

(2006) 01 DEL CK 0185

In the Delhi High Court

Case No : Writ Petition (C) 6722 of 2003

Suni Manoj Mathew and Another

APPELLANT

Vs

BSES Rajdhani and Others

RESPONDENT

Date of Decision : 03-01-2006

Acts Referred:

Citation : (2007) ACJ 156 : (2006) 126 DLT 570 : (2006) 86 DRJ 575

Hon'ble Judges : Vikramajit Sen, J

Bench : Single Bench

Advocate : Hetu Arora, for the Appellant; N.S. Dalal and Amit Andley, for respondents 2 and 3, for the Respondent

Judgement

Vikramajit Sen, J.—The prayer in this Writ Petition is for the grant of compensation in the sum of Rs. 10,00,000/- owing to the untimely death of late Manoj Mathew owing to the negligent acts of the Respondents. The undisputed facts are that late Manoj Mathew met with a fatal accident on 17.6.2002 at the I.I.T. Flyover, opposite Satnam Taxi Stand. He was rushed to the All India Institute of Medical Sciences (AIIMS). He was driving his motorcycle at the time when he encountered his death. He died within six hours of the accident. The Petition has been filed by his wife and son.

2. Respondent No.3 is the Commissioner of Police. The only grievance against this Respondent pertains to the timely recording of the First Information Report (FIR). It now transpires that the criminal proceedings are underway against Shri Mudrax Parashar, owner of MSS Bijlee Bharti, having his office at Y 2A, Phase-II, Okhla Industrial Area, New Delhi. No liability can be fastened on the said Respondent No.3 or on the Government of National Capital Territory of Delhi.

3. The fatal and tragic accident was caused because a metal ladder used for repairing street lighting had moved or rolled down from the pavement to the main road itself resulting in the collision. The Report is that the motorcycle had on impact got entangled with the ladder. No person was manning the ladder at

the relevant time. There can, Therefore, be no dispute that the death was caused due to the collision with the said large metal ladder because of the negligence of the persons using it.

4. On behalf of B.S.E.S. Rajdhani, Respondent No.1, it is firstly contended by Mr. Dalal, learned counsel, that disputed questions of fact have arisen which preclude the entertainment of the present Writ Petition. In the first place, even if disputed question of fact do arise in a writ petition, the Court is not automatically and absolutely debarred from adjudicating the claim.

Referring the Petitioners to an alternative remedy is a matter of convenience and in the discretion of the Writ Court. However, in the present case, there are no disputed questions of fact. The death due to a collision with the metal ladder is not disputed. In paragraph 11 of the Petition it has been asseverated that B.S.E.S. Rajdhani appears to have taken away the offending ladder from the custody of the Police which on the basis of the FIR is case property u/s 451 of the CrPC. This specific allegation has not been denied in the Counter Affidavit and must, Therefore, be deemed to have been admitted for the present purposes. In any event it is not denied by BSES that the ladder was being used for repairing street lighting. This responsibility or duty is entirely that of BSES. The fact that the BSES had contracted this duty and responsibility to Shri Mudrax Parashar will not absolve it of its liability. If the liability is not direct, it is certainly vicarious in nature. Black's Law Dictionary, Fifth Edition, defines vicarious liability as indirect legal responsibility; for example, the liability of an employer for the acts of an employee, or, a principal for torts and contracts of an agent. Public and civic Authorities have on a rampant and ubiquitous scale adopted a cavalier and careless attitude in fulfilling their functions, totally oblivious of the hazards and dangers that are caused to the public by their negligent functioning.

5. It is firmly entrenched in Indian jurisprudence that while exercising extraordinary powers under Article 226 of the Constitution of India a Writ Court can order payment of compensation under public law without having to rigorously and definitively adjudicate on the negligence of a particular party. The principle of *res ipsa loquitur* has been applied in several judgments. This Latin phrase has been defined in Black's Law Dictionary in these words - The thing speaks for itself. Rebuttable presumption or inference that defendant was negligent, which arises upon proof that instrumentality causing injury was in defendant's exclusive control, and that the accident was one which ordinarily does not happen in absence of negligence. The steel ladder was not meant to be on the road without manual overseeing. So far as the BSES is concerned it must be deemed to have full knowledge that the use of a metal ladder, platformed on four wheels for ease of movement, would be a mobile death track in case it is left unattended.

6. Very recently I had occasion to consider a similar tragic death in the case of *Raj Kumar v. Union of India*, 2005 VIII AD(Delhi) 303. The young man was thrown off the scooter he was driving when it came into contact with a manhole

which was approximately three inches below the regular surface of the road. In circumstances similar to the one in the present case he suffered near instant death. A sum of Rs. 6,00,000/- had been awarded against the Delhi Jal Board (DJB), which was the Authority responsible for the construction of the manhole. The entire case law has been discussed in that decision, and for this reason need not be reiterated herein. This Judgment was assailed by way of a Letters Patent Appeal. The Division Bench has upheld it by an erudite, detailed yet perspicuous Judgment reported as Delhi Jal Board v. Raj Kumar, 2005 VIII AD (Delhi) 533, in which the famous decision of Rylands v. Fletcher had been applied by the Division Bench presided over by Hon''ble Mr. Justice Markandeya Katju, the learned Chief Justice. The Judgment of the Division Bench is a Restatement of the law on this aspect of the law.

7. My attention has been drawn to decisions of this Court in Darshan v. Union of India, 79(1999) 432, Poonam Sharma Vs. Union of India (UOI) and Others, and Dharamvir Kataria (Col.) Vs. Union of India and Others, ; and of a Division Bench of the Punjab and Haryana High Court in Prem Chand v. Uttari Haryana Bijli Vitran Nigam Limited, AIR 2003 NOC 278, which fortifies the grant of compensation even in the circumstances unfolded in this Petition.

8. The deceased was an educated person drawing a salary of Rs. 10,000/- per month. As has been mentioned above, the claim is for Rs. 10,00,000/-. Keeping in view the status of the Petitioners I direct Respondent No.1 by Mandamus to deposit a sum of Rs. 7,00,000/- with the Registrar General of this Court within four weeks from today. The Registrar General shall thereafter release a sum of Rs. 2,00,000/- to Petitioner No.1 to be shared equally by her and her son for immediate expenses. A sum of Rs. 5,00,000/- shall be invested by the Registrar General in a Scheduled Bank or with any other Authority offering most remunerative returns. Interest shall be disbursed to Petitioner No.1 for the education and maintenance of the minor son, namely, Ashwin Manoj Mathew. On his attaining majority the principal amount shall be released to both the Petitioners in equal proportions.

9. This compensation shall not affect any other remedy available to the Petitioners. This Judgment shall also not have any bearing or effect on the criminal prosecution pending before the Metropolitan Magistrate.

10. Parties to bear their respective costs.