

(2000) 09 DEL CK 0143
In the Delhi High Court
Case No : IA. /99 in Suit No. 704/96

Rita Kishor and Others

APPELLANT

Vs

Delhi Development Authority

RESPONDENT

Date of Decision : 01-09-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Citation : AIR 2000 Delhi 417 : (2001) 1 CivCC 229 : (2001) 1 RCR(Civil) 366

Hon'ble Judges : Mukul Mudgal, J

Bench : Single Bench

Advocate : Mr. R.P. Bansal and Mr. Sharad K. Aggarwal, for the Appellant; Ms. Gita Mittal and Ms. S. Takiar, for the Respondent

Judgement

Mukul Mudgal, J.—This is an application on behalf of the plaintiff u/s 151 of the CPC seeking interim reliefs from the defendant-DDA.

2. The plaintiffs have filed the suit for compensation and damages against the defendant-DDA on account of the unnatural and untimely death of plaintiff No.1's husband who was the father of the plaintiffs 2-3, who are minors.

3. At the time of his death, the deceased girl Raj Kishor was a senior-most Assistant Field Investigator in DDA and it is pleaded by the learned counsel for the plaintiffs that the deceased was due for promotion as a Field Investigator.

4. The plaintiff's case is that on 21st April 1994, there was a fatal accident in the lift installed in defendant - Delhi Development Authority's (hereinafter referred to as DDA) building in which the said girl Raj Kishor died. It is not in dispute that the deceased, Shri girl Raj Kishor, was an employee of the defendant-DDA and the lift was installed in DDA's building and that the accident occurred during working hours, i.e., 10.15 AM on 1st April, 1994.

5. The learned senior counsel for the plaintiffs, Shri R.P. Bansal, has relied upon the pleading in the written statement wherein it is stated that the accident occurred due to the technical defect in the lift. The learned counsel for the

plaintiffs has also relied upon the Para 4 of the written statement wherein it has been stated that Mr. Om Vir Singh, Lift Operator and Sh. B.C. Joshi, Mechanic deserves to be blamed for allowing the passengers in the lift which was not working satisfactorily for the last 10 days. The plaintiffs have submitted that since the said employees viz. S/Shri Om Vir Singh and B.C. Joshi were the employees of DDA, Therefore the DDA is responsible for their action assuming without admitting that the averments of the defendants qua Mr. Om Vir Singh and Mr. B.C. Joshi are correct. The learned counsel for the plaintiffs contends that the lift not having worked satisfactorily for the last 10 days it was, Therefore, the duty of the defendant-DDA to take steps to safeguard the life of their employees by taking adequate precautions

6. In the plaint the plaintiff No.1 has averred that her husband was 37 years old at the time of his death and he was drawing the salary of Rs. 4,000/- per month and he was expected to serve the DDA for another 21 years. The plaintiffs, Therefore, claim a sum of Rs.15 lacs towards salary as well as other benefits to which girl Raj would have been entitled to in the normal course had he served the DDA until his retirement.

7. In the light of these pleadings, interim damages have been claimed by the plaintiffs by the present application.

8. The plea of the learned counsel for the DDA, Ms. Gita Mittal, is that the prayer made in this interim application is not maintainable as this application seeks interim relief in a case where the defendant is sued for tortious liability. The other allegations regarding negligence have been rebutted. The quantum of damages claimed has also been disputed.

9. The main case of the plaintiffs is based on the averments that the following facts having been admitted by the defendants :

- a. that the plaintiff was employed with the defendants;
- b. there was negligence on the part of the employees of the DDA in maintaining the lifts;
- c. that the accident occurred on a working day during working hours i.e. on 1st April 1994 at 10.15 a.m.

10. The plea of the learned counsel for the plaintiff is that in view of these admissions the only question which is now required to be determined in the suit is the quantum of damages payable to the plaintiff.

11. The plea taken in the written statement by the defendant is that the following amount has been paid to the plaintiff :

- 1. Leave encashment Rs.17,478/-
- 2. Gratuity Rs. 22,032/-
- 3. G.P.F. Rs. 38,061/-
- 4. Leave salary up to 21.4.94 Rs. 2,750/-
- 5. G.I.S. Rs. 10,000/-
- 6. Benevolent fund Rs. 10,000/-
- 7. Ordinary family Pension Rs.765/- p.m. family pension from 22.4.94 to 21.4.2001 after that Rs.450/- p.m. from 22.4.2001 and time to time

pension benefit sanctioned.

12. It is further stated that one out of turn flat of DDA has been allotted to the plaintiff, the prevailing market value of which is more than double the allotted price and the flat has been allotted only at Rs.4,01,400/- which also amounts to compensation, because the plaintiff was not entitled for allotment either in general pool because there was no ground for the same. It is further pleaded that the accident occurred due to failure of the machine and not on account of negligence of any officer. Further it was also pleaded that Shri Om Vir Singh mechanic and Shri B.C. Joshi, lift operator deserves to be blamed for allowing the passengers in the lift which was not found functioning satisfactorily for the last 10 days.

13. The learned counsel for the plaintiff in support of the plea that interim relief can be granted in the present case which arises out of an averred tortious liability of the defendant, has relied upon the judgment of the Hon"ble Supreme Court reported as Manohar Lal Chopra Vs. Rai Bahadur Rao Raja Seth Hiralal, to contend that under the inherent powers of the Court u/s 151 of the Code, such relief can be granted by a Court. He has relied upon the following observations of the Hon"ble Supreme Court :

"The section itself says that nothing in the Code shall be deemed to limit or otherwise affect the inherent power of the Court to make orders necessary for the ends of justice. In the face of such a clear statement, it is not possible to hold that the provisions of the Code control the inherent power by limiting it or otherwise affecting it. The inherent power has not been conferred upon the Court; it is a power inherent in the Court by virtue of its duty to do justice between the parties before it."

14. The law of interim compensation awardable in writ jurisdiction has been summed up in a decision reported as The Chairman, Railway Board and Others Vs. Mrs. Chandrima Das and Others, and the Hon"ble Supreme Court observed as follows:

"Various aspects of the public law field were considered. It was found that though initially a petition under Article 226 of the Constitution relating to contractual matters was held not to lie, the law underwent a change by subsequent decisions and it was noticed that even though the petition may relate essentially to a contractual matter, it would still be amenable to the writ jurisdiction of the High Court under Article 226. The public law remedies have also been extended to the realm of tort. This Court, in its various decisions, has entertained petitions under Article 32 of the Constitution on a number of occasions and has awarded compensation to the petitioners who had suffered personal injuries at the hands of the officers of the Government."

15. In D.K. Basu Vs. State of West Bengal 1997(1) SC 416 it was held as follows by the Hon"ble Supreme Court :-

44. The claim in public law for compensation for unconstitutional deprivation of fundamental right to life and liberty, the protection of which is guaranteed under the Constitution, is a claim based on strict liability and is in addition to the claim available in private law for damages for tortious acts of the public laws proceedings. Award of compensation for established infringement of the indefeasible rights guaranteed under Article 21 of the Constitution is a remedy available in public law since the purpose of public law is not only to civilize public power but also to assure the citizens that they live under a legal system wherein their rights and interests shall be protected and preserved. Grant of compensation in proceedings under Article 32 or Article 226 of the Constitution of India for the established violation of the fundamental rights guaranteed under Article 21, is an exercise of the courts under the public law jurisdiction for penalising the wrongdoer and fixing the liability for the public wrong on the State which failed in the discharge of its public duty to protect the fundamental rights of the citizen.

45. The old doctrine of only relegating the aggrieved to the remedies available in civil law limits the role of the courts too much, as the protector and custodian of the indefeasible rights of the citizens. The courts have the obligation to satisfy the social aspirations of the citizens because the courts and the law are for the people and expected to respond to their aspirations. A court of law cannot close its consciousness and aliveness to stark realities. Mere punishment of the offender cannot give much solace to the family of the victim — civil action for damages is a long drawn and a cumbersome judicial process. Monetary compensation for redressal by the court finding the infringement of the indefeasible right to life of the citizen is, Therefore, useful and at times perhaps the only effective remedy to apply balm to the wounds of the family members of the deceased victim, who may have been the breadwinner of the family.

54. Thus, to sum up, it is now a well - accepted proposition in most of the jurisdictions, that monetary or pecuniary compensation is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressal of the established infringement of the fundamental right to life of a citizen by the public servants and the State if vicariously liable for their acts. The claim of the citizen is based on the principle of strict liability to which the defense of sovereign immunity is not available and the citizen must receive the amount of compensation from the State, which shall have the right to be indemnified by the wrongdoer. In the assessment of compensation, the emphasis has to be on the compensatory and not on punitive element. The objective is to apply balm to the wounds and not to punish the transgressor or the offender, as awarding appropriate punishment for the offence (irrespective of compensation) must be left to the criminal courts in which the offender is prosecuted, which the State, in law, is duty bound to do. The award of compensation in the public law jurisdiction is also without prejudice to any other action like civil suit for damages which is lawfully available to the victim or the heirs of the deceased victim with respect to the same matter for the tortious act committed by the

functionaries of the State. The quantum of compensation will, of course, depend upon the peculiar facts of each case and no strait-jacket formula can be evolved in that behalf. The relief to redress the wrong for the established invasion of the fundamental rights of the citizen, under the public law jurisdiction is, thus, in addition to the traditional remedies and not in derogation of them. The amount of compensation as awarded by the Court and paid by the State to redress the wrong done, may in a given case, be adjusted against any amount which may be awarded to the claimant by way of damages in a civil suit."

16. Thus, it will readily be seen that even in a writ petition if orders for compensation could be passed while leaving the option to file a suit for tortious liability subject to final adjustment, I see no difficulty why the same principle cannot be followed in a civil suit which is filed for tortious liability without taking recourse to writ proceedings. In fact in view of the law laid down by the Hon'ble Supreme Court in D.K. Basu (supra) case in a civil suit the need to award interim damages is even more imperative particularly in view of the admitted facts of the present case.

17. In the facts of the case such as the present one and in view of the admitted position that the deceased girl Raj Kishor was an employee of the DDA, the lift was owned by the DDA and the fatal accident occurred during working hours, I am satisfied that the plaintiffs have made out a case for grant of interim relief. Further the learned counsel for the plaintiff is justified in contending that the main determination in the suit in view of the above admission is really the quantum of damages. The denial of interim relief to the widow and her two sons i.e. the plaintiffs would cause grave injustice, particularly when basic facts arising in the present suit are admitted by the DDA. The facts of the present case represent a poignant plight of a hapless widow and her two minor sons i.e. plaintiffs 2 and 3 aged about 12 and 8 years who have been rendered destitute due to the unfortunate accident in the lift. The denial of the interim relief at this stage would effect not only the well being of the widow but also affect the education and career prospects of the two minor children. The need of a family of the deceased in such a situation is immediate and imminent. Denial of interim relief in the facts of the present case would occasion a grave miscarriage of justice, by causing irretrievable injury to the well being of the plaintiffs and the career of plaintiffs No. 2 and 3. When basic facts are admitted it would be unjust if the plaintiffs are not given the interim relief prayed for. The balance of convenience is thus clearly in favor of the plaintiffs. In this view of the matter I am satisfied the interim relief should be granted to the plaintiffs. The plaintiffs have made out a clear prima facie case in their favour.

18. The claim raised in the suit is for damages to the tune of Rs.20 lacs. It is pertinent to note that at the time of the accident, the deceased was 37 years old and he was the senior most Asstt. Field Investigator at that time and was drawing a salary of Rs. 4,000/- per month. The amount of the damages in the plaint is on the basis of the estimated salary as also the enhancement in the

salary and the balance period of the employment.

19. Considering all the facts and circumstances of the present case and in particular the fact that the plaintiff was only 37 years of age at the time of death and was likely to work until the age of superannuation, I am satisfied that a sum of Rs. 5.00 lacs should be awarded as an interim relief. This amount paid will of course, subject to the result of the suit and subject to adjustment upon final determination in this suit. This amount be paid to the plaintiffs within a period of 3 weeks from today.

S. No. 704/96

20. List the suit for directions on 23rd October 2000 before the appropriate court.