
(1959) 11 P&H CK 0017
In the Punjab And Haryana At Chandigarh
Case No : First Appeal No. 69-D of 1953

Municipal Corporation, Delhi

APPELLANT

Vs

Sobhag Wanti etc.

RESPONDENT

Date of Decision : 27-11-1959

Acts Referred:

Citation : AIR 1960 P&H 300

Hon'ble Judges : G.L. Chopra, J;D. Falshaw, J

Bench : Division Bench

Judgement

Falshaw, J.

(1) These are four appeals Nos. 69-D, 70-D, 71-D and 85-D of 1953 filed by the Delhi Municipal Committee against decrees of various amounts for damages passed in favour of the plaintiff respondents.

(2) The cases arise out of an incident which happened in the morning of 7-2-1951 when the top portion of the famous Clock Tower which is stood in one of the main business centres of Delhi, Chandni Chowk, suddenly collapsed with the result that a number of persons were killed or injured by the falling debris. The plaintiffs in these suits are relatives of four of the persons who were killed. In appeal No. 69-D/53, the plaintiffs were the widow, a minor son and two minor daughters of Ram Parkash.

In appeal No. 70-D/53 the plaintiff Jagdish Raj is a widower whose wife was killed. In appeal No. 71-D/53 the person killed was the wife of Tek Chand plaintiff and mother of Munshi Lal, Kala Ram, Bhandari Lal and Rani Devi minor plaintiffs. In appeal No. 85-D/53 the plaintiff is a minor son of Gopi Chand who was killed. The first three cases were dealt with by a single judgment and were consolidated to the extent that while the plaintiffs led separate evidence, mainly on the question of damages, the evidence of the defendant was treated as being common. The lower Court awarded damages in a sum of Rs. 25,000/- to Sobhag Wanti etc., Rs. 15,000/- to Munshi Lal etc., Rs. 2,000/- to Jagdish Raj and Rs.

20,000/- to Kuldip RaJ.

(3) The two questions involved in the appeals are the quantum of damages in individual cases assuming that the Committee is found liable to pay damages and the question common to all the cases, whether the collapse of the Clock Tower was not due to the negligence of the Municipal authorities. In one of the suits the onus had been placed on the plaintiff to show that the fall of the Tower was due to the negligence of the Committee, but it is obvious that in a case like this when a building has unexpectedly collapsed, and whenever for technical reasons the onus is placed, it becomes the duty of the persons responsible for the maintenance of the building to show that the building was kept in a proper condition, and that its collapse was not due to any negligence, since the persons responsible for the maintenance of the buildings are the only persons who are in a position to reveal the true state of affairs.

(4) The evidence led by the Committee consists of the statements of a number of its own officials and the statement of Mr. B. S. Puri, who at the time of the occurrence was Chief Engineer, Central P.W.D. and was called in by the Committee after the collapse to investigate the report.

(5-15)(After discussing the evidence of the witnesses for the Municipal Committee the judgment proceeds): For some reason or other when the report submitted by Mr. Puri to the Committee was produced by the defendant during the examination of this witness on 8-6-1953 objection was taken to its admission on account of its late production, and the lower Court excluded it, in my opinion quite wrongly. It is, however, to be presumed that Mr. Puri's report was on the lines of his statements.

(16) The statement of some witnesses produced by various plaintiffs who claimed to have noticed from the ground level cracks which were visible in the Clock Tower sometime before the collapse is hardly worth discussing, and was rightly ruled out of consideration by the lower Court.

(17) The learned counsel for the appellant Committee has seized on the observation of the learned Subordinate Judge in the case of Sobhag Wanti etc. to the effect that the evidence adduced by the defendant leaves no room for doubt that there were no superficial signs in the Tower which might have given warning to the defendant Committee that the Tower was likely to fall and thus enable them to avoid it. It was thus contended that since the defects which led to the collapse of the Tower were latent, the Committee could not be held guilty of negligence. While, however, I have no doubt that the collapse of the Tower came just as much a surprise to the Committee as to the unfortunate people who were in its vicinity at the time, it does not seem to me that this is any answer to the plaintiffs' case in view of the evidence of the Chief Engineer which put the safe existence of the portion of the building which collapsed at 40 or 45 years, whereas the evidence of the officials of the Committee showed that the Clock Tower was built at least 80 years ago.

It is therefore quite clear that once the building had passed the normal age at which the mortar could be expected to deteriorate, a bounden duty was cast on the Committee to carry out careful and periodical inspections for the purpose of determining whether in fact deterioration had taken place and whether any precautions were necessary to strengthen the building. In my opinion there is no evidence worth the name to show that anything like this was ever done. No doubt evidence has been led to the effect that inspections were carried out from time to time, but no records of any such inspections have been kept, and it would seem that if in fact any inspections were carried out they were of a perfunctory nature like that described by the witness whose inspection consisted of casting a glance around. The witnesses of the Committee have seized on the two occasions of Republic Day in 1950 and 1951 as fixed points at which it could be said that some officials had certainly gone up the Tower and found no defects, but the question which at once suggests itself in this connection is to what extent the officials who went up the Tower were preoccupied in affixing illuminations or flags, and to what extent they had gone there for the purpose of inspecting the Tower for the purpose of finding out whether it was still in a safe condition.

(18) If the mortar found in the debris when picked up by Mr. Puri turned into powder into his fingers it seems probable that if the mortar had been closely inspected at any time before the Tower collapsed it would have shown the signs of crumbling, but obviously inspection on these lines was never carried out and the Chief Engineer has said in so many words that if he had any idea that the Clock Tower was anything like 80 years old he would have advised the Committee to have an expert inspection carried out before the disaster occurred. In my opinion it is impossible to believe that if any expert inspection had been carried out at any time in the years immediately preceding the collapse some signs would not have been discovered which would have furnished a warning that top portion of the building was in a dangerous state and required strengthening.

(19) In these circumstances although a large number of cases were cited on behalf of the appellant regarding latent defects and the position of private householders portions of whose houses had fallen and caused damage to persons or property, I do not think these cases are at all helpful. Some of the cases even referred to damages for injury caused by the fall of branches of trees, which appear to me to be on an entirely different footing from buildings. Moreover, in the case of ordinary private house-holders and in the absence of any evidence showing that the building was old enough to be dangerous on that account alone, it seems to me that different considerations arise than those which arise in the present case, in which I find that the evidence shows that a potentially dangerous building maintained by a public authority was not subject to the careful and systematic inspection which it was the duty of the Committee to carry out.

(20) Out of the cases cited before us the one which most nearly approaches the present case appears to be the case of Kuppammal Vs. M. and S.M. Ry. Co. Ltd.

and Corporation of Madras, In that case a long brick wall was built and maintained by the Railway Company round part of its premises. Adjoining this wall the Corporation had constructed a latrine and one day a section of the railway wall 80 feet long collapsed without warning and part of the collapsed wall knocked down the wall of the latrine and killed two people who were inside. The case was tried on the original side and it was by Gentle J. that the Railway Company owed a duty to the lawful users of the latrine, including the two deceased, to take reasonable care to prevent this wall falling, and in failing to remedy the defects and to keep the wall in a safe condition they were guilty of breach of duty which they owed and were therefore negligent and liable to pay damages.

Each case of this kind undoubtedly depends on its own facts, and on the facts in the present case I do not consider that there can be any doubt whatever that if the Committee had performed its duty in carrying out proper inspection of the Clock Tower which on account of old age etc. was potentially dangerous the collapse of the top portion of the Tower might have been foreseen, and that is collapse was due to the negligence of the responsible officials of the Committee.

(21) This brings us to the question of damages which requires separate consideration in each case. In the case of Sobhag Wanti etc. the evidence is to the effect that Ram Parkash, deceased was 30 years old at the time of the accident, his widow being aged about 28 and his son 14 and daughters 12 & 2 years old. The evidence, however, regarding the income of Ram Parkash and the amount of loss caused to his widow and children is not ever satisfactory. One witness Manohar Lal stated that Ram Parkash had a saw mill and a cloth shop but he could not give any figures of his earning capacity. The only other witness or the point was the widow who stated that the monthly expenses of Ram Parkash, which is an ambiguous phrase, amounted to Rs. 500/- or Rs. 1,000/-. She said that as a matter of fact he had two cloth shops as well as the saw mill, and that Ram Parkash's father was living. The latter might thus have been in a position to produce the accounts of the businesses of Ram Parkash but he was not produced.

(22) The position regarding pecuniary loss in cases under the Fatal Accidents Act is stated as follows at pages 98 and 99 of the Eleventh Edition of Clerk and Lindsell on Torts:

"The basis of the action is the pecuniary loss suffered by the dependants in consequence of the deceased's death. Nothing may be given by way of solatium. If the pecuniary loss is proved the defendant is entitled to succeed. * * *

As Lord Wright said in *Davies v. Powell Duffryn Associated Collieries, Ltd.*: "It is a hard matter of pounds, shillings and pence, subject to the element of reasonable future probabilities. The starting point is the amount of wages which the deceased was earning, the ascertainment of which to some extent may depend upon the regularity of his employment. Then there is an estimate of how much

was required or expended for his own personal and living expenses. The balance will give a datum or basis figure which will generally be turned into a lump sum by taking a certain number of years' purchase. That sum, however, has to be taxed down by having due regard to uncertainties, for instance, that the widow might have again married and thus ceased to be dependant, and other like matter of speculation and doubt".

(23) In this case without any elaborate discussion of this material the Court has fixed the damages at Rs. 25,000/-. It was contended on behalf of the appellant Committee that there was no material at all and we were left to infer that no damages at all should be allowed. It is, however, obvious that some damages must be allowed as the widow and children must have been receiving a monthly sum from the deceased for their subsistence and for the education of the Children, two of whom are said to be studying in school. At a bare minimum I consider that the sum must be taken to be Rs. 150/- P. M. since there can be no doubt that the family was well above the ordinary labouring class, and for the purpose of capitalising it I would fix the period at 15 years in view of all the circumstances. This would bring the sum to Rs. 27,000/- which is more than what the lower Court has arrived at. I thus see no reason for reducing the amount of damages in this case.

(24) In the case of Jagdish Raj who brought the suit for Rs. 15,000/- the sum decreed for the loss of his wife is only 2,000/- and this sum was fixed because it was brought out that by the time of the trial he had already married another wife. There is evidently no reason for interfering in this case.

(25) In the case of Tek Chand and his four children the evidence led is to the effect that he himself was about 46 years old and that his wife was 40 or 42 at the time of her death. There were six children of whom two were sons who apparently separated from their father already. The other children was aged (16) (son), 14 (son), and 8 (son) and 12 (daughter). The plaintiff's case was that he worked as a broker in ornaments and that before his wife's death he was earning about Rs. 350/- per mensem but now he only earned about Rs. 100/- per mensem. It is difficult to believe that his income has declined solely because of the death of his wife and it must be taken that his income was about Rs. 100/- per mensem but the point is not so much of his income as of what the pecuniary loss due to the death of his wife and as far as I can see the only loss in this respect is that he has had to employ a maid servant of the purpose of cooking for himself and his children at Rs. 15/- per mensem plus food.

(26) In awarding Rs. 15,000/- the lower Court had not indicated on what basis this sum was calculated and it certainly appears to be excessive. If the increased expenses caused by the loss of the wife are taken at Rs. 40/- per mensem and a period of 15 years is taken for the purpose of calculating the total sum the amount would come to Rs. 7,200/- and in my opinion this is a fair figure.

(27) Finally there is a case of Kuldip Raj in whose case the damages for the loss

of his father have been assessed at Rs. 20,000/-. The evidence of the earning capacity of the deceased is vague and unsatisfactory. He is said to have earned his living by astrology and one or two witnesses have estimated his income at Rs. 250/- to 300/- a month but the fact remains that, as was admitted by his brother, he was living in an evacuee house of which the rent was only Rs. 5/-.

(28) It is quite clear that the lower Court has fallen into error in the case of this plaintiff who was apparently about 12 years of age at the time of the suit. The learned Subordinate Judge has calculated the pecuniary loss due to the death of the father at only Rs. 5,600/- and the remaining sum of Rs. 14,400/- has been allowed to the plaintiff on account of mental pain and suffering. This appears to be on account of the pain and suffering of the plaintiff himself, who was about ten years old at the time of the loss of his father, and who was left completely orphaned as his mother had died some time before. Under the Fatal Accidents Act there is no scope whatever for awarding damages to the plaintiff on account of his own suffering or bereavement nor indeed in my opinion is there even any scope for allowing the dependant plaintiff damages of any pain and suffering which might have been suffered by the deceased himself before he died.

The sum of Rs. 14,400/- can therefore not be allowed on this account. It was however, contended on behalf of the plaintiff and not seriously contested on behalf of the Committee that it was open to ask to increase the damages for the pecuniary loss of the plaintiff which certainly appear to have been underestimated by the lower Court. Even on the assumption that the figure relating to the alleged earnings of the deceased had been greatly exaggerated by the witnesses produced it is evident that the plaintiff a young boy must have been kept and maintained properly by his father and again at certainly higher level than the lowest. At a bare minimum I would put plaintiff's pecuniary loss at Rs. 50 P. M. and I would allow damages at this rate for a period of fifteen years which would come to Rs. 9,000/-.

(29) The net result is that I would dismiss the appeals of the Committee in the case of Jagdish Raj and Sobhag Wanti etc. with costs, and in the case of Munshi Lal etc. I would reduce the sum decreed from Rs. 15,000/- to Rs. 7,200/- and in the case of Kuldeep Raj from Rs. 20,000/- to Rs. 9,000/-. In these two cases I would leave the parties to bear their own costs.

G.L. Chopra, J.

(30) I agree.