
(2012) 04 DEL CK 0106

In the Delhi High Court

Case No : Writ Petition (C) No. 11018-19 of 2006

Rakesh and Another

APPELLANT

Vs

Govt. of NCT of Delhi and Another

RESPONDENT

Date of Decision : 10-04-2012

Acts Referred:

Citation : (2012) 04 DEL CK 0106

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Aruna Mehta and Mr. Sanjeev Mehta, for the Appellant; R.S. Mathur, for Mr. Amitabh Marwah, for R-1, Mr. Mukesh Gupta and Mr. Sumit Gupta for R-2 MCD, for the Respondent

Judgement

Rajiv Sahai Endlaw, J.—The two petitioners being husband and wife, by this writ petition inter alia claim compensation in the sum of Rs. 20,00,000/- from the respondents Govt. of NCT of Delhi and the MCD for the death of their minor son Sagar aged about three and a half years owing to the negligence of the respondents. It is the case of the petitioners that their said son died on 3rd March, 2006 by falling in the uncovered sewer/drain at the intersection of the lanes near the house of the petitioners. Negligence is averred on the part of the respondent no. 2 MCD in not covering the sewer/drain inspite of the same being situated in front of a populated residential area inhabited also by children. It is claimed that the petitioner No. 1 being the father of the deceased runs a "kabari" shop and earns Rs. 6,000/- per month. Notice of the petition was issued. At one stage, PWD was orally sought to be impleaded as a party, however no steps were taken for the same. Counter affidavits have been filed by the respondent no. 1 GNCTD and the respondent no. 2 MCD and the petitioners have filed rejoinder to the said affidavits.

2. The respondent no. 1 GNCTD in its counter affidavit has stated that the civic amenities in the area in which the incident occurred are being maintained by the respondent no. 2 MCD and the allegations by the petitioner of negligence are

also against the respondent no. 2 MCD and the respondent no. 1 GNCTD is thus not liable. It is also pleaded that the First Information Report was not lodged because of the statement of the petitioner no. 1 on 3rd March, 2006 to the effect that the petitioners did not seek any police investigation.

3. The respondent no. 2 MCD in its counter affidavit has raised the preliminary objection as to the maintainability of the petition; it is pleaded that the petition entails disputed questions of fact which cannot be adjudicated in writ jurisdiction. It is further stated that the lanes in the area in question are quite narrow and a lot of sludge flows into the drains which requires frequent cleaning/maintenance and the respondent no. 2 MCD is taking all necessary measures to ensure the same. It is pleaded that the accident has happened on account of negligence on the part of the deceased/petitioners.

4. The petitioners in their rejoinder to the counter affidavit of respondent no. 1 have reiterated that the respondents have violated public duty and that the petitioners are illiterate and since the deceased was brought out of the sewer/drain and was dead, police investigation was not sought; it is pleaded that contributory negligence cannot be imputed to a child of tender age; principles of *res ipsa loquitur* and strict liability are invoked.

5. The counsels for the respondents have been heard and the written arguments along with judgments filed by the counsel for the petitioners perused.

6. In view of the plethora of case law which has developed on the subject, need is not felt to discuss the law in detail. Suffice it is to refer to *Ram Kishore Vs. MCD 2007 VII AD (Del) 441* and to *Swarn Singh Vs. Union of India (UOI) and Others* discussing the legal position in detail.

7. I find the facts of the present case to be similar to those of *Sh. Kishan Lal and Others Vs. Govt. of NCT of Delhi and Others* That was also a case of a child of seven years falling in an open manhole. This Court in that case held that the respondents MCD failed to demonstrate how death could have reasonably happened without negligence on its part. On the basis of the opinion of the doctor that the cause of death was asphyxia as a result of drowning and the factum of discovery of the body by local residents in the manhole near the lavatory which the child had visited and from the factum that if the manhole was covered the child would not have fallen in it, inference of negligence was deduced. The plea of contributory negligence was negated. In the present case also, the factum of the deceased having fallen and having been pulled out from the sewer/drain is not disputed. Moreover, there is no explanation as to why the sewer/drain was left uncovered. Thus, a case of negligence on the part of the respondent No. 2 MCD is made out.

8. The next question is as to the quantum of compensation. The counsel for the respondent No. 2 MCD has urged that there is no evidence of the age of the deceased in the present case and no proof of income of the petitioner No. 1. However the statements recorded after the incident and the Inquest Report

made on the day of the incident disclose the age of the deceased to be three and a half years. The parents of the deceased within a few hours of the demise of their child cannot be held to have disclosed the age to be anything else than it was.

9. This Court in *Kishan Lal* (supra) where the age of the deceased was seven years and where the father of the deceased was shown to be earning Rs. 4,000/- per month and where the incident occurred in 2005, awarded compensation of Rs. 5,13,801/- with simple interest @ 6% per annum with effect from the date of the petition till the date of payment. In the absence of any proof of income of the father, this Court in *Ram Kishore* (supra) had applied a formula of minimum wages. Applying the aforesaid formula, the standard compensation for non pecuniary loss taken as Rs. 50,000/- and adjusted according to inflation in 2006 would be Rs. 1,61,102/- and the compensation for pecuniary loss of dependency also taken on the basis of minimum wages would be Rs. 4,41,585/-. Accordingly, the petitioners are found entitled to total compensation of Rs. 6,02,687/-.

10. The writ petition is accordingly allowed. The respondent No. 2 MCD is directed to pay compensation of Rs. 6,02,687/- with interest @ 6% per annum from 11th July, 2006 when the petition was filed, till the date of payment. Out of the aforesaid amount, a sum of Rs. 1,00,000/- be released immediately by cheques of equal amount of Rs. 50,000/- in the name of each of the petitioners. The balance amount be forwarded in the form of a fixed deposit with a nationalized bank in the joint names of the petitioners to the Delhi Legal Services Authority (DLSA). The Secretary, DLSA is requested to, after interacting with the petitioners release the said amount and / or make provision for release thereof after adjudging the requirements of the petitioners and their other children if any.

No order as to costs.