

(1993) 01 SHI CK 0007
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 653 of 1991

Mohan Lal

APPELLANT

Vs

State of Himachal Pradesh and Another

RESPONDENT

Date of Decision : 05-01-1993

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Constitution of India, 1950 — Article 226

Citation : (1994) ACJ 325 : (1993) 1 ShimLC 340

Hon'ble Judges : Bhawani Singh, Acting C.J.; D.P. Sood, J

Bench : Division Bench

Advocate : G.D. Verma, for the Appellant; M.L. Chauhan, A.A.G. and Deepak Gupta, for the Respondent

Judgement

Bhawani Singh, Actg. C.J.

1. On 5.8.1991, the petitioner sent a communication to the Chief Justice of this court. Consequently, the matter was ordered to be registered on the judicial side. Hence, the present writ petition before us.

2. The petitioner has stated that on 3.5.1987, while passing through the road, he stopped at a place where bus No. 6322 of the respondent Corporation was standing. The driver and the conductor of this bus had lit fire beneath the diesel tank. On account of formation of gases the pressure in the tank increased, the diesel tank burst and caught fire and engulfed the petitioner as well as the conductor of the bus. Thereafter he was admitted in Civil Hospital, Theog, where he remained till 10.12.1987. In between this period, he was also admitted in Indira Gandhi Medical College and Hospital, Shimla, from 18.8.1987 to 24.8.1987. According to the petitioner, he again remained admitted in the same hospital from 12.4.1988 to 14.5.1988.

3. The petitioner has stated that he spent more than Rs. 40,000/- on his medical treatment but he has not recovered fully due to burn injuries and he has been

rendered permanently disabled on account of this accident. He has further stated in his communication that he made repeated representations for compensation to the State of Himachal Pradesh, Himachal Road Transport Corporation, Chief Minister of the State, the Minister for Transport and the Secretary (Transport) to the Government of Himachal Pradesh. The latest representation, as pointed out by the petitioner, is dated 17.6.1991. The petitioner also served notice dated 2.11.1987 through his counsel, Mr.T.R. Chandel, claiming Rs. 3,00,000/- as compensation.

4. In para 9 of this communication, the petitioner has stated that he is a poor man with no source of income and no money to spend on litigation and pay court-fee as well as to engage a counsel. He has further stated that in a democratic set-up, being a citizen of this country, he felt that he has a right of protection of his person and property. In the absence of financial resources, however, he sent the communication to this court since he was facing extreme difficulty and hardship.

5. The respondent Corporation has filed a reply in this case. A preliminary objection has been taken to the effect that the writ petition is not maintainable since there is no record to show that the petitioner suffered any injury as alleged by him and disputed questions were involved in this case, therefore, the writ jurisdiction ought not be exercised. It has been averred that the remedies of a civil suit or a claim petition under the Motor Vehicles Act are available to the petitioner but under these remedies relief cannot be granted to the petitioner as the same have become time-barred. However, the receipt of notice u/s 80 of the CPC has been admitted.

6. On merits, it has been admitted that the fire was lit underneath the diesel tank of the bus in question as a result of which the diesel tank got burst. It has been stated that the conductor of the bus who suffered injuries along with the petitioner in this accident died subsequently and his heirs have since been compensated for the same. However, in the case of the petitioner, there is no record to support the plea that the injuries were sustained by him in the accident. In the absence of relevant record, it cannot be said that the injuries were sustained by the petitioner, therefore, liability to pay the compensation has been denied.

7. In the rejoinder, it has been asserted by the petitioner that the medical evidence duly points out that the injuries were sustained by the petitioner in this accident. A reference has been made to the medical certificate dated 6.6.1987 (Annexure P-1). As per this certificate the petitioner was admitted in the Civil Hospital, Theog, on 3.5.1987 for burn injuries. In certificate dated 11.1.1988 (Annexure P-2) it has been mentioned that the petitioner remained in the Civil Hospital, Theog, for treatment from 3.5.1987 to 10.12.1987 as an indoor patient. In the discharge slip (Annexure P-3) of Indira Gandhi Medical College and Hospital, Shimla, it has been pointed out that the petitioner remained there from 18.8.1987 to 24.8.1987 for treatment. Similarly, he also remained in the same hospital from 12.4.1988 to 14.5.1988 for treatment (Annexure P-4). The

petitioner has reaffirmed that he has a right to invoke the writ jurisdiction of this court for the redressal of his grievances.

8. On 4.5.1987, the matter was reported to the police (Annexure P-5). Today, the petitioner moved an application in order to produce a copy of daily diary dated 4.5.1987 of (he police station, Theog and medical certificate dated 5.12.1992 (Annexure P-6) with a request that the documents be placed on the record of this case. We have permitted him to do so.

9. We have reproduced the essential facts available on the record of this case and proceed to deal with the crucial questions involved for determination of this case.

10. The first question to be examined is whether the petitioner could file a writ petition to seek compensation for the injuries sustained by him or go to a civil court to claim the same from the respondents. The learned counsel for the parties appealing in this case have rendered valuable assistance on this question by citing the following case-law.

11. In Rudul Sah Vs. State of Bihar and Another, the Apex Court held that in the exercise of its jurisdiction under Article 32 of the Constitution, it could pass an order for the payment of money in the nature of compensation consequential upon the deprivation of a fundamental right to life and liberty of a petitioner. In this case, the petitioner was illegally detained by the State. The Supreme Court awarded compensation to the extent of Rs. 35,000/- to the petitioner by way of interim relief leaving the petitioner to seek his remedy in a civil court.

12. In M.C. Mehta v. Union of India 1987 ACJ 386 (SC), the Apex Court was again concerned with relief to persons affected by oleum gas leakage in Shriram Foods and Fertiliser Industries. The question arose whether under Article 32 of the Constitution, the court could entertain applications for compensation. It has been held in para 3 that:

The first question which requires to be considered is as to what is the scope and ambit of the jurisdiction of this court under Article 32 since the applications for compensation made by the Delhi Legal Aid and Advice Board and the Delhi Bar Association are applications sought to be maintained under that Article. We have already had occasion to consider the ambit and coverage of Article 32 in the Bandhua Mukti Morcha Vs. Union of India (UOI) and Others, and we wholly endorse what has been stated by one of us, namely, Bhagwati, J., as he then was, in his judgment in that case in regard to the true scope and ambit of that Article. It may now be taken as well settled that Article 32 does not merely confer power on this court to issue a direction, order or writ for enforcement of the fundamental rights but it also lays a constitutional obligation on this court to protect the fundamental rights of the people and for that purpose this court has all incidental and ancillary powers including the power to forge new remedies and fashion new strategies designed to enforce the fundamental rights. It is in realisation of this constitutional obligation that this court has in the past

innovated new methods and strategies for the purpose of securing enforcement of the fundamental rights, particularly in the case of the poor and the disadvantaged who are denied their basic human rights and to whom freedom and liberty have no meaning.

Further, in para 4, the court held that:

Thus it was in *S.P. Gupta Vs. President of India and Others*, that this court held that "where a legal wrong or a legal injury is caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal right or any burden is imposed in contravention of any constitutional or legal provision or without authority of law or any such legal wrong or legal injury or illegal burden is threatened, and any such person or determinate class of persons is by reason of poverty or disability or socially or economically disadvantaged position unable to approach the court for relief, any member of the public or social action group can maintain an application for an appropriate direction, order or writ in the High Court under Article 226 and in case of breach of any fundamental right of such person or class of persons, in this court under Article 32 seeking judicial redress for the legal wrong or injury caused to such person or determinate class of persons. This court also held in *S.P. Gupta's case (supra)* as also in the *People's Union for Democratic Rights and Others Vs. Union of India (UOI) and Others*, and in *Bandhua Mukti Morcha 's case (supra)* that procedure being merely a handmaiden of justice it should not stand in the way of access to justice to the weaker sections of Indian humanity and, therefore, where the poor and the disadvantaged are concerned who are barely eking out a miserable existence with their sweat and toil and who are victims of an exploited society without any access to justice, this court will not insist on a regular writ petition and even a letter addressed by a public spirited individual or a social action group acting pro bono publico would suffice to ignite the jurisdiction of this court." We wholly endorse this statement of the law in regard to the broadening of locus standi and what has come to be known as epistolary jurisdiction.

It would also be relevant to refer to the views expressed in para 7 of this judgment. They are:

We are also of the view that this court under Article 32 (1) is free to devise any procedure appropriate for the particular purpose of the proceeding, namely, enforcement of a fundamental right and under Article 32 (1) the court has the implicit power to issue whatever direction, order or writ as is necessary in a given case, including all incidental or ancillary power necessary to secure enforcement of the fundamental right. The power of the court is not only injunctive in ambit, that is, preventing the infringement of a fundamental right, but it is also remedial in scope and provides relief against a breach of the fundamental right already committed vide *Bandhua Mukti Morcha Vs. Union of India (UOI) and Others*, If the court were powerless to issue any direction, order or writ in cases where a fundamental right has already been violated, Article 32 would be robbed of all its efficacy, because then the situation would be that if a

fundamental right is threatened to be violated, the court can injunct such violation but if the violator is quick enough to take action infringing the fundamental right, he would escape from the net of Article 32. That would, to a large extent, emasculate the fundamental right guaranteed under Article 32 and render it impotent and futile. We must, therefore, hold that Article 32 is not powerless to assist a person when he finds that his fundamental right has been violated. He can in that event seek remedial assistance under Article 32. The power of the court to grant such remedial relief may include the power to award compensation in appropriate cases. We are deliberately using the words "in appropriate cases" because we must make it clear that it is not in every case where there is a breach of a fundamental right committed by the violator that compensation would be awarded by the court in a petition under Article 32. The infringement of the fundamental right must be gross and patent, that is, incontrovertible and ex facie glaring and either such infringement should be on a large scale affecting the fundamental rights of a large number of persons or it should appear unjust or unduly harsh or oppressive on account of their poverty or disability or socially or economically disadvantaged position to require the persons or persons affected by such infringement to initiate and pursue action in the civil courts. Ordinarily, of course, a petition under Article 32 should not be used as a substitute for enforcement of the right to claim compensation for infringement of a fundamental right through the ordinary process of civil court. It is only in exceptional cases of the nature indicated by us above that compensation may be awarded in a petition under Article 32. This is the principle on which this court awarded compensation in *Rudul Sah Vs. State of Bihar and Another*, So also, this court awarded compensation to Bhim Singh, whose fundamental right to personal liberty was grossly violated by the State of Jammu and Kashmir. If we make a fact analysis of the cases where compensation has been awarded by this court, we will find that in all the cases, the fact of infringement was patent and incontrovertible, the violation was gross and its magnitude was such as to shock the conscience of the court and it would have been gravely unjust to the person whose fundamental right was violated, to require him to go to the civil court for claiming compensation.

13. In *SAHEL1*, a *Saheli*, A Women's Resources center, Through Ms Nalini Bhanot and Others Vs. Commissioner of Police Delhi Police Headquarters and Others, the court observed in para 11 that:

An action for damages lies for bodily harm which includes battery, assault, false imprisonment, physical injuries and death. In case of assault, battery and false imprisonment the damages are at large and represent a solatium for the mental pain, distress, indignity, loss of liberty and death. As we have held hereinbefore that the son of Kamlesh Kumari aged 9 years died due to beating and assault by the SHO, Lal Singh and as such she is entitled to get the damages for the death of her son. It is well settled now that the State is responsible for the tortious acts of its employees. Respondent No. 2, Delhi Administration, is liable for payment of compensation to Kamlesh Kumari for the death of her son due to beating by the

SHO of Anand Parbat Police Station, Lal Singh.

14. Lastly, the learned counsel for the parties drew our attention to Smt. Kumari Vs. State of Tamil Nadu and others, wherein the High Court had dismissed the petition in a case where six years old son of the claimant died as a result of falling in a ten feet deep sewerage tank in the city of Madias. The tank was not covered with a lid and was left open. The High Court rejected the petition under Article 226 of the Constitution on the ground that in a writ jurisdiction it was not possible to determine as to which of the respondents was negligent in leaving the sewerage tank uncovered. In appeal, the Apex Court reversed the High Court judgment and awarded a sum of Rs. 50,000/- with interest at the rate of 12 per cent per annum to be paid by the State of Tamil Nadu.

15. Now we turn to the other decisions of the various High Courts which were cited before us.

16. In Kalawati v. State of Himachal Pradesh 1988 ACJ 780 (HP), relying on Supreme Court's judgment in Rudul Sah Vs. State of Bihar and Another, the court observed in para 8 as under:

True it is that the cases in hand have not been instituted under Article 32 but under Article 226. It needs emphasis, however, that the jurisdiction under Article 226 is much wider than that under Article 32. True it is also that the factual matrix is not identical. The damages in Rudul Sah's case were claimed by a person aggrieved by an unlawful act consisting of illegal detention whereas in the present case the claim for compensation is by the dependants/legal representatives of the persons who lost their lives on account of the apparent negligence of the employees of the State. The distinction, if any, cannot, however, make a difference in the application of the principle. It cannot debar or deter the writ court from awarding a reasonable sum by way of compensation as an ad interim or interim measure of a palliative nature, if, on the facts and in the circumstances of the case and on the basis of the material on record, its judicial conscience is satisfied that if a suit were to be filed to recover the damages, a decree would follow almost as a matter of course, although the precise amount which should be decreed cannot be predicted. Such a course of action would not only help in protecting, preserving and enforcing the fundamental right to life but also prevent its violation in other cases. Besides, the dependent family of the deceased will be saved from penury and undeserved want till fine points of fact and law, which legal ingenuity may discover, are extensively argued, deliberated and adjudicated in a compensation suit, which it can be directed to file for recovering the full damages, and till the said proceeding passes through the usual gamut of the trial court, the appellate court(s) and the executing court.

This decision was followed by the same Bench in Jaram Singh v. State of Himachal Pradesh 1988 ACJ 1083 (HP). In this case the wife of the petitioner was killed on being hit by a stone which rolled down from the upper side of the road, where the labourers engaged by the Public Works Department were carrying out

construction work of another road. In this case, the court held that the High Court is empowered in the exercise of its writ jurisdiction to award damages in cases where a fundamental right like that of life and liberty is violated. The writ court is empowered to award a reasonable sum by way of compensation as an ad interim or interim measure of a palliative nature, if, on the facts and in the circumstances of the case and on the basis of the material on record, its judicial conscience is satisfied that if a suit were to be filed to recover the damages, a decree would follow almost as a matter of course, although the precise amount which would be decreed cannot be predicted.

17. The High Court of Judicature at Gauhati in *Sita Rani Gupta v. State of Assam* 1989 ACJ 348 (Gauhati), awarded compensation in a writ proceeding. Justice B.L. Hansaria, as he then was, speaking for the court, said that it is for the court "to protect the dignity of the petitioner which is one of the founding pillars of our Constitution" and promote social justice to avoid prolonged agony to the petitioner who is in dire distress and wants some immediate monetary help. In this case a sum of Rs. 40,000/-, as compensation, was given to the widow of the deceased who was a driver.

18. Similarly, Madras High Court in *Lalitha v. Director-General of Police* 1989 ACJ 655 (Madras), held that compensation can be awarded to a claimant for the negligence of the State officials in a petition under Article 226 of the Constitution.

19. This is the trend of judicial decisions in the country on the question of maintainability of a writ petition in such cases. The only difference noticed by us is that in some cases, the courts have granted lump sum compensation while in others, the compensation has been awarded by way of interim measure.

20. Mr. Deepak Gupta, learned counsel for respondent No. 2, places reliance on *A.V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhwani and Another*, and *Vinod Gurudas Raikar Vs. National Insurance Co. Ltd. and others*, to submit that since the claim of the petitioner has become time-barred, this court, in exercise of its jurisdiction under Article 226 of the Constitution, may not allow relief to the petitioner. In view of the latest trend of judicial decisions, noticed above, this submission of Mr. Deepak Gupta does not impress us. We have to look to the facts of the case as well. In the present case it is clearly demonstrated that the petitioner received burn injuries as a result of this accident on 3.5.1987. On the same day he was admitted in the hospital where he remained as an indoor patient till 14.5.1988. Despite this, his agony was not over and he never recovered fully from the burn injuries. As noticed in the preceding part of this judgment, he sent numerous representations to the authorities, besides a notice through his lawyer. Then his financial condition stood in his way and he was completely incapacitated to take any action. According to the petitioner, he spent about Rs. 40,000 on medical treatment up to 5.8.1991. At the time of the accident he was a driver of a private vehicle which was parked nearby the bus involved in this case.

21. A notice served through Mr. T.R. Chandel, Advocate, dated 2.11.1987 (taken on record) discloses that the petitioner is aged 47, he is married with three sons and a daughter. One of his sons is blind and handicapped. The other two children attend the school. He has also old parents to be looked after. In para 3 of this notice, it is stated as under:

That my aforesaid client is under treatment since 3.5.1987, but the burn injuries have made him cripple and permanently handicapped?

In para 4 it is further stated that:

That the act of the conductor and the driver to heat the petrol tank was totally unwarranted and hazardous, besides being rash and negligent. They fully knew or should have known that the heat in the tank can cause danger to the passer-by. The Corporation and the State, under whose employment the aforesaid driver and the conductor were, are vicariously liable for the negligent and rash act complained against. The heating process was being conducted by the aforesaid persons without warning the passers-by or persons in the vicinity. The explosion was sudden and simultaneous on my client's reaching the spot. The aforesaid negligent and rash act was committed by the employees aforesaid during the course of their employment of the Corporation/ State.

As stated earlier, a sum of Rs. 3,00,000/- has been claimed as compensation by way of this notice.

22. In the aforesaid circumstances, we see no difficulty to hold that this court has jurisdiction to entertain this petition under Article 226 of the Constitution of India and to deal with the relief being sought by the petitioner.

23. In view of the documentary evidence before us, there cannot be any dispute that this accident took place and the petitioner sustained intensive burn injuries as a result thereof. The medical certificates as well as the daily diary report point out that the petitioner was present at the spot at the time of accident and thereafter admitted into the hospital where he received medical treatment for burn injuries. In the same accident, the conductor of the bus was also injured and later on died and compensation has already been paid to his dependants admissible under the Workmen's Compensation Act.

24. If we look to the manner in which the accident had taken place, the evidence clearly points out towards the negligence of the driver and the conductor of the bus belonging to the respondent Corporation. The first thing that strikes us is why should the diesel freeze in the month of May. There appears to be some other fault in starting the vehicle. The way in which the driver and the conductor of the bus dealt with the situation is rather shocking. They lit fire underneath the diesel tank to defreeze the diesel. Obviously, the gases were likely to be formed on account of this exercise which ultimately happened and proved fatal in the present case. One life has been lost while the condition of the petitioner has become deplorable. As such there is no other option but to hold the officials of

the respondent Corporation negligent and it must face the consequences. In the alternative, the principles of *res ipsa loquitur* apply and in that event, the blame is to be shared by the respondent Corporation.

25. Now we proceed to determine the compensation in the present case. The first question is whether it should be interim compensation or full and final to close litigation between the parties. In our considered opinion, it should be full and final compensation if we look to the peculiar facts and circumstances of the case already noticed and reproduced above and more particularly in view of the fact that the petitioner cannot, at this stage, be asked to go to the civil court to agitate the matter as it has become time-barred in view of Section 166 (3) of the Motor Vehicles Act, 1988. Moreover, it would be desirable to deal with the case on merits and award compensation in full and final settlement of the claim since the evidence is available on the record of this case.

26. In order to assess the compensation, the safe evidence to be relied upon would be the employment of the petitioner as a driver with some private truck owner. There is no evidence that the petitioner has been paid compensation by the owner of that vehicle; nor the petitioner or the learned counsel for the parties are in a position to say so for lack of evidence. No enquiry was conducted by the respondents in this case. Therefore, we proceed to deal with the matter taking the petitioner to be a truck driver with a private truck owner. At the relevant time such drivers used to be paid normally Rs. 1,000 per month in addition to two meals a day. However, we fix the figure at Rs. 1,000/- per month. The medical evidence has pointed out the permanent disability to the extent of 50 per cent. The heirs of the conductor of the respondent Corporation who died in the same accident have been paid Rs. 63,998/- as his monthly salary was Rs. 882/- at that time. In view of the fact that permanent disability in the case of the petitioner is 50 per cent, it would be reasonable to fix his loss at Rs. 500/- per month. Applying the principles under the law of Torts, the awardable compensation can be assessed at Rs. 72,000/- ($500 \times 12 \times 12$). The petitioner has also spent considerable amount on medical treatment. Although he has stated that he spent more than Rs. 40,000/- on his treatment, however, it would be just and reasonable to give him Rs. 15,000/- on this account. Thus the total amount payable to the petitioner comes to Rs. 87,000/-.

27. The result of the aforesaid discussion is that this writ petition is allowed. The respondent Corporation is directed to deposit a sum of Rs. 87,000/- in the Registry of this court within four weeks from today which is to be paid to the petitioner. No interest will be payable on this amount. It is, however, made clear that this awarded amount is in full and final settlement of the claim of the petitioner. The petitioner would not be entitled to prefer any other claim in any other court for this accident, more particularly in view of the forthright stand taken by the learned counsel for the respondent Corporation. This is a legal aid matter, therefore, the respondent Corporation would pay Rs. 650/- to Mr. G.D. Verma, learned counsel appealing for the petitioner in this case who will not

realise any fee from the legal aid committee.

28. The writ petition is disposed of with the aforesaid observations. However, we make no order as to costs.