

(2017) 04 DEL CK 0007

In the Delhi High Court

Case No : Writ Petition (C) 5737 of 2012 and CM 10655 of 2013

Mahipal Singh Chauhan

APPELLANT

Vs

State (NCT of Delhi)

RESPONDENT

Date of Decision : 25-04-2017

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 4 ADDelhi 560

Hon'ble Judges : Mr. J.R. Midha, J.

Bench : Single Bench

Advocate : Mr. Roshan Lal Saini and Ms. Manisha Rawat, Advocates, for the Petitioner; Mr. Ajjay Aroraa, Mr. Kapil Dutta and Ms. Diksha Lal, Advocates, for the EDMC; Mr. Rajeev M. Roy, Advocate, for the Respondent No. 5; Mr. Manish Srivastava, Mr. Aditya Gupta and Ms. Shagun Trisal, Advocates, for the Respondent-9/BYPL; Mr. Abhishek Pundir, Advocate, for the DSIIDC

Final Decision : Allowed

Judgement

Mr. J.R. Midha, J.—(Oral) - The petitioners are the parents and brothers of late Jaipal Singh Chauhan who suffered electrocution while playing volleyball with his friends in Ramlila Park, Ghazipur on 04th September, 2011. The petitioners are seeking compensation for the death of late Jaipal Singh Chauhan.

2. The police registered FIR No.253/2011 under Section 336/304A IPC, P.S. Ghazipur. Vide order dated 1st August, 2016, this Court directed the police to submit a report with respect to the authority responsible for maintenance of the high mast light pole at the time of the accident in pursuance to which Inspector, Subash Chandra submitted the status report on 12th August, 2016 according to which East Delhi Municipal Corporation was responsible for maintenance of high mast light pole installed in DDA Park, Ghazipur .

3. On 16th September, 2016, the East Delhi Municipal Corporation agreed to pay the compensation to the petitioners without prejudice to their rights and contentions and with liberty to recover the same from DSIIDC, BSES Yamuna

Power Ltd and/or other agency in accordance with law. The East Delhi Municipal Corporation submitted an affidavit dated 16th September, 2016 to place on record their decision to pay the compensation to the petitioners.

4. The Electrical Inspector, Govt. of NCT of Delhi conducted an enquiry under Section 161 of the Electricity Act. As per report dated 8th December, 2011 of the Electrical Inspector, the electrical installation on the high mast light pole was not properly maintained; the insulation of the electric supply cable was found worn-out/cracked thereby exposing the conductor; two cuts were observed in the electric supply wires feeding the light fixtures installed on the pole and naked/exposed wires were found hanging in accessible position near the base of the pole. The relevant portion of the report dated 8th December, 2011 is reproduced hereunder:

"..... No miniature circuit breaker (MCB) was fixed inside the MCB box for controlling electric supply to the pole lights. At one end of the cable, the insulation of the cable cores was found worn-out/cracked thereby exposing the conductor and exposed conducted was close to the metallic body of MCB box fitted on the tubular pole. The electric supply wires for light fixtures were four numbers of PVC insulated copper wires of size 4 sq mm. Two nos. of cuts were observed in these wires thereby exposing the conductor. The naked and exposed wires were found hanging in accessible position near the base of the pole. At the time of inspection, the following provisions of the Central Electricity Authority (Measures Relating to Safety and Electric Supply) Regulations 2010, had not been complied with:-

1. The electric installation of the high mast pole had not been maintained in safe condition in following respects as required under the provisions of regulation 12(1) of the said regulations: -

(i) The insulation of the electric supply cable was found wornout/cracked thereby exposing the conductor.

(ii) Two nos. of cuts were observed in the electric supply wires feeding the light fixtures installed on pole.

2. The miniature circuit breaker (MCB) or suitable cut-out had not been provided for controlling the supply to the high mast light pole in contravention of the provisions of regulation 35(4) of the said regulations."

5. The Report dated 08th December, 2011 of Electrical Inspector holding that the accident occurred due to the failure to maintain the electrical installation on the high mast pole is accepted. This case is squarely covered by the principles of *res ipsa loquitur*. Reference be made to *Shaym Sunder v. State of Rajasthan*, (1974) 1 SCC 690, *Syad Akbar v. State of Karnataka*, (1980) 1 SCC 30, *Kerala State Electricity Board v. Kamalakshy Amma*, 1987 ACJ 251 and *State of Gujarat v. Purnimaben*, (2001) 2 GLH 276. In *Union of India v. Dhyan Singh*, 2013 ACJ 2644, this Court discussed the aforesaid judgments and summarised the

principles of *res ipsa loquitur* as under:

"(i) *Res ipsa loquitur* means that the accident speaks for itself. In such cases, it is sufficient for the plaintiff to prove the accident and nothing more.

(ii) Where the thing is shown to be under the management of the defendant or his servants, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence in the absence of explanation by the defendants, that the accident arose from want of care.

(iii) There are two requirements to attract *res ipsa loquitur*,

(i) that the "thing" causing the damage be under the control of the defendant and (ii) that the accident must be such as would not in the ordinary course of things have happened without negligence.

(iv) *Res ipsa loquitur* is an exception to the normal rule that mere happening of an accident is no evidence of negligence on the part of the driver. This maxim means the mere proof of accident raises the presumption of negligence unless rebutted by the wrongdoer.

(v) 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. This hardship is to be avoided by applying the principle of *res ipsa loquitur* 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.

(vi) The effect of doctrine of "*res ipsa loquitur*" is to shift the onus to the defendant in the sense that the doctrine continues to operate unless the defendant calls credible evidence which explains how the accident or mishap may have occurred without negligence, and it seems that the operation of the rule is not displaced merely by expert evidence showing, theoretically, possible ways in which the accident might have happened without the defendant's negligence. The doctrine of "*res ipsa loquitur*", therefore, plays a very significant role in the law of tort and it is not the relic of the past, but the living force of the day in determining the tortious liability.

(vii) The principal function of the maxim is to prevent injustice which would result if a plaintiff were invariably compelled to prove the precise cause of the accident and the defendant responsible for it, even when the facts bearing in the matter are at the outset unknown to him and often within the knowledge of the defendant."

6. The next question which arises for consideration is as to the amount of compensation to be awarded to the legal representatives of the deceased.

7. The law with respect to computation of compensation in such cases is well

settled that the compensation has to be computed by the multiplier method. Reference be made to *Lata Wadhwa v. State of Bihar*, (2001) 8 SCC 1997; *Municipal Corporation of Delhi v. Association of Victims of Uphaar Tragedy*, AIR 2012 SC 100 and *Delhi High Court in Jaipur Golden Gas Victims Association v. Union of India*, 164 (2009) DLT 346; *Nagrik Sangarsh Samiti v. Union of India*; *Ram Kishore v. M.C.D.*, 2007 (97) DRJ 445; *Ashok Sharma v. Union of India*, 2009 ACJ 1063. Reference be also made to *Gobald Motor Service Ltd. v. Veluswami*, 1962 (1) SCR 929, *Ishwar Devi Malik. v. Union of India*, ILR (1968) 1 Delhi 59, *Lachman Singh v. Gurmit Kaur, I* (1984) ACC 489 (SB), *Lachman Singh v. Gurmit Kaur*, AIR 1979 P&H 50, *Bir Singh v. Hashi Rashi Banerjee*, AIR 1956 Cal. 555.

8. In *Lata Wadhwa v. State of Bihar* (supra), a fire broke out in a factory in which sixty people died and one hundred and thirteen got injured. The Supreme Court awarded compensation to the victims on the basis of the multiplier method. In *Municipal Corporation of Delhi v. Association of Victims of Uphaar Tragedy*, (supra) 59 persons died in Uphaar tragedy in 1997 and the Supreme Court granted compensation on the basis of multiplier method. In *Jaipur Golden Gas Victims Association v. Union of India* (supra), the Division Bench of this Court awarded compensation to the victims of fire tragedy by applying the multiplier method. In *Ashok Sharma v. Union of India* (supra), six children lost their lives by drowning and the compensation was awarded by applying the multiplier method.

9. In the present case, the deceased, Jaipal Singh Chauhan was aged 23 years at the time of the accident and had completed training in computer applications as well as Tally and wanted to do Chartered Accountancy. At the time of accident, the deceased was getting salary of Rs. 12,000/- plus conveyance allowance of Rs. 3000/- and lunch allowance of Rs. 3000/- as per the Certificate Annexure P-5.

10. The income of the deceased for computation of compensation is taken as Rs. 13,500/- per month and 50% is added thereon towards his future prospects. Since the deceased was unmarried, 50% is deducted towards his personal expenses and the loss of dependency of the petitioners is taken to be Rs. 10,125/- per month (Rs.13,500/- + 6,750/- = Rs. 20,250 - Rs. 10,125/- = Rs. 10,125/-). Petitioner no.1, father of the deceased was aged 48 years and petitioner no.2, mother of the deceased was aged 47 years at the time of the accident. The appropriate multiplier according to the age of the parents is 13.

11. Taking the income of the deceased as Rs. 13,500/- per month, adding 50% towards future prospects, deducting 50% towards the personal expenses of the deceased and taking the multiplier of 13 into consideration, the loss of dependency is computed as Rs. 15,79,500/- (Rs.10,125/- x 12 x 13). Rs. 50,000/- is awarded towards loss of love and affection, Rs. 50,000/- is awarded towards loss of estate and Rs. 25,000/- is awarded towards funeral expenses. The Petitioners are entitled to total compensation of Rs. 17,04,500/- along with interest @ 9% per annum from the date of filing of this writ petition.

12. The writ petition is allowed and the compensation of Rs. 17,04,500/- along with interest @ 9% per annum from the date of filing of the writ petition i.e. 11th September, 2012 is awarded to the petitioners against East Delhi Municipal Corporation.

13. The East Delhi Municipal Corporation is directed to deposit the aforesaid compensation amount along with upto date interest with UCO Bank, Delhi High Court Branch by means of a cheque drawn in the name of UCO Bank A/c Asha Devi Chauhan within a period of 30 days. After depositing the compensation amount, East Delhi Municipal Corporation would be at liberty to initiate appropriate legal proceedings against BSES Yamuna Power Ltd, DSIIDC and/or any agency in accordance with law.

14. The order of disbursement of the compensation shall be passed after examining the petitioners No.1 and 2 who shall remain present in Court on the next date of hearing along with the passbooks of their savings bank accounts near the place of their residence as well as Aadhar Cards and PAN Cards.

15. List for disbursement of award amount as part heard matter on 29th May, 2017.

16. Copy of this judgement be given dasti to counsel for the parties under the signature of the Court.