fixed deposit of 10% of the award amount for a period of nine years.

55. The interest on the aforesaid fixed deposits shall be paid by automatic credit of interest in the Savings Account of the petitioner. Upon the expiry of the period of each FDR, the Bank shall credit the maturity amount in the Savings Account of the petitioner. On the request of the petitioner, the Bank shall transfer the Savings Account to any other branch according to the convenience of the petitioner. With the aforesaid directions, the petition stands disposed of.