

(2003) 12 DEL CK 0076

In the Delhi High Court

Case No : Civil Writ Petition: 1309 of 1991

Ramesh Devi

APPELLANT

Vs

Delhi Development Authority

RESPONDENT

Date of Decision : 03-12-2003

Acts Referred:

Penal Code, 1860 (IPC) — Section 304, 337

Citation : (2003) 2 ILR Delhi 570

Hon'ble Judges : Sanjay Kishan Kaul, J

Bench : Single Bench

Advocate : Anil Aggarwal, for the Appellant; Rajiv Bansal, Advocate for Respondent No. 1 and Ms. Neelam Tiwari, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Sanjay Kishan Kaul, J.—A gentleman by the name of Shri Veer Singh, who was the husband of the petitioner, was running a cycle repair shop adjacent to the wall of office of the respondent DDA situated at Asaf Ali Road, New Delhi. On 25.08.1990 at about 6.00 A.M. the wall collapsed on Shri Veer Singh and he sustained multiple fractures, blunt injury abdomen with bilateral fracture ribs and left hemopneumothorax and scapule, Paraplegia Ducto Spinal injury and crush injury-right hand. Shri Veer Singh was shifted to Loknayak Jai Prakash Narain Hospital, New Delhi and MLC was prepared on 25.08.1990. On 27.8.1990 he passed away due to injuries sustained by him. He was aged about 38 years at the time of his death. A case is stated to have been registered u/s 337 of the IPC vide FIR No. 133/1990 on 25.08.1990 but on the death of Shri Veer Singh, the case was converted to u/s 304 of the IPC.

2. The writ petition has been filed by the petitioner herein for various reliefs on account of negligence on the part of the respondent to maintain and keep its property in good condition. It is stated that the structure was weak and no periodic check ups were done. If proper caution have been taken, the accident could have been avoided. As a result of the negligent conduct of the respondent,

the wall collapsed and caused injuries to late Shri Veer Singh.

3. Shri Veer Singh is survived by the petitioner and five minor children. The petitioner is an illiterate lady of about 35 years of age having no source of income.

4. The respondent paid a sum of Rs. 20,000/- as ex-gratia and is stated to have assured that she would be absorbed in the employment as a special case. The petitioner first served a legal notice on 16.11.1990 followed by another legal notice dated 16.02.1991, prior to the filing of the present writ petition. In the writ petition, it is also stated that Late Shri Veer Singh was earning about Rs. 1500/- per month and the dependency of the children was about Rs. 1200/- per month. The pecuniary loss has been quantified at Rs. 3 lakhs, as a result of the loss of income apart from the loss of affection and care to the children.

5. In the counter affidavit filed by the DDA in answer to the show cause notice, the collapse of the wall is admitted but the reason is stated to be rainy season. It has also been denied that any injuries were caused to late Shri Veer Singh. The counter affidavit also states that there is no negligence on the part of the respondent and the wall was in good condition. The grant of ex-gratia payment is admitted but the same is stated to be a good gesture in view of the totality of the circumstances.

6. The petitioner has prayed for compensation of Rs. 3 lakhs, as also a job opportunity as a class IV employee on compassionate ground. At the stage of entertaining the writ petition on 23.10.1991, the Division Bench observed that it was not satisfied with the averments made in the counter affidavit and requisitioned the file sanctioning the amount of Rs. 20,000/-. The original file was produced before the Court on 27.11.1991 and it was noted that Shri Veer Singh appeared to have died on account of portion of the boundary wall of the project office of the DDA having collapsed. The petitioner was asked to file an affidavit to show how much the deceased was earning and what was his liability at the time of his death. It may be noticed that efforts were made to find out whether the petitioner could be given employment by the DDA. The DDA offered only a daily wage employment to the petitioner at the rate of Rs. 43.50 per day which was not acceptable to the petitioner. This is recorded in the order dated 04.02.1993. Even thereafter efforts were unsuccessfully made to sort out the issue of employment.

7. In so far as the earning capacity of late Shri Veer Singh is concerned, an affidavit has been filed by the petitioner herein affirming that Shri Veer Singh was earning about Rs. 1500/- per month, was aged about 38 years and was having good health with no illness but died due to injuries sustained by him as a result of collapse of the wall. The persons dependent on him were the petitioner and five minor children, born between 1976 to 1989.

8. In the affidavit filed in response thereto, the DDA for the first time raised the issue about the possibility of heavy vehicle hitting the wall on the night of

24/25th August, 1990. In fact what is stated is that this possibility cannot be ruled out being a busy road and that Shri Veer Singh had no business to be next to the wall. The other averments have been denied.

9. At the stage when the matter was taken up for hearing on 31.10.2003, learned Counsel for the petitioner stated that the petitioner would be satisfied if an amount of Rs. 1 lakh as compensation towards full and final claim of the petitioner less the amount already paid with reasonable interest is paid by the DDA. The petitioner was willing to give up the claim of employment. Learned Counsel for respondent no. 1 thus took time to obtain instructions. Today learned Counsel states that the respondent DDA is not willing to accept the proposal of the petitioner and the matter be heard on merit.

10. Learned Counsel for the DDA has produced the original records which show that the matter was considered. The nothings show that the concerned authorities of the DDA have considered the matter and a plea has been taken about the possibility of vehicle hitting the wall resulting in the collapse of wall. The final decision is based on the ground that the person who had died was a total outsider and his death had nothing to do with the official duty. It is noted that there is no clear link established between the death and the poor construction of the DDA and thus the case should be contested on merits.

11. I have considered the submissions advanced by learned Counsel for the parties. I find that the very plea rejecting the proposal of the petitioner as recorded in the case is fallacious.

12. The death of late Shri Veer Singh is not in dispute. The FIR registered and the documents also show that the death is due to the collapse of the wall. It can hardly be argued that a properly built up wall would have collapsed due to rain. It is not a case where a force majeure like an earthquake has occurred. In my considered view, the cause of the death is clear being the collapse of the wall. In fact nothing more was required to be said on this account and the facts themselves speak out -res ipsa loquitur. It cannot be said that there was no obligation on the part of the DDA to properly maintain the wall.

13. To allege the possibility of heavy vehicle hitting the wall was clearly an after-thought on the part of the DDA to somehow deny the claim of the petitioner. Not only this the same is in the realm of possibility and it is not even averred that the same has occurred. I find it unfortunate that a public body like the DDA should have taken such an unreasonable stand in a case of a death of a person.

14. It is even more unfortunate that the petitioner had to wait for 12 long years for the disposal of the writ petition. The deceased passed away leaving the petitioner and five minor children and ex-gratia of Rs. 20,000/- can hardly be expected to meet the requirement of such persons when the sole earning member of the family is lost in the accident. There can hardly be any occasion to make the ex-gratia payment if the cause was not made. It is not a case where the DDA generally awards ex-gratia payments.

15. The proposal for alternative employment has been explored but not found feasible. In view thereof the proposal made by learned Counsel for the petitioner was more than eminent and fair which has been rejected by the DDA for no cogent reasons. It is not necessary that the DDA has to make payment only to its employees. The reasoning that there is no linkage between the death and any act of the DDA is fallacious. The wall was of the DDA. The wall collapsed. The death was caused due to collapse of the wall.

16. The plea that the petitioner should be relegated to the suit at this stage cannot be sustained specially with the development of law subsequently. The Division Bench of this Court in Association of Victims of Uphar Tragedy & Others Vs. Union of India & Others 2003 (2) JCC 715, has held that where question of life and liberty arises merely because some disputed questions of fact are sought to be raised, the Court would not be justified in requiring the party to seek relief by way of lengthy, dilatory and expensive process of civil suit. There can be matters which call for detailed evidence and enquiry which can be determined only after adducing evidence. Even in such cases it is open to the Court in exercise of jurisdiction to fix some reasonable amount of compensation before relegating parties to a civil suit. However, in the present case the cause of the death and the liability of the DDA, in my considered view, is not in doubt. Thus the only question is a claim of compensation which the petitioner should be entitled.

17. The petitioner is stated to have been earning about Rs. 1500/- per month and spending about Rs. 1200/- on the family consisting of the wife and five children. This is sworn on the affidavit by the petitioner and that late Shri Veer Singh was carrying on cycle repair business. The figures are not unreasonable or cannot be stated to be unacceptable. Shri Veer Singh was 38 years of age and was capable of working at least till about 60 years of age. That would also a reasonable period to have the life expectancy. Thus he had a period of 22 years of working still left. The amount of Rs. 1200/- per month would translate to Rs. 14,400/- per year. Thus amount for a period of 22 years would come to Rs. 3,16,800/-. There would also be the question of adjustment on account of lumpsum payment but the same has to be balanced with the prospect of increased capacity of earning. The petitioner has claimed a sum of Rs. 3 lakhs. I thus consider it appropriate to award an amount of Rs. 3 lakhs as compensation to the petitioner. An amount of Rs. 20,000/- already paid be deducted out of this amount. This amount would have been due to the petitioner in 1991. The petitioner would thus also be entitled to interest on this amount of Rs. 3 lakhs. Taking into consideration the rates during this period of time, I consider it appropriate to award simple interest @ 9% per annum from the date of accident till the date of payment.

18. At this stage, learned Counsel for respondent No. 1 states that this Court should confine the award of compensation to the amount which was proposed by learned Counsel for the petitioner. I am unable to accept this suggestion since

respondent did not accept the proposal and invited the judgment on merits. Having said that it is not open to DDA now to state that the proposal made by petitioner as a settlement should be the basis for awarding the compensation by this Court.

19. A writ of mandamus is issued directing respondent No. 1 DDA to remit the aforesaid amount of Rs. 2,80,000/- with interest to the petitioner within a maximum period of one month from today, through counsel. The writ petition is allowed with costs of Rs. 10,000/-. Dasti to learned Counsel for the parties.