

(2024) 04 J&K CK 0018

In the Jammu And Kashmir High Court

Case No : Others Writ Petition No. 939 Of 2012

Khazir Mohammad Ganai And Others

APPELLANT

Vs

State Of J&K And Others

RESPONDENT

Date of Decision : 20-04-2024

Acts Referred:

Citation : (2024) 04 J&K CK 0018

Hon'ble Judges : Sindhu Sharma, J

Bench : Single Bench

Advocate : Aijaz Bedar, Ilyas Nazir Laway

Final Decision : Dismissed

Judgement

Sindhu Sharma, J

1. The petitioners have approached this Court by way of this petition, seeking the following reliefs:-

(i) "A writ in the nature of mandamus be issued in favour of the petitioner and against the respondents / State directing them to pay compensation of about 30 lacs to the petitioners for the negligent act of the respondents which lead to the falling of poulas tree on the residents including the family member of the petitioners namely Iram Jan along with the interest at the rate of 12% per annum from the date of incident;

(ii) A writ in the nature of mandamus be issued in favour of the petitioners and against the respondents directing them to release and deposit the compensation before this Hon'ble Court to avoid further delay in the disbursement of the same."

2. The case as projected by the petitioners is that the daughter was 18 years old was walking on the road on 20.03.2012 when, due to heavy winds, the populas tree fell on her and injured her critically along with some other persons. She was shifted to hospital (SKIMS) by the relatives, but she sucumbed to injuries on 23.03.2012. The petitioners submit that PWD (Department) failed in maintaining

the trees, which were old and also in a half-broken condition. These trees were negligently managed by the respondents, as a result, they broke down and fell on the deceased and critically injuring her and resulting in her death.

3. The police report in this regard and also the certificate pertaining to cause of death issued by the Sher-i-Kashmir Institute of Medical Sciences, Soura, Srinagar (hereafter referred to as 'SKIMS'), have been placed on record with the petition, which reflects that the cause of death was due to Polytrauma (Spleenic rupture) with multiple long and flat bone injuries and Fat Embolism leading to cardiac arrest with refractory hypotension.

4. It is submitted that the negligence and carelessness of the respondents in maintaining and cutting down of these trees endangered human life, resulted in the death of the daughter of petitioners No. 1 and 2, who was about 18 years old. The daughter of the petitioner was educated and only hope for her family as she could have secured employment and alleviated the family's suffering in the days to come. The petitioners thus seek compensation from the respondent for the death of Iram Jan, which has occurred due to their negligence.

5. The petitioners approached the respondents for grant of compensation for the death due to negligence by way of a representation, but the respondents have not granted any compensation to them. The contention of the petitioners is that they have been deprived of love and affection of one of their beloved family members and prospective bread earner due to negligence of the State, as such, the petitioners seek compensation for an amount of Rs. 30 lac along with interest @12 p.a. from the date of incident till date.

6. In support of their contention, learned counsel for the petitioners has placed a reliance on a judgment passed by the Hon'ble Supreme Court in "N. Nagendra Rao and Co. vs. State of Andhra Pradesh", AIR 1994 SC 2667, in which it is held that State would be liable to pay compensation for the negligent act of its officers and principle of sovereign immunity would not absolve in from the same.

7. In their reply, the respondents submit that on 23.03.2012 during strong windstorm that took place with the speed of 120 kms per hour, as per office records, a number of trees fell throughout the valley and unfortunately the daughter of petitioner Nos. 1 & 2 i.e., Iram Jan R/o Babteng Pattan, while crossing the road was hit by one Papulas tree and later she died. The death, according to them, has occurred due to sudden falling of the tree, due to wind storm which is a natural calamity and not due to negligence of the respondents. They further submit that the respondents had taken due care by putting the dry/ semi-dry trees along national highway to open auction and most of such trees were cut down from the Narbal to Pattan and proposal for conducting auction for the same from Pattan to Delina was processed undertaken and all the dry/semi dry trees which included half broken were removed after conducting open auction under rules. It is also refuted that the petitioners had approached the respondents for compensation and have raised disputed questions of fact and, as

such, the same could not be considered in these proceedings.

8. Heard learned counsel for the parties.

9. The claim of the petitioners from the respondents is on the ground of negligence and carelessness as per rule of Strict Liability. The Strict Liability Rule envisages that many activities which are hazardous and may constitute a constant danger to person and property of others may be allowed to be carried on but subject to the safety measures. Strict Liability is based on the principle, the rule of law is that a person, who for his own purposes brings on his lands and collects and keeps there anything likely to do mischief, if it escapes, must keep it in at his peril, and, if he does not do so, is *prima facie* answerable for all the damage which is the natural consequence of its escape. It is well settled that the Strict liability would only be applicable if there is non-natural use of the land. The exception of these principles is concerned, where there is a act of God or by nature. The contention of the petitioners is that the papulas trees at the road side were being managed in a negligent manner by the respondents, there was no pruning and removal of the dry, dead and half broken trees which resulted in the accident as these trees fell on the daughter of petitioner Nos. 1 & 2, which resulted in her death in the hospital.

10. Per contra, the respondents' stand is that on the fateful day, there is huge storm which resulted in uprooting and breaking of many trees throughout the Kashmir Valley, therefore, the damage caused was due to natural calamity i.e., an act of God. The fact that the trees were on the road side and did not fall within the dangerous activity or non-natural use of land, as such, the liability of the respondents in this regard was very limited. This apart, the sudden and act of nature which could not be foreseen and had resulted in falling of the trees would not make them liable to pay compensation.

11. The Hon'ble Apex Court in "Rajkot Municipal Corporation vs. Manjulben Jayantilal Nakum and others", (1997) 9 SCC 552, has held as under:

"62. The question, therefore, is: whether the respondents in the present case have established the three essential ingredients? Statute enjoins a power to plant trees on the roadsides or in public places. There is no statutory sanction for negligence in that behalf. But the question is: whether the statutory function to plant trees gives rise to duty of maintaining the trees? In a developing society it is but obligatory on every householder, when he constructs house and equally for a public authority to plant trees and properly nurture them up in a healthy condition so as to protect and maintain the eco-friendly environment. But the question is: whether the public authority owes a statutory duty toward that class of person who frequent and pass and repass on the public highway or road or the public places? If the local authority/statutory body has neglected to perform the duty of maintaining trees in a healthy condition and when damage, due to fall of the tree occurs, the question emerges whether the neighbor relationship and proximity of the causation and negligence and the duty of care towards the

plaintiff have been satisfactorily proved to have existed so as to fasten the defendant with the liability due to tort of negligence. It depends on a variety of facts and circumstances. It is difficult to lay down any set standards for proof thereof. Take for instance, where a hanging branch of a tree/tree is gradually falling on the ground. The statutory/local authority fails to take timely action to have it cut and removed and one of the passers-by dies when the branch/tree falls on him. Though the injured or the deceased has contributed to the negligence for the injury or death, the local authority etc. is equally liable for its negligence/omission in the performance of the duty because the proximity is anticipated. Suppose a boy not suspecting the danger climbs or reaches the falling tree and gets hurt, the defendant would be liable for tort of negligent. The defect is apparent. Negligence is obvious, proximity and neighborhood anticipated and lack of duty of care stands established. The plaintiff, in common law action, is entitled to sue for tort of negligence. The authority will be liable to pay the damages for omission or negligence in the performance of the duty. Take another instance, where while 'A' is passing on the road, there is sudden lightning and thunder and 'A' takes shelter under a tree and the lightning falls on the tree and consequently 'A' dies. In this illustration, there is no corresponding obligation or a duty of care on the part of the Corporation or the statutory authority to warn that 'A' should not take shelter under the tree to avoid harm to him. Take yet another instance, where road is being laid and there is no warning or signal and a cyclist or a motor cyclist during night falls in the ditch, i.e. place of repair due to negligence on the part of the defendant. The injury is caused to the victim/vehicle. The plaintiff is entitled to lay suit for tort of negligence. But in a situation like the present one where the victim being not aware of the decess/decay, the tree suddenly falls in a still weather condition, no one can anticipate and it is difficult to foresee that a tree would fall suddenly and thereby a person who would be passing by on the road-side, would suffer injury or would die in consequence. The Corporation or the authority is not liable to be sued for tort of negligence since the causation is too remote. *Novus actus inconveniences* snaps the link and, therefore, it is difficult to establish lack of care resulting in damage and foresee ability of the damage. The case in hand falls in this category. Jayantilal was admittedly passing on the roadside to attend to his office duty. The tree suddenly fell and he sustained injury and consequently died. It was difficult to foresee that a tree would fall on him.

63. The conditions in India have not developed to such an extent that a Corporation can keep constant vigil by testing the healthy condition of the trees in the public places, road-side, highway frequented by passers-by. There is no duty to maintain regular supervision thereof, though the local authority/other authority/owner of a property is under a duty to plant and maintain the tree. The causation for accident is too remote. Consequently, there would be no Common Law right to file suit for tort of negligence. It would not be just and proper to fasten duty of care and liability for omission thereof. It would be difficult for the local authority etc. to foresee such an occurrence. Under these circumstances, it

would be difficult to conclude that the appellant has been negligent in the maintenance of the trees planted by it on the road-sides.”

12. The trees which were growing on the side of the road are not in non natural use of the land or an hazardous activity to attract the principle of strict liability. The wind storm was an act of nature and negligence is not attributable to the respondents.

13. This apart, the issue whether there was wind storm on the fateful day and this wind storm has resulted in falling of the trees on the petitioners’ daughter and the fact whether the respondents were negligent in maintaining these trees and had not removed the dead and half broken tree, are all questions of fact which cannot be considered by this Court in these proceedings. This disputed questions of facts which cannot be considered in these proceedings which resulted in critical injury and death of the daughter of the petitioner, the instant writ petition for compensation is not maintainable, as the same can be proved by leading evidence in civil proceedings.

14. In view of the aforesaid facts and circumstances, there is no merit in this petition and the same is, accordingly, dismissed.