
(2019) 09 P&H CK 0153

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 8832 Of 2016 (O&M)

Savitri Yadav

APPELLANT

Vs

State Of Haryana And Others

RESPONDENT

Date of Decision : 16-09-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 174, 357(5)
Motor Vehicles Act, 1988 — Section 141(3)
Punjab Municipal Act, 1911 — Section 182(2)
Punjab Municipal Corporations Act, 1976 — Section 2(b)

Citation : (2019) 09 P&H CK 0153

Hon'ble Judges : Rajiv Narain Raina, J

Bench : Single Bench

Advocate : Sharad Choudhary, Kapil Bansal, Vivek Singla, Jagdish Manchanda

Final Decision : Allowed

Judgement

Rajiv Narain Raina, J

1. Attar Singh Yadav, the husband of the petitioner, aged 60 riding on a two wheeler scooter No.HR 16K 3991 while passing through the main market of Bhiwani on his way to attend the anniversary of a former Minister at Rajput Dharamshala, Rohtak Gate, Bhiwani on 31.12.2015 at about 1.00 PM on reaching near about the New Housing Board was unfortunately caught in the midst of a fight between two raging stray bulls. On seeing the bulls fight, he alighted from his scooter to keep himself away from harm, but the bulls had the better of him and as a result thereof, he was fatally injured in the attack. He was taken to the Civil Hospital, Bhiwani where he was declared brought dead by the doctors. The death was due to multiple injuries sustained by him from the horns of the stray bulls. The post mortem report reveals seven injuries on his person with multiple rib fractures on the left side of the chest. In the opinion of the doctors, death was due to injuries caused to vital organs i.e. lung etc. which were anti mortem in nature and sufficient to cause death in the ordinary course of life. DDR No.8

dated 31.12.2015 under Section 174 Cr.P.C. was entered on the same day at Police Post, Jain Chowk, Bhiwani. The death report records injury marks on above and nearby the left shoulder, scratch marks right shoulder and scratch marks on the left foot. In the medical report, cause of death is recorded due to injuries suffered from the bull attack. The incident was reported in the Press i.e. Bhaskar News, Bhiwani (Annex. P-3). The headline of said newspaper read: "Due to bulls fight death of a proprietor of a private school; Terror of bulls in the city, No remedy is with the Administration." The media report narrates the story that Avtar Singh was riding a scooter and due to fight of bulls, one bull hit his scooter making him lose balance in the midst of fighting bulls which led to his falling down and being gored to death. On seeing this ugly scene, some bystander took him in the Civil Hospital. The doctors declared him brought dead.

2. Claiming death by negligence and carelessness by the respondents, the petitioner sent a legal notice to them demanding compensation for the untimely death of her husband. The legal notice having received no response, either from the Municipal Committee, Bhiwani within whose municipal limits the incident occurred or from the Deputy Commissioner, Bhiwani.

3. Present petition has been filed claiming compensation based on the provisions of the Haryana Municipal (Registration and Proper Control of Stray Animals) Bye-laws, 2006 dated 27.4.2007 (Annex. P-6) making out a case of negligence of the municipality.

4. Learned counsel for the petitioner contends that it is the statutory duty of the Municipal Committee to keep stray animals away from streets/roads and public places and to compensate victims who die due to injuries sustained in an attack by stray animals. Paragraph 2 (b) of the Bye-laws defines "animal" to mean any male or female buffalo, horse, camel, cow, calf, bull, pony, donkey, goat, sheep, pig, elephant, nilgai, deer etc. In Clause (e) of Paragraph 2 "cattle pound" has been defined as an enclosure where all types of stray animals are kept after being impounded. Paragraph 2 (j) defines "stray animal" to mean an ownerless animal (male/female) as defined in clause (b) of Section 2 found straying within municipal limits. Paragraph 10 of the Bye-laws further provides as under:-

"All the revenues collected by way of registration/renewal fee and penalty charges shall be used for the following purpose, namely:-

- (a) for maintenance of cattle pound;
- (b) for payment of compensation to the victims of stray cattle;
- (c) for payment of premium for third party insurance of registered animals; and
- (d) cost of identification and veterinary health care of stray animals."

5. The petitioner urges that had the respondents acted in performance of the statutory duties to round up stray bulls and remove the menace of stray cattle from the streets/roads/markets the husband of the petitioner would still have

been alive, but for unforeseen accident. In these circumstances, the petitioner claims compensation without specifying the amount in the prayer clause. Obviously she leaves quantification of compensation to the wisdom of the Court. To promote her cause she relies on the judgments of Delhi High Court in *Shakuntala vs. Government of NCT of Delhi & Another*, 2010 (7) RCR Civil 2397, *Parmeshwar vs. Government of NCT of Delhi and another* and a judgment of this Court passed in CWP No.23932 of 2015 (*Sushma Rani vs. State of Punjab and others* decided on 24.2.2016). The petitioner says that she has lost not only her husband due to an unfortunate accident, but also her mark of identity in society due to the negligence and carelessness of the respondents as they had failed to discharge their statutory and mandatory obligations and duties under the bye-laws to ensure safety of residents of Bhiwani from the menace of stray cattle.

6. Vide order dated 14.7.2016, respondent no.3-Municipal Committee was proceeded against ex-parte due to non-appearance of its counsel. On 10.3.2017 also, the third respondent remained ex parte and by an interim order dated 10.3.2017, interim compensation of Rs. 2 lac was ordered ex parte to be paid to the petitioner by the 3rd respondent within a period of one month. Thereafter respondent no.3 entered appearance explaining reasons for absence which was accepted but the amount has been paid by cheque. This Court also appointed Mr. Vivek Singla, as amicus curiae by order dated 2.8.2017 to assist the Court.

7. The Municipal Committee and the Deputy Commissioner, Bhiwani have filed their separate written statements. The reply of Deputy Commissioner is on the lines of the written statement filed by the Municipal Committee, Bhiwani.

8. It is urged on behalf of the Municipal Committee that the writ petition is not maintainable as this Court has no jurisdiction in view of the Bye-laws. Paragraph 2 (f) of the Bye-laws defines "court" to mean the Civil Court having jurisdiction over the area. The petitioner has to approach the Civil Court to claim compensation, if any, for negligence and liability of the Municipality, as well as the responsibility of the State, with regard to the incident occurred in the municipal area. To answer this disputed fact, parties should have to lead their evidence, both oral and documentary, and on this ground, the writ petition is liable to be dismissed.

9. It is further argued that it is to yet to be decided whether the stray bulls that may have caused the death belong to which owner and whether any 'branding code' as defined in Paragraph 2 (g) read with clause 3 (c) of the Bye-laws has been affixed on the animal or not. The responsibility is yet to be determined by leading evidence with regard to identity of the stray animal and its owner. They would refer to Clause (a) of paragraph 3 of the Bye-laws which provides that owner of every animal, kept or brought within the limits of the Committee, shall, on or before the 1st day of April of each year or within seven days of its arrival in the municipal area, get the animal registered at the office of the Committee in Form A, failing which a penalty of three times the registration fee for such animals shall be imposed on the owner. It is further submitted that as per

definition of "owner" it has been explained in Paragraph (2) (i) to mean the owner of an animal and includes any other person in possession or custody of such animal whether with or without the consent of the owner. These facts need to be proved by leading evidence in a civil court as per Bye-laws. The manner in which the accident took place also needs to be proved by leading evidence.

10. In counter point, the petitioner argues that the death occurred in a public place, in a busy market, on a municipal road with many bystanders and in public gaze. The injured was taken to hospital by the public. The post mortem report records the injuries caused by animal attack with multiple rib fractures and several other bodily injuries. The presence of the fighting bulls has not been disputed. The media report suggests as much. This court cannot remain unmindful of the materials on record of this case to refuse payment of compensation.

11. I have heard learned counsel for the petitioner, Municipal Committee, State Government and the learned Amicus Curiae and with their assistance perused the papers on file.

12. Firstly, I have to deal with the objection raised by the learned counsel for the respondents that this petition is not maintainable in view of Paragraph 2 (f) of the Bye-laws which defines "court" as Civil Court having jurisdiction over the area. It is further provided in Paragraph 7 (b) that an appeal can be filed against the order of the lower court within a period of fifteen days before the appellate court. Paragraph 9 (1) of the Bye-laws is relevant and reads as under:

"An Official duly authorised by the licensing authority to seize any animal found on the highway or in public place which he has reason to believe to be a stray animal and detain it for a week or until the owner of such animal has claimed for it and paid all expenses incurred by the committee for its detention in addition to the fee as per clause 4(a). If the animal bears a Branding Code, the committee may serve a written notice to the owner stating that the animal has been seized and is liable to be sold by way of auction or disposed off as may be decided by the committee, if not claimed within seven days after the service of the notice."

13. The aforesaid provisions cast a statutory duty on the Municipality and its officials to remain vigilant in carrying out duties and removing stray cattle from public places and commit the same to the cattle pounds maintained out of the funds and revenue collected by way of registration/renewal fee and penalty charges.

14. The matter can be examined from another angle. Paragraph 2 (i) defines "owner" as the owner of an animal and includes any other person in possession or custody of such animal whether with or without the consent of the owner. Paragraph 2 (j) defines "stray animal" to mean an ownerless animal (male/female) as defined in clause (b) of Paragraph 2 found straying within municipal limits. In my view, as per Paragraph 2 (i) defining "owner", the word "person" has to be read in animate and inanimate form. The Municipality is also a "person"

in law and it is bound by statutory duty and the principles of strict and vicarious liability and is strictly liable to compensate bodily harm caused to man by stray animals in municipal area. The custodian of stray animals is the State and the Municipality and it is their duty to round them up by their enforcement staff regularly and on an everyday basis by keeping in mind the preponderance of the menace of stray cattle on roads. It is their job to brand stray animals and it is for the owner to prove to the contrary. The liability first falls surely and inevitably on the shoulders of the Municipality to keep public places free from stray cattle at all times. If the Municipality fails to carry out its statutory obligations to keep citizens free from possibilities of harm from stray animals and this duty cannot be abdicated. They are liable to compensate family on account of death of member due to injuries caused to person by stray cattle attacks or injuries received by users of public places, for which facilities, roads and markets etc. they pay municipal taxes, state taxes, central government taxes, fees, levies etc.

15. Mr.Vivek Singla, learned Amicus Curiae cites the well known Supreme Court judgment in Smt. Nilabeti Behera alias Lalita Behera vs. State of Orissa and others, AIR 1993 SC 1960 to submit that in case of violation of fundamental right to life, the State is enjoined to pay monetary compensation. The writ remedy under Article 226 of the Constitution of India is justified. The defence of sovereign immunity is not available. Writ petition for compensation is maintainable and it is not enough to relegate the victim to ordinary remedy of civil suit to claim damages. Though this was a case of death on account of injuries caused by the police in custodial death, the principles evolved are of universal application. Compensation of ` 1.5 lacs was awarded in the case to the victim and it was observed that award of compensation in writ proceeding would be taken into account for adjustment, in the event of any other proceedings taken by the petitioner for recovery of compensation on the same ground so that the amount to this extent is not recovered by the petitioner twice over. It was further observed that such an order is just. It is also in consonance with the statutory recognition of the principle of adjustment provided in Section 357(5) Cr.P.C., 1973 and Section 141 (3) of the Motor Vehicles Act, 1988. The aforesaid principle in Nilabeti Behera (supra) has been proliferated in other fields of law including in cases of death by electricution, motor accident, Section 357 (5) of the Cr.P.C. and other akin laws in the matter of award of compensation. This principle has also been applied to death caused due to stray cattle and the principles have also been extended to the case of psychiatric shock, which is in nascent use. In the present case also, the petitioner's husband had a fundamental right to life which has been extinguished due to negligence of the Municipality in not taking care of its duties by continuously rounding up stray animals from public places, streets and markets and confining them in pounds.

16. In the case of Sushma Rani (supra) also, the husband of the petitioner was killed by a stray bull in 2014 when he was on his way to a construction site on his moped. He was seriously injured and taken to the Civil Hospital, Mandi Gobindgarh where he succumbed to the injuries caused by an enraged stray bull.

In the aforesaid case also, an objection was taken of the regular remedy by way of filing a civil suit. In that case, the State of Punjab in its short affidavit had stated that no provision has been made for compensation in case of accidental death by the stray animals. However, as per the Punjab Municipal Corporations Act, 1976, any animal found straying may be removed by an officer or employee of the Corporation or by any police officer to a pound. This Court had relied on the judgment rendered in Parminderjit Kaur and another vs. State of Punjab and others, 2015 (2) PLR 693 wherein an Engineer working in the Irrigation Department was hit by a stray animal from the back and suffered grievous injury. He was taken to hospital where he was declared dead. This Court found that as per Section 182 (2) of the Punjab Municipal Act, 1911, any animal found picketed, tethered or straying on any public street without the permission of the Committee may be removed to a pound by any officer or servant of the committee or by a police officer. No such effort was made to take control of stray animal which had taken the life of a human being. Consequently, the Court awarded Rs. 10 lacs as compensation with interest @ 9% per annum from the date of filing of the petition till the date of payment, leaving it open to the petitioner to approach the regular court for any sum in excess of what was assessed by the writ Court. Having relied on the aforesaid judgment in Parminderjit Kaur, Shakuntala and Parmeshwar, supra in the case of Sushma Rani, this Court allowed compensation vide order dated 24.2.2016. LPA against the judgment in Sushma Rani filed by the State was dismissed by a Division Bench of this Court in LPA No.1405 of 2016 vide order dated 24.8.2016 permitting the withdrawal of the appeal.

17. In the present case, death admittedly occurred due to attack by stray animal i.e. bulls and inquest report and post mortem report prove without any iota of doubt that the death was as a result of injuries suffered in a cross fire of two raging bulls in a busy market. Accordingly, the objection as to the maintainability of writ petition is over-ruled. The writ court has sufficient power and authority to award adequate compensation in the present case.

18. The State and the Municipality, in my view, is the constructive owner of res nullius and all stray animals which can cause potential harm, and therefore, the offending bull in the present case will be deemed to be in their care, custody and possession with an obligation to round them up. This strict responsibility is not to be seen to be lightly shirked and brushed aside to deny a just claim. It is not enough to send the aggrieved party to the civil court to prosecute a protracted litigation to find the true owner when the ingredients of award of compensation are amply available on record and satisfied in this case. If they do find the owner, they can always pass on the compensation after it is paid. The widow must be compensated for her terrible loss in her middle age when she would have needed her husband the most.

19. By the interim order dated 12.9.2019, Mr.Manchanda, learned counsel for respondent no.3 was asked to seek instructions as to the quantum of

compensation which deserved to be paid to the widow in view of the settled law. He has sought a decision on merits as he is not in a position to answer the query. I respect his limitations representing the stubborn municipality.

20. The question now remains to be answered as to the just and appropriate quantum of compensation to be awarded in this case. Rs. 2.00 lacs have been paid as interim compensation. As time passes, compensation amounts have to be constantly adjusted upward to account for depreciation of the value of money and the rise in the cost of living index which is phenomenal in the present day. The only way to compensate death is by payment of money by what is thought to be prudently a fair and just amount to compensate death in today's standard and economic regime. A margin of guess work is judicially acceptable as there is no table or chart to be followed. I, therefore, deem it fit and proper to award compensation of Rs. 20 lacs to the widow, less the amount already paid i.e. Rs. 2.00 lacs minus Rs. 20 lacs= Rs. 18 lacs.

21. In view of the above discussion, the writ petition is allowed. The remaining amount of compensation i.e. Rs. 18 lacs be paid to the petitioner by the 3rd respondent within two months from the date of receipt of a certified copy of this order. No interest is awarded on the principal amount determined in view of lump sum compensation. The liability is held to be joint and several with the State of Haryana. The payment will be made by the third respondent-Municipal Committee in the first instance. Rest is matter of adjustment between the State and the Municipality for which the petitioner has no role to play. If the amount is not paid within two months, the compensation will earn interest at the rate of 9% per annum till its payment.