

(2012) 02 DEL CK 0354

In the Delhi High Court

Case No : Writ Petition (C) 768 of 2009

Santu Ram and Another

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 07-02-2012

Acts Referred:

Constitution of India, 1950 — Article 21, 226
Criminal Procedure Code, 1973 (CrPC) — Section 91
Penal Code, 1860 (IPC) — Section 304A

Citation : (2013) ACJ 1746

Hon'ble Judges : Vipin Sanghi, J

Bench : Single Bench

Advocate : Siddhant Gautam, for the Appellant; Rajiv Bansal, Ms. Swati Gupta for DDA, Ms. Anjali Sharma for R-3 ASI and Pritam Singh, Sangam Vihar, for the Respondent

Final Decision : Allowed

Judgement

Vipin Sanghi, J.—This writ petition has been filed by the petitioners, namely Sh. Santu Ram and his wife, Smt. Pushpa Devi, under Article 226 of the Constitution of India, to claim compensation of Rs. 20 lakhs from the respondents on account of the death of their son Master Sanjay Kumar, aged around 15 years, because of the alleged negligence and dereliction of duty on the part of the respondents. The case of the petitioners is that on 10.01.2008 at around 4:15 p.m. their son, Master Sanjay Kumar, was playing cricket along with his friends in DDA Park, near BSF Camp, Sangam Vihar. There were a large number of cemented electric poles which were kept in the middle of the park by BSES in a disorderly manner. While playing cricket in the park, the cricket ball went underneath the electric cemented poles lying there and Master Sanjay Kumar went to retrieve the ball. When the boy was taking out the ball from amongst the poles stacked in a disorderly fashion, one of the poles fell over the head of the deceased which caused fatal injury to the deceased.

2. As the incident occurred, many persons gathered on the spot and some of them informed the police. The police then took the injured boy to Batra Hospital, where the doctors declared the boy as brought dead. The medico-legal report has also been filed by the petitioners which shows that the deceased was brought in a dead condition to the hospital at 4:45 p.m. on 10.01.2008.

3. The FIR of the incident was also recorded, being FIR No. 20/2008 in police station Sangam Vihar u/s 304A IPC against unknown persons. The postmortem has been conducted on the deceased boy and the cause of death is shown as - shock due to haemothorax, which could be possible by fall of electric pole on the body. The death certificate of the deceased has also been placed on record.

4. It is submitted by the petitioners that they are poor persons and are surviving by doing petty labour work. They further submit that their son was a good student and was having a bright future ahead. The petitioners have placed on record the certificate issued by the National Institute of Open Schooling to certify that the deceased had completed "C" level course of open basic education, which is equivalent to class VII/VIII of schooling.

5. The petitioners submit that they were having very high hopes from their son but due to his untimely death all their hopes and dreams have been shattered. They submit that the deceased was their only son, and his rise in life would have given a better status to the family both financially and socially. They have suffered great mental pain and agony and this loss cannot be compensated in terms of money.

6. The petitioners also submit that the respondent no. 4, i.e. SHO, P.S. Sangam Vihar has failed to investigate the matter and has not even recorded the statements of the eyewitnesses who were present at that time. They allege that police has deliberately not mentioned the name of the eyewitnesses in the FIR and it only shows their casual and careless attitude towards the matter. The petitioner no. 1 has also written a letter dated 12.06.2008 to the DCP (South) for directing the SHO Sangam Vihar to investigate the matter sincerely and record the statements of all the eyewitnesses.

7. The petitioners submit that the death of their child has been caused due to the negligence which can be attributed to the respondents. The cemented poles were kept in the middle of the park in a disorderly and negligent manner without any safety precaution, and even a slight push could make the poles roll down. The petitioners further submit that the poles were kept in a public park which was being freely used by the public at large.

8. The petitioners submit that State instrumentalities have failed to act with due care and it is a breach of public duty cast upon them by law. Consequently, fundamental rights of the petitioners son have been violated and they are entitled to invoke the extraordinary jurisdiction of the Court under Article 226 of the Constitution as the public law remedy is available to them for claiming compensation.

9. It is also submitted by the petitioners that petitioner no. 1 has visited the office of the respondents a number of times for some relief but no help has been provided by the respondents. Petitioner no. 1 has also issued a legal notice dated 12.06.2008 to all the respondents demanding compensation for the death of his son, but to no avail. Thus as a last resort, this petition has been preferred.

10. Upon issuance of notice, respondent no. 2, Delhi Development Authority (DDA) and respondent no. 3, BSES Rajdhani Power Ltd. (BSES) have filed their counter affidavits. Respondent no. 4, SHO, P.S. Sangam Vihar has filed a status report along with the copy of the charge sheet.

11. The respondent DDA has taken the stand that they are not liable to pay any compensation to the petitioners, as there was no omission or negligence on their part which has caused the death of the deceased. They have contended that BSES had dumped the electric poles in the park during the night of 09.01.2008 unauthorisedly, without taking any prior or written permission from the DDA.

12. The DDA has attributed the negligence to BSES, as they had been given the contract for supplying electricity in the area. The DDA also submits that they hardly had any time to take any corrective steps, as the poles were dumped by BSES on the night of 09.01.2008, and the alleged incident has taken place on 10.01.2008. Thus, according to the DDA, the responsibility for payment of compensation lies entirely with BSES.

13. In the counter affidavit of respondent BSES, they have stated that extensive evidence would have to be led in this matter to establish responsibility for causing death of Mr. Sanjay Kumar due to negligence on the part of BSES and the proper remedy for the petitioners would be to file a civil suit for damages. They have also stated that the poles were not kept in a park, and it was an open tract of undeveloped land which belonged to the DDA, which was not meant for any public movement or activity.

14. The respondent no. 3 has also contended that the poles were kept in a proper and orderly manner and not in a disorderly or haphazard manner as alleged by the petitioners. They have also stated that the poles cannot roll down without there being contributory negligence on the part of the deceased boy.

15. In the status report filed by the respondent no. 4, it is stated that during investigation, notice u/s 91 Cr.P.C was issued to BSES. In pursuance of that it was revealed that the said poles were unloaded by M/s Rajindra Presstress Concrete Industries and the erection work for electrification of the area was being done by M/s Amba Enterprises and it was supervised by Sh. Brij Pal. The said accused Brij Pal has been arrested in this case and the case is pending trial. They have also filed the copy of the charge sheet which has been produced by the Delhi Police in the concerned court.

16. To counter the question of maintainability of the present petition, the petitioners have placed reliance on the decision of this Court in Darshan and

Others (Smt.) Vs. Union of India and Others, . In this case the deceased had died of drowning after falling into an open manhole. The Division Bench of this court held as follows -

"Coming to instant case. It is one of *res ipsa loquiter*, where the negligence of the instrumentalities of the State and dereliction of duty is writ large on the Red Fort in leaving the manhole uncovered. The dereliction of duty on their part in leaving a death trap on a public road led to untimely death of Skatter Singh. It deprived him of his fundamental right under Article 21 of the Constitution of India. The scope and ambit of Article 21 is wide and far reaching. It would, undoubtedly, cover a case where the state or its instrumentality failed to discharge its duty of care cast upon it, resulting in derivation of life or limb of a person. Accordingly, Article 21 of the constitution is attracted and the petitioners are entitled to invoke Article 226 to claim monetary compensation as such a remedy is available in public law, based on strict liability for breach of fundamental rights."

17. Recently this Court in the case of Varinder Prasad V. BSES Rajdhani Power Ltd. and Others, W.P. (C.) No. 8924/2007 decided on 18.01.2012, had dealt with the said issue. In that case, the Court took into account the earlier decision of this court in Ram Kishore V. MCD, 2007(97) DRJ 445, to hold that a writ petition to claim compensation is maintainable under Article 226 of the Constitution of India, in case there is violation of fundamental rights.

18. As far as the principle of strict liability is concerned, reference may be made to a leading case of MCD V. Suhagwanti, AIR 1966 SC 1750, wherein the Supreme Court applied the strict liability principle in awarding compensation to the victim. The Court applied the maxim *Res Ipsa Loquitor* as the mere fact that the clock tower fell, told its own story in raising the inference of negligence so as to establish a *prima facie* case against the Corporation.

19. In Pushpabai Purshottam Udeshi and Others Vs. Ranjit Ginning and Pressing Co. (P) Ltd. and Another, , the Supreme Court explained the doctrine of *Res Ipsa Loquitor* in the following words:

"6. The normal rule is that it is for the plaintiff to prove negligence but as in some cases considerable hardship is caused to the plaintiff as the true cause of the accident is not known to him but is solely within the knowledge of the defendant who caused it, the plaintiff can prove the accident but cannot prove how it happened to establish negligence on the part of the defendant. This hardship is sought to be avoided by applying the principle of *res ipsa loquiter*. The general purport of the words *res ipsa loquiter* is that the accident "speaks for itself" or tells its own story. There are cases in which the accident speaks for itself so that it is sufficient for the plaintiff to prove the accident and nothing more. It will then be for the defendant to establish that the accident happened due to some other cause than his own negligence. Salmond on the Law of Torts (15th Ed.) at p. 306 states : "The maxim *res ipsa loquiter* applies whenever it is

so improbable that such an accident would have happened without the negligence of the defendant that a reasonable jury could find without further evidence that it was so caused". In Halsbury's Laws of England, 3rd Ed., Vol. 28, at page 77, the position is stated thus : "An exception to the general rule that the burden of proof of the alleged negligence is in the first instance on the plaintiff occurs wherever the facts already established are such that the proper and natural inference arising from them is that the injury complained of was caused by the defendant's negligence, or where the event charged as negligence "tells its own story" of negligence on the part of the defendant, the story so told being clear and unambiguous". Where the maxim is applied the burden is on the defendant to show either that in fact he was not negligent or that the accident might more probably have happened in a manner which did not connote negligence on his part."

20. As far as this case is concerned, neither of the respondents have denied the alleged accident. Nor have they denied that the death of Master Sanjay Kumar has been caused due to the falling of the cemented pole on him. This fact is also verified by the post mortem report, which shows the cause of death could be fall of electric pole on the body of the deceased. The occurrence of the incident has also been recorded in the FIR and the subsequent charge sheet which has been filed by the police. Petitioners have also filed affidavits of the parents of the children who were playing on that day with the deceased.

21. It has not been denied by the respondents that the cemented poles were kept by them, nor they have produced anything on record to show they have kept the poles after taking proper safety precautions. The poles were stacked in a pile with some of them rather precariously placed. The area was not cordoned off and no security guard was stationed to safeguard the poles and the public against possible harm from their collapse. No signage was put up to warn the public of the possible dangers that the said heavy cemented poles posed, in case they were to roll down from their position due to their inept stacking. Photographs taken soon after the incident have been placed on record which tell their own tale. The heavy cemented poles appear to be incapable of being lifted by a 15 year old boy. It is clear that at the time of their stacking, some of these poles were not carefully stacked in alignment and were left in a precarious position, which led to collapse of some of them when the boy in question went to retrieve the ball he was playing with in the park. The respondent BSES was obliged in law to ensure that the cemented poles were properly stacked in alignment, so that they, or any of them, do not roll down either on their own, or on application of a slight force. They should have cordoned off the area where the poles were stored, as these poles were stacked in an open public area, which was accessible to the public at large. BSES should have known that it owes a duty to the public at large against any loss or harm that they may suffer from the stacked cemented poles, stored in a public park.

22. Clearly the place where the poles were kept was a public place and anybody

could have access to that place without any hindrance. It was certainly the duty of the respondent BSES to ensure that their actions or omissions do not cause harm or injury to any other person who may come into contact with that poles stacked in an open public place. The respondents were negligent in keeping the cemented poles in an open public area, where the general public had access, without any warning or taking proper safety measures. So, the principle of strict liability will be applicable in the present case and the BSES is liable to pay compensation to the petitioners for the ultimate breach of their only son's most valuable fundamental right to life, guaranteed under Article 21 of the Constitution of India.

23. Now, as far as the quantification of compensation is concerned, the Supreme court has observed in *New India Assurance Co. Ltd V. Satender & Others*, (2006) 13 SCC 60, and in *Lata Wadhwa & Others V. State of Bihar & Ors.*, (2001) 8 SCC 197, that the compensation should be quantified, in case of death of an infant child, on the following principles:

"In case of the death of an infant, there may have been no actual pecuniary benefit derived by its parents during the child's life-time. But this will not necessarily bar the parent's claim and prospective loss will find a valid claim provided that the parents" establish that they had a reasonable expectation of pecuniary benefit if the child had lived. This principle was laid down by the House of Lords in the famous case of *Taff Vale Rly. V. Jenkins* (1913) AC 1, and Lord Atkinson said thus:

".....all that is necessary is that a reasonable expectation of pecuniary benefit should be entertained by the person who sues. It is quite true that the existence of this expectation is an inference of fact - there must be a basis of fact from which the inference can reasonably be drawn; but I wish to express my emphatic dissent from the proposition that it is necessary that two of the facts without which the inference cannot be drawn are, first that the deceased earned money in the past, and, second, that he or she contributed to the support of the plaintiff. These are, no doubt, pregnant pieces of evidence, but they are only pieces of evidence; and the necessary inference can I think, be drawn from circumstances other than and different from them." "

24. The Courts have evolved a two-tier compensation mechanism. It has two components, i.e. the conventional sum, and pecuniary compensation, in such cases. The Court in *Smt. Kamla Devi Vs. Government of NCT of Delhi and Another*, held as follows-

"5. The compensation to be awarded by the Courts, based on international norms and previous decisions of the Supreme Court, comprises of two parts:

(a) "standard compensation" or the so-called "conventional amount" (or sum) for non-pecuniary losses such as loss of consortium, loss of parent, pain and suffering and loss of amenities; and

(b) Compensation for pecuniary loss of dependency.

6. The "standard compensation" or the "conventional amount" has to be revised from time to time to counter inflation and the consequent erosion of the value of the rupee. Keeping this in mind, in case of death, the standard compensation in 1996 is worked out at Rs. 97,700/-. This needs to be updated for subsequent years; on the basis of the Consumer Price Index for Industrial Workers (CPI-IW) brought out by the Labour Bureau, Government of India.

7. Compensation of pecuniary loss of dependency is to be computed on the basis of loss of earnings for which the multiplier method is to be employed. The table given in Schedule II of the MV Act, 1988 cannot be relied upon, however, the appropriate multiplier can be taken there from. The multiplier is the yearly income of the deceased less the amount he would have spent upon himself. This is calculated by dividing the family into units-2 for each adult member and 1 for each minor. The yearly income is then to be divided by the total number of units to get the value of each unit. The annual dependency loss is then calculated by multiplying the value of each adult member. This becomes the multiplicand and is multiplied by the appropriate multiplier to arrive at the figure for compensation of pecuniary loss of dependency.

8. The total amount paid under 6 and 7 above is to be awarded by the Court along with simple interest thereon calculated on the basis of the inflation rate based on the Consumer Prices as disclosed by the Government of India for the period commencing from the date of death of the deceased till the date of payment by the State.

9. The amount paid by the State as indicated above would be liable to be adjusted against any amount which may be awarded to the worked out a pattern, and they keep it in line with the changes in the value of money."

25. The standard compensation has to be awarded by taking the base amount as Rs. 50,000/- in 1989, as mentioned in Kamla Devi (supra). The said amount would require to be adjusted for January 2008, when Sanjay Kumar's death occurred, based on the Consumer Price Index for Industrial Workers (CPI-IW), published by Labour Bureau, Government of India. With the base year as 1982, when the index is taken as 100, the average CPI(IW) for the month of January 2008 works out to 620. Thus the standard compensation, as per inflation corrected value, comes out to $(50,000 \times 620/171)$ Rs. 1,81,286. Thus the standard compensation to which the petitioners are entitled is Rs. 181,286.

26. As far as pecuniary compensation is concerned, as already explained in Kamla Devi (supra), the income of the parents can be taken as a standard measure for arriving at the expected annual income of the children. Unfortunately, in this case the petitioners have not placed on record any income proof of their earnings. It is only stated by them that they are doing labour work. In such a situation, to minimize the element of guess work, it would be appropriate if the minimum wages are taken as a basis for determining the

expected income. The minimum wage multiplied by a factor of 1.5 would enable in arriving at a reasonable estimate of income. The minimum wages for skilled workers notified by the office of the Labour Commissioner, Government of NCT of Delhi for the year 2008 was Rs. 4057/- per month. If the same is multiplied by a factor of 1.5, it comes to Rs. 6085.50 per month. As Sanjay would have grown up, his personal expenses would have only risen. The contribution to the household would not have exceeded half of the income. Accordingly, the figure of Rs. 6085.50 ought to be divided by 2 to provide a monthly figure of Rs. 3042.75 and an annual figure of Rs. 36,513. This is the multiplicand in the present case. This multiplicand is to be multiplied by the multiplier of 15, in terms of the second Schedule to the Motor Vehicles Act, 1988. This comes out to be a figure of Rs. 5,47,695.

27. Taking the above calculation into account, the total compensation to which the petitioners are entitled works out to be Rs. 1,81,286+ Rs. 5,47,695 = Rs. 7,28,981/-. The amount shall carry simple interest @ 9% per annum from the date of filing of this petition till the date of payment. It shall be open to the BSES to claim this amount against any other party who was responsible for the said incident in appropriate proceedings. The writ petition is allowed in the aforesaid terms.