
(2012) 10 DEL CK 0095

In the Delhi High Court

Case No : Regular First Appeal No. 116 of 2007 and CM No's. 2924-25 of 2007

Union of India

APPELLANT

Vs

Dhyan Singh and Others

RESPONDENT

Date of Decision : 12-10-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 33, 80
Constitution of India, 1950 — Article 142
Evidence Act, 1872 — Section 114
Fatal Accidents Act, 1855 — Section 1A, 2

Citation : (2013) ACJ 2644

Hon'ble Judges : J.R. Midha, J

Bench : Single Bench

Advocate : R.V. Sinha, Mr. R.N. Singh and Ms. Sangita Rai, for the Appellant;
P.K. Jha, for Respondents Nos. 1 to 7, Mr. Anuj Aggarwal and Mr. A.J. Bhambhani,
Amicus Curiae, for the Respondent

Judgement

J.R. Midha

1. The Trial Court has passed a decree for Rs. 5,00,000/- in favour of respondents No. 1 to 7 and against the appellant which is under challenge in this appeal. On 11th September, 2001, four labourers hired by the contractor of CPWD were cleaning the septic tank at the CRPF Camp, Bawana. The labourers told the contractor that a foul smell was coming out of the septic tank which may be fatal to their lives but the contractor still ordered them to clean the tank whereupon three labourers entered the septic tank and they fell unconscious upon inhaling the poisonous gases in the tank. The fourth labourer, Deepak raised an alarm whereupon Constable Ranbir Singh and Head Constable Dayal Singh reached the spot and went inside the septic tank to save the lives of the labourers. However, both of them were affected by the poisonous gases inside the tank and they fell unconscious. The fire brigade and the police were requisitioned and they pulled out all the men out of the septic tank in a critical condition and they were taken to Babu Jagjivan Memorial Hospital. Head

Constable Dayal Singh survived whereas the remaining four persons including Constable Ranbir Singh were declared dead.

2. Constable Ranbir Singh was survived by his widow, parents and four minor children (respondents No. 1 to 7) who filed a suit for recovery against the appellant. Later on, CRPF, employer of the deceased was impleaded as defendant No. 2. Respondents No. 1 to 7 were the plaintiffs, appellant was defendant No. 1 and respondent No. 8 was defendant No. 2 before the Trial Court.

3. The appellant contested the suit on various grounds inter alia that the work of cleaning the septic tank was to be done by the contractor between 10th July, 2001 to 9th August, 2001 and the contractor started the work after the expiry of the said period without seeking the extension from the department and, therefore, the appellant was not responsible for the accident. It was further pleaded that there was no negligence on the part of the appellant. It was further pleaded that the contractor was held liable for the accident in the preliminary enquiry report, Ex. PW-5/A by the Deputy Welfare Commissioner and the appellant was not responsible for the negligence of the contractor. It was further pleaded that the legal representatives of the deceased were receiving pension and, therefore, they were not entitled to any compensation.

4. The following issues were framed by the Ld. Trial Court on 6th April, 2004:

1. Whether claim in the suit of the plaintiff is bad for mis-joinder of parties? OPD
2. Whether suit is barred u/s 80 CPC? OPD
3. Whether M/s. Naveen Enterprises had failed to take necessary precaution and for that defendants can be held and liable? OPP
4. Whether deceased Ranbir Singh was doing any official duty at the relevant time or had volunteered? Onus to proof on both the parties.
5. Whether plaintiffs are entitled to decree in the sum of Rs. 5,00,000/- or any other amount and from which of the defendants?
6. Relief.

5. The plaintiffs examined six witnesses at the trial. PW-1, widow of the deceased and PW-3, father of the deceased deposed that the deceased was 32 years and 6 months old at the time of the accident and was working as a Constable with CRPF at a salary of Rs. 5,000/- per month. They estimated their loss at Rs. 13,50,000/-. The respondents No. 1 to 7 issued a legal notice dated 28th January, 2003 to the appellant demanding Rs. 12,00,000/- as compensation. They proved the legal notice dated 28th January, 2003, postal receipts, acknowledgement card and the pension book as Ex. PW-1/A to PW-1/E. PW-2, Record Clerk from Babu Jagjivan Memorial Hospital proved the postmortem report as Ex. PW-2/A. PW-4 from Delhi Police proved FIR No. 331/2001 as Ex. PW-4/A. PW-5 from CPWD proved preliminary enquiry report of Deputy Welfare Commissioner as Ex. PW-5/A. PW-6 from CRPF proved that the

deceased had put in 11 years, 5 months and 10 days of service and had 25 years of remaining service. He deposed that the deceased was drawing a basic salary of Rs. 3,350/- and dearness allowance of Rs. 1,507/-. He further deposed that the deceased would have got basic pay of Rs. 3,650/- if he had not died in the accident. He further deposed that the family of the deceased was getting pension of Rs. 2,863/- per month.

6. The appellant examined two witnesses in support of their defence. DW-1, Executive Engineer of CPWD deposed that the septic tank at CRPF Camp, Bawana was cleaned by CPWD through Naveen Enterprises. He further deposed that the work was scheduled to commence on 10th July, 2001 and to be completed by 9th August, 2001 and the accident occurred after the expiry of the contract period on 11th September, 2001. He further deposed that the contractor acted on his own without authorization beyond the contract period. In cross-examination DW-1 admitted that he never inspected the septic tank and the gas might have accumulated therein.

7. DW-2, ex-Deputy Commander, CRPF deposed that a Board of Enquiry was set up on 13th September, 2001 to determine the cause of death of the deceased. He proved the report of the Board of Enquiry dated 5th November, 2001 as Ex. DW-2/1. He deposed that there was no negligence on the part of the CRPF since the responsibility for maintaining and cleaning of the septic tank was of the CPWD. The Board of Enquiry held that Constable Ranbir Singh being a conscientious and disciplined member of the force tried his best to save the life of the labourers of the contractor of CPWD who fell into the septic tank. Constable Ranbir Singh sacrificed his own life to save the life of his colleague Head Constable Dayal Singh. The Board of Enquiry further held that the force and the family members of Dayal Singh would always remain indebted to Constable Ranbir Singh. The Board further held that the present case to be an unprecedented and live example of humanity and conscientiousness to the force and would be an example for the members serving in the force. The Board further recommended to honour the deceased with the Jeevan Raksha Padak to be given by the President for his commendable act of bravery. The relevant portion of the report of the Board of Enquiry is reproduced hereunder:

11. On hearing all the aforesaid proceedings and conducting a thorough investigation, we come to a conclusion that on hearing the news that Hawaldar/Driver Dayal Singh was in the tank and nobody from the present several Jawans were entering into the tank for his help, Constable Ranbir Singh did not care about his life and went inside the gutter tank in order to extend him a help and save his life and with the help of Hawaldar/Driver Dayal Singh, he took out the labour from there. In the meantime, when Hawaldar/Driver Dayal Singh was becoming unconscious, Constable Ranbir Singh tried to take him out from the gutter and he again tried to pull him out while catching hold of the "Daangri" (clothe) of the Hawaldar/Driver Dayal Singh when his (Dayal Singh) hand slipped out from the hands of Hawaldar Phool Kumar as a result of which

he (Constable Ranbir Singh) fell in the gutter facing his mouth upward otherwise Hawaldar/Driver Dayal Singh would have fallen in the gutter in prostrate position and the mud would have entered in his mouth, nose - ear and the life of Hawaldar/Driver Dayal Singh could not be saved. Hawaldar/Driver Dayal Singh got a new life because of the saving efforts of Constable Ranbir Singh. It would not be an exaggeration to say that he had asked Constable Anand Singh also to go out from the gutter immediately because at that time he himself had become semi-conscious. Till the time Constable Ranbir Singh remained conscious and had not fallen down in the gutter because of the effect of the poisonous gases, he kept on doing the saving efforts without keeping any intention to go out the gutter. As a result whereof he gave new life to Hawaldar/ Driver Dayal Singh and sacrificed his life. It is an example for us and deserves to be followed. Only then we can say that because of the presence of the persons like brave Constable Ranbir Singh humanity prevails in our planet. It is an unprecedented example for all of us.

12. However, the three labours who had become victims of the said accident were taken to Babu Jagjivan Ram Hospital for further treatment and were declared dead but till then they had not been taken out from the gutter, every possible efforts had been made to save their lives which is a live unprecedented example of humanity.

OPINION

The Board of Enquiry under the Chairmanship of the Presiding Officer on the basis of statements of the witnesses present at the spot and the statements of the Jawans who had done their duties and co-operated in the rescue work in the sudden accident occurred in the campus of CRPF, questionnaire and the documents available as an evidence is of the following opinion:-

On 11.09.2001, Tuesday, at about 1:15 o'clock in the safety tank incident that suddenly occurred near the Trance ("samaadhi") of Peer Baba at the back of CRPF campus, Hawaldar/Driver Dayal Singh, No. 920140037 and Ranbir Singh No. 901191997 of 54 Battalion, being always a conscientious and disciplined members of the force and considering humanity above all in human life, tried their best to save the lives of the laborers of the contractor of CPWD who had fallen in the safety tank, while giving an unprecedented example of their bravery and efficiency and even without caring for their life. The actions which they took in this regard are highly commendable. It is glorious for the force that Constable Ranbir Singh, No. 901191997, in order to save the life of laborers and his colleague Hawaldar/ Driver Dayal Singh, sacrificed his own life and gave new life to Hawaldar/Driver Dayal Singh. For this brave act of Constable Ranbir Singh, our force and the family members of Hawaldar/ Driver Dayal Singh will always remain indebted. It has given an unprecedented and live example of humanity and conscientiousness to the force and it will be an example for the members serving in this force. Besides that, the board recommends for the following actions:-

A. Immediate action be taken by the Battalion to honour deceased Constable Ranbir Singh No. 901191997 of C/54 Battalion, C.R.P.F. with "Jeevan Raksha Padak" to be given by the President for his commendable act of bravery.

B. Immediate action be taken in relation to clearing of all dues i.e. Pension/Gratuity/G.P.F/G.I.S/Risk fund etc. of aforesaid Constable Ranbir Singh to his legal heir wife Smt. Raj Rati Devi in accordance with the rules of Govt. of India.

C. Immediate action be taken to appoint the wife or children of deceased Constable Ranbir Singh as per the rules and regulations of the Government of India (if they fulfill) on compassionate grounds.

D. If the child of Constable Ranbir Singh is minor, then a recommendation be made to appoint him, as soon as he obtains the age of majority.

E. The covered identity card of Constable Ranbir Singh be cancelled and action in this regard be taken.

F. Immediate action be taken to return the balance amount deposited by deceased Constable Ranbir Singh in respect of Mess Advance and Rum Advance after making Government recovery, if any, to his wife.

G. The Board also recommends for providing appropriate remuneration to Hawaldar/Driver Dayal Singh, No. 820140037,54 Battalion, CRPF for his effort in rescue work while giving an example of bravery and conscientiousness above all for which appropriate action be taken. The classification of the kit of Constable Ranbir Singh was made by the Board which is annexed at page no. 35 according to which no dues are pending against the official.

8. The onus of issue No. 1 was on the appellant who failed to prove the same and, therefore, the issue No. 1 was decided against the appellant. With respect to issue No. 2, the Ld. Trial Court held that the suit was not barred by Section 80 of the CPC because the plaintiffs had served the legal notice Ex. PW-1/C on the appellant before filing the suit. The Ld. Trial Court further held that the appellant made a false statement in the written statement as well as evidence with respect to non-receipt of the notice u/s 80 of the Code of Civil Procedure.

9. With respect to issue No. 3, the Ld. Trial Court held that the contractor failed to take necessary precautions in cleaning the septic tank and, therefore, the appellant can be held liable because the responsibility of cleaning of the septic tank was of CPWD. There was nothing on record to show that the CPWD directed the contractor not to carry on the work after the expiry of the period of contract. The appellant has also not placed any record relating to any action taken against the contractor. The Trial Court, therefore, held the contractor be responsible for the accident. With respect to issue No. 4, the Ld. Trial Court held that the deceased was on the official duty at the time of the accident. With respect to issue No. 5, the Ld. Trial Court awarded Rs. 5,00,000/- to the plaintiffs/respondents No. 1 to 7.

10. Ld. Counsel for the appellant has urged only one ground at the time of hearing of this appeal that there was no negligence on the part of the appellant and, the appellant cannot be held liable to pay the compensation to the plaintiffs/respondents No. 1 to 7. It is further submitted that the appellant is not responsible for the acts and omissions of the contractor whose term had expired.

11. The plaintiffs/respondents No. 1 to 7 are poor persons and their counsel was unable to effectively assist this Court and, therefore vide order dated 29th July, 2011, this Court appointed Mr. A.J. Bhambhani as Amicus Curiae to assist this Court.

12. The Ld. Amicus Curiae has submitted that this case is squarely covered by the judgment of the Supreme Court in Delhi Jal Board Vs. National Campaign for Dignity and Rights of Sewerage and Allied Workers and Others, in which the Supreme Court held the Government liable to pay the compensation in the event of death of any person in cleaning of septic tanks. It is further submitted that four precious lives were lost due to the failure of CPWD to maintain the septic tanks. It is submitted that the doctrine of *res ipsa loquitur* is applicable to the present case. It is submitted that respondents No. 1 to 7 are entitled to just compensation under the Fatal Accidents Act, which has to be computed on the basis of the multiplier method. It is submitted that the just compensation on the basis of multiplier method is Rs. 11,59,052/-. It is submitted that the plaintiffs/respondents No. 1 to 7 had demanded compensation of Rs. 12,00,000/- in the legal notice Ex. PW-1/C. It is further submitted that plaintiffs /respondents No. 1 to 7 proved loss of Rs. 13,50,000/- before the Trial Court although they restricted their claim to Rs. 5,00,000/- due to poverty and legal advice received. It is submitted that just compensation be awarded to respondents No. 1 to 7 in exercise of jurisdiction under Order XLI Rule 33 of the Code of Civil Procedure.

13. This case is squarely covered by the judgments of the Supreme Court in Delhi Jal Board Vs. National Campaign for Dignity and Rights of Sewerage and Allied Workers and Others, and this Court in National Campaign for Dignity and Rights of Sewerage and Allied Workers Vs. MCD and Others, in which the Government was held liable to pay the compensation to the families of the sewage workers who died due to the negligence of the contractor. The plea of the Government that they are not liable for the negligence of the contractor was rejected by the Courts.

14. In National Campaign for Dignity and Rights of Sewerage and Allied Workers v. Delhi Jal Board (*supra*), the National Campaign for Dignity and Rights of Sewerage and Allied Workers, which is engaged in the welfare of sewage workers, filed a Writ Petition to highlight the plight of sewage workers as the legal representatives of the persons who work in the sewers laid or maintained by the State and/or its agencies/instrumentalities on their own or through the contractors and who get killed due to negligence of the employer, do not have the means and resources for seeking intervention of the judicial apparatus of the

State. The Division Bench of this Court requested Dr. S. Muralidhar, J. to find out a workable solution to the problem relating to the deaths of the sewer workers, their health and safety, the steps to prevent recurrence of deaths/injuries of the sewer workers, to improve their working conditions, the compensation to be paid for the deaths of the workers and the steps to be taken to phase out manual work and replace it with mechanized sewer cleaning. Dr. S. Muralidhar, J. deliberated upon the matter and gave valuable suggestions which were considered by the Division Bench. The Division Bench after hearing all the parties held that the Government shall remain responsible to pay the compensation for death of a worker due to the negligence of the contractor. However, the Government can recover the said compensation from the contractor. The Division Bench directed the civic agencies to pay the compensation to the families of the victims. The relevant portion of the judgment is reproduced hereunder :-

We accordingly request Hon"ble Dr. Justice S. Muralidhar, a Judge of this Court, to donate some of his valuable time beyond Court hours in an attempt to find out a workable solution to the problem in consultation with all concerned including experts, if any on the subject. The parties shall appear before Dr. S. Muralidhar, J. on Saturday the 18th August, 2007 at 11.00 a.m. in His Lordships chamber.

3. Thereafter, fairly elaborate detailed hearings were held by Dr. S. Muralidhar, J. on 18th August, 2007, 22nd September, 2007 and 1st December, 2007. Although a number of issues have been highlighted by the petitioner, the issues that have been considered on priority basis include: (a) deaths of the sewer workers, (b) their health and safety, (c) the steps to prevent recurrence of deaths and injuries of the sewer workers and to improve their working conditions (d) the compensation if any paid for the deaths of the workers in the course of their employment, and (e) the steps to be taken to phase out manual work and replace it with mechanized sewer cleaning. By order dated 5th April, 2008, which is in the form of a report, magnitude of the problem has been noted with reference to the affidavit dated 4th April, 2008 of Delhi Jal Board (DJB) wherein it is mentioned that "the infrastructure in the National Capital comprises a network of 6150 kms long sewers. Out of this 150 kms is the length of trunk sewers, 1500 Kms is the length of peripheral sewers and 4500 kms is the length of internal sewers. The sewer network is connected to 17 Sewage Treatment Plants, having a composite capacity of 512.4 MGD. Besides, there are 33 major Sewage Pumping Stations located at various locations to pump the sewage wherever required." It was noted that at present 3923 permanent workers are employed against 4171 sanctioned posts. In addition there are 1403 muster roll workers. Apart from these workers, contract labour is also engaged from time-to-time. It was further noted that although guidelines on safety have been issued by DJB in November, 2002, they are being observed more in its breach and the DJB is not serious about the implementation of its own safety guidelines. It was further noted that so far as DJB is concerned there have been a total of 36 deaths of sewer workers since 2002 out of which 30 were contract workers and 6 were in regular employment. It was also noted that in spite of repeated

directions, DJB has failed to conduct inquiries into the deaths and injuries of sewer workers. It was noted that there are many aspects of the matter that will require further monitoring to ensure that real changes are brought about in the working conditions of sewer workers. In particular the liability of the DJB and the contractors under the CLRA and their liability to pay compensation under the WC Act (as amended in 2002) will have to be examined. Even while a workable scheme of remedial measures is formulated, the reasons for the deaths of the sewer workers and for the failure of the DBJ and its contractors to comply with the 2002 guidelines must be unearthed for which the DJB has to honour its commitments to the Court with all seriousness.

4. Thereafter the matter was placed before the Division Bench and by order dated 11th April, 2008, the Court called upon the DJB and NDMC to file status report setting out the requisite information and, inter alia, stating: (a) the number of deaths that have taken place from the year 2002 onwards; (b) have any inquiries/investigations at any level been conducted by the authorities into the cases of such deaths; (c) if inquiries were conducted, was any action taken either against the contractor who employed the deceased workers or against any other functionary of the local body under whom the contractor was engaged; (d) if there any proposal for improvement of the working conditions of the sewer workers, if so what are those proposals and what steps have been taken by the local bodies to implement the recommendations, if any, made in that regard; (e) in case there are no proposals, are the local bodies willing to frame guidelines and take measures to prevent such deaths in future and to provide better working conditions to the workers engaged for cleaning work; (f) if there any provision for payment of compensation to the families of the deceased workers and for those who suffer a disability while working. If so what is the scheme and have any payments under the same been made.

5. Pursuant to the above order, NDMC has filed affidavit dated 8th May, 2008 wherein it has been asserted that no NDMC employee/contractor's labour has died during cleaning of sewer lines/manholes since the year 2002 due to negligence/non-adoption of safety measures. However, it is conceded that 3 persons working under the NDMC contractor died on 7th December, 2003 due to inhalation of toxic gases from the sewer lines. It is stated that the above three persons entered in the manholes without obtaining any permission/approval from Engineer-in-Charge of the site and without any safety precautions/measures which are required before entering into a sewer line. It is further stated that since it was a case of accident and not negligence, no inquiry was conducted. According to NDMC, there is scope for improvement of the working conditions of the sewer workers and following steps have been taken by NDMC in this direction:

(1) As far as possible cleaning of sewer lines/manholes is done mechanically. Entry of human beings is being restricted to the rarest of rare cases only where mechanical cleaning is not possible.

(2) In cases where manual cleaning is done, it is ensured that all safety

equipments are used and all precautions are taken. Sewermen are not allowed to remain in deep manholes for more than 5-10 minutes at a stretch. The concerned Junior Engineer/Assistant Engineer remains present at site during the entire cleaning operation.

(3) All safety appliances like air breathing apparatus, full face cover safety mask, safety belts, torch, safety goggles, safety helmets, safety belts, gum boots, diving suits, air blowers and exhausts, etc. are being extensively used.

(4) Free medical facilities are provided to all employees for health checkup, treatment and hospitalization, etc. in state of the art hospitals of capital. A list of all such hospitals is given below:

(1) Max Balaji Hospital, Indraprastha

(2)....

(3)....

(4)....

(26) Charak Palika Hospital, Moti Bagh

(5) All the sewermen are insured for Rs. 1.00 lac each with the National Insurance Company Ltd. for which the premium is paid by NDMC. This is besides the General Insurance Scheme which is applicable to the Government employees as per Central Govt. Rules.

(6) Accommodation is given to the sewermen as per the availability/seniority. At every service centre labour rest room has been provided. For the education of their family members several NDMC schools are functioning in NDMC area.

(7) Drinking water, bathing and washing facility is provided at the stores/service centres. Recreational club has been provided by NDMC for its employees.

(8) Training for use of appliances and other safety equipments is given to the workers by the department itself. Programme for training from other agencies is being chalked out.

6. The DJB has filed status report dated 7th July, 2008 in which it is admitted that number of deaths since 2002 is 36 and six of those workers were employed by DBJ and 30 were contract workers. The reasons for the deaths in most of the cases have not been given. In the cases in which reasons have been furnished, the cause of death has been attributed to lack of safety equipments or negligence. In none of these cases any disciplinary action has been taken and apart from simple warning, which has been issued in majority of cases, no action has been taken against the concerned official or contractor, responsible for the workers' safety. It is further stated in the status report that the DJB has now made functional Safety and Disaster Management Cell that will take care of issues concerning the sewer workers. Instructions have been issued to all concerned to incorporate a clause in the contract agreement to reserve the right

of DJB to debar/blacklist a defaulting firm. The report further states that the following proposals for improvement of the working conditions have been made:

- (i) Safety awareness programs.
- (ii) Circulations of do's and don'ts for sewer workers.
- (iii) Directions to procure and maintain safety equipment.
- (iv) Training in confined space entry and rescue imparted to ten trainers
- (v) Entered into an MOU with National disaster management for providing consultancy services for safety and disaster management.

According to DJB it has taken the following steps in an attempt to shift from manual to mechanized cleaning:

- (i) DJB has stopped using manual labour to clean sewer line deeper than 5 ft. It has procured additional jetting machines.
- (ii) Major trunk/peripheral sewer is desilted by super sucker machines. However, in an emergency, deep sewer entry is allowed with proper safety equipment and the presence of a junior engineer.

7. According to DJB it has also procured the necessary equipments. It is then stated that DJB has 11 dispensaries, 25 private hospitals and 37 diagnostic centres empanelled with the DBJ to provide care to the workers. It has a decentralised arrangement for reimbursement when beyond normal entitlement so relief in emergency cases is immediate. The first aid boxes are made available for workers and contractors are obliged to provide medical facilities as per provision of the contractual agreement and periodic health check ups are being done. It is stated that model rules and safety codes, which are in force, will be strictly implemented for the workers cleaning the sewers. DJB has introduced a basic safety awareness for the year 2007-2008 in collaboration with National Institute of Disaster Management for providing consultancy services for safety and disaster management and the establishment of emergency preparedness and response teams. The guidelines issued by the NHRC are being followed by the DJB. On the issue of compensation, the DJB has stated that if a worker dies, compassionate appointment is given wherever possible. Workers facing injury are provided with compensation as per the insurance policies taken. In cases where there is death of a worker hired by contractor, Workmen's Compensation Act provides for payment of compensation. Although DJB has agreed to provide names of the contract workers working for the contractors, relevant details regarding contractors and the workers working under them have not been furnished.

8. In the written submissions filed on behalf of the petitioner on 22nd July, 2008, it has been brought on record that a daily wage worker by the name of Amit, working for contractor employed by NDMC, died due to inhalation of toxic gases on 20th July, 2008. It is stated that Amit was accompanied by another daily

wage worker, Rajpal, who fainted due to the inhalation of gases and was removed from the sewer. Rajpal has, however, survived. Further according to the petitioner, on 5th May, 2008, two contract workers working under contractors employed by the DJB died due to inhalation of gases in the sewer. Their names are Chintu and Pintu (Papu/Hassan Ahmed). They were working in a sewer line situated at Dabri.

15. The interim directions of the Division Bench of this Court are reproduced hereunder:-

(a) The medical examination and medical treatment will be given free of charge to sewer workers and the treatment will continue for all such workers found to be suffering from an occupational disease, ailment or accident until the workman is cured or until death.

(b) The services of the sewer workers are not to be terminated, either by the respondents or the contractors engaged by them, during the period of illness and they shall be treated as if on duty and will be paid their wages.

(c) Compensation shall be paid by the respondents and recoverable from the contractors, if permissible in law, to all the workmen suffering from any occupational disease, ailment or accident in accordance with the provisions of the Workmen's Compensation Act, 1923.

(d) The respondents shall pay on the death of any worker, including any contract worker, an immediate ex gratia solatium of Rs. One lac with liberty to recover the same from contractors, if permissible in law.

(e) The respondents shall pay/insure payment of all statutory dues such as Provident Fund, Gratuity and Bonus to all the sewer workers, including contract workers, as applicable in law.

(f) The respondents shall provide as soon as possible modern protective equipments to all the sewer workers in consultation with the petitioner organisation.

(g) The respondents shall provide soap and oil to all the workmen according to the present quota, but on monthly basis and not at the end of the year.

(h) The respondents shall provide restrooms and canteens, in accordance with the DJB model rules, including therein first-aid facilities, safe drinking water, washing facilities, latrines and urinals, shelters, creches and canteens as set out in the model rules. There are to be provided at what is known as "stores" which are the places where the workers assemble to give their attendance and from where they depart to their respective work sites.

(i) The respondents shall provide all workman, including contract workmen, with an accident-card-cum-wage-slip as set out in Clause 8 of the C.P.W.D./PWD (DA)/Delhi Jal Board Contractors Labour Regulations (for short "Labour Regulations").

(j) The respondents shall provide all workers, including contract workers, employment cards as set out in Clause 9 of the Labour Regulations and, on termination of services provide the contract workers and others with a service certificate as set out in Clause 10 of the Labour Regulations.

(k) The respondents shall authenticate by signing the payment of wages register for contract workers in terms of Clause 5 of the Labour Regulations.

(l) The respondents shall submit to this Court and to the petitioner within four weeks from today the full list of contract workers and contractors engaged for work relating to the sewers together with the wages paid to such workmen and the number of years of employment of the workers.

(m) The DJB is directed to ensure that the ex gratia payment in case of deaths of sewer workers has been paid to the families of deceased workmen and in case such compensation is not paid, release the same within a period of eight weeks.

(n) NDMC is directed to pay ex gratia payment of Rs. One lac each in respect of the accident of 7th December, 2003 where three persons working under the NDMC contractors died, with liberty to recover the same from the contractor, if permissible in law.

(o) The DJB and NDMC are directed to hold an inquiry into deaths of sewer workers referred to in paragraphs 15 and 16 of the written submissions of the petitioner dated 22nd July, 2008 and submit a report to this Court within a period of eight weeks. If it is found that the contract workers in question were working under the contractors employed by NDMC/DJB, ex gratia compensation of Rs. One lac shall be released forthwith to the families of the victims subject to right of recovery from contractors in accordance with law.

(p) The respondents shall place on record a map showing the areas within the NCT, (1) where no sewage facilities are available, (2) where modern machinery cannot enter due to narrow lanes or otherwise, (3) the areas serviced by modern machinery, and (4) critical area where frequent deaths, accidents and blockages occur. It shall be done within three months from today.

(q) Lastly, the respondents are directed to place on record the proposals and plans to phase out manual work and replace it with mechanized sewer cleaning, as envisaged by DJB as well as NDMC, which shall be done within three months.

(Emphasis supplied)

16. Vide order dated 21st April, 2009, the Division Bench of this Court directed the civic bodies to pay compensation of Rs. 1,71,000/- to the families of each of the victim through Delhi Legal Services Authority. Delhi Jal Board challenged this order before the Supreme Court. Vide judgment reported as Delhi Jal Board v. National Campaign for Dignity and Rights of Sewerage and Allied Worker (supra), the Supreme Court dismissed the appeal and enhanced the compensation from Rs. 1,71,000/- to Rs. 5,00,000/- to be paid by the civil agencies. The Supreme

Court held that the State and its agencies/instrumentalities cannot absolve themselves of the responsibility to put in place effective mechanism for ensuring safety of the workers employed for maintain and cleaning the sewage system. The Supreme Court further held that human being employed for doing work in the sewers cannot be treated as mechanical robots, who may not be affected by poisonous gases in the manholes. The State and its agencies or contractors are under constitutional obligation for the safety of such persons who undertake such hazardous jobs and cannot use the judicial process for frustrating the efforts of the dependants of the workers, who died due to the negligence of the contractor to whom the work of maintaining the sewage system was outsourced. The relevant findings of the Supreme Court are as under:-

1...This appeal filed by Delhi Jal Board for setting aside an interlocutory order passed by the Division Bench of the Delhi High Court whereby it has been directed to deposit Rs. 79,000 with the Delhi High Court Legal Services Committee in addition to Rs. 1.71 lakhs already paid to the families of the deceased worker, namely, Rajan is one of the several thousand cases filed by the State and/or its agencies/instrumentalities to challenge the orders passed by the High Courts for ensuring that the goal of justice set out in the Preamble to the Constitution of India is fulfilled, at least in some measure, for the disadvantaged sections of the society who have been deprived of the fundamental rights to equality, life and liberty for last more than 6 decades. The appeal is also illustrative of how the State apparatus is insensitive to the safety and well-being of those who are, on account of sheer poverty, compelled to work under most unfavourable conditions and regularly face the threat of being deprived of their life.

2. The laws enacted by Parliament and State Legislatures provide for payment of compensation to the legal representatives of those killed in air, rail or motor accident. The legal representatives of a workman, who dies while on duty in a factory/industry/establishment get a certain amount of compensation. Even those who are killed in police action get compensation in the form of ex gratia announced by the political apparatus of the State. However, neither the law-makers nor those who have been entrusted with the duty of implementing the laws enacted for the welfare of the unorganised workers have put in place an appropriate mechanism for protection of persons employed by or through the contractors to whom services meant to benefit the public at large are outsourced by the State and/or its agencies/instrumentalities like the appellant for doing works, which are inherently hazardous and dangerous to life nor made provision for payment of reasonable compensation in the event of death.

3. Since the legal representatives of the persons who work in the sewers laid or maintained by the State and/or its agencies/instrumentalities on their own or through the contractors and who get killed due to negligence of the employer do not have the means and resources for seeking intervention of the judicial apparatus of the State, the National Campaign for Dignity and Rights of

Sewerage and Allied Workers, which is engaged in the welfare of sewage workers filed Writ Petition No. 5232 of 2007 in the Delhi High Court to highlight the plight of sewage workers many of whom died on account of contemptuous apathy shown by the public authorities and contractors engaged by them and even private individuals/enterprises in the matter of providing safety equipments to those who are required to work under extremely odd conditions.

* * *

25. In the last 63 years, Parliament and the State Legislatures have enacted several laws for achieving the goals set out in the Preamble but their implementation has been extremely inadequate and tardy and the benefit of welfare measures enshrined in those legislations has not reached millions of poor, downtrodden and disadvantaged sections of the society and the efforts to bridge the gap between the haves and have-nots have not yielded the desired result. The most unfortunate part of the scenario is that whenever one of the three constituents of the State i.e. judiciary, has issued directions for ensuring that the right to equality, life and liberty no longer remains illusory for those who suffer from the handicaps of poverty, illiteracy and ignorance and directions are given for implementation of the laws enacted by the legislature for the benefit of the have-nots, a theoretical debate is started by raising the bogey of judicial activism or judicial overreach and the orders issued for the benefit of the weaker sections of the society are invariably subjected to challenge in the higher courts. In a large number of cases, the sole object of this litigative exercise is to tire out those who genuinely espouse the cause of the weak and poor.

* * *

38. In view of the principles laid down in the aforesaid judgments, we do not have the slightest hesitation to reject the argument that by issuing the directions, the High Court has assumed the legislative power of the State. What the High Court has done is nothing except to ensure that those employed/engaged for doing work which is inherently hazardous and dangerous to life are provided with life-saving equipments and the employer takes care of their safety and health.

39. The State and its agencies/instrumentalities cannot absolve themselves of the responsibility to put in place effective mechanism for ensuring safety of the workers employed for maintaining and cleaning the sewage system. The human beings who are employed for doing the work in the sewers cannot be treated as mechanical robots, who may not be affected by poisonous gases in the manholes. The State and its agencies/instrumentalities or the contractors engaged by them are under a constitutional obligation to ensure the safety of the persons who are asked to undertake hazardous jobs. The argument of choice and contractual freedom is not available to the appellant and the like for contesting the issues raised by Respondent 1.

Re: Question 3

40. We shall now consider whether the High Court was justified in issuing interim directions for payment of compensation to the families of the victims. At the outset, we deprecate the attitude of a public authority like the appellant, which has used the judicial process for frustrating the effort made by Respondent 1 for getting compensation to the workers, who died due to negligence of the contractor to whom the work of maintaining sewage system was outsourced. We also express our dismay that the High Court has thought it proper to direct payment of a paltry amount of Rs. 1.5 to 2.25 lakhs to the families of the victims.

* * *

50. In view of the law laid down in the aforementioned judgments, the appellant's challenge to the interim directions given by the High Court for payment of compensation to the families of the workers deserves to be rejected. However, that is not the end of the matter. We feel that the High Court should have taken cue from the judgment in *The Chairman, Railway Board and Others Vs. Mrs. Chandrima Das and Others*, and awarded compensation which could be treated as reasonable. Though, it is not possible to draw any parallel between the trauma suffered by a victim of rape and the family of a person who dies due to the negligence of others, but the High Court could have taken note of the fact that this Court had approved the award of compensation of Rs. 10 lakhs in 1998 to the victim of rape as also increase in the cost of living and done well to award compensation of at least Rs. 5 lakhs to the families of those who died due to negligence of the public authority like the appellant which did not take effective measures for ensuring safety of the sewage workers.

51. We may have remitted the case to the High Court for passing appropriate order for payment of enhanced compensation but keeping in view the fact that further delay would add to the miseries of the family of the victim, we deem it proper to exercise power under Article 142 of the Constitution and direct the appellant to pay a sum of Rs. 3.29 lakhs to the family of the victim through the Delhi High Court State Legal Services Committee. This would be in addition to Rs. 1.71 lakhs already paid by the contractor.

52. In the result, the appeal is dismissed subject to the aforesaid direction regarding the amount of compensation to be paid by the appellant. It is needless to say that the appellant shall be entitled to recover the additional amount from the contractor. Respondent 1 shall also be entitled to file appropriate application before the High Court for payment of enhanced compensation to the families of other victims and we have no doubt that the High Court will entertain such request.

53. With a view to obviate further delay in implementation of the directions contained in the first order passed by the High Court on 20-8-2008, we direct the appellant to ensure compliance with clauses (a), (b), (d), (e), (f), (g), (i), (k), (m) and (n) within a period of two months from today and submit a report to the High Court. The appellant shall also ensure that these directions are complied

with by the contractors engaged by it for execution of work relating to laying and maintenance of sewer system within the area of its jurisdiction. A report to this effect be also submitted to the High Court within two months. Additionally, we direct that in future the appellant shall ensure that the directions already given by the High Court and which may be given hereafter are made part of all agreements which may be executed with contractors/private enterprises for doing work relating to sewage system.

54. The directions contained in the preceding paragraph do not imply that the appellant and other agencies/instrumentalities of the State like New Delhi Municipal Council, Municipal Corporation of Delhi, Delhi State Industrial Development Corporation are not required to comply with the directions given by the High Court. Rather, they too shall have to submit similar reports.

17. This case is also covered by the principles of *res ipsa loquitur*. In *Shyam Sunder and Others Vs. The State of Rajasthan*, the Supreme Court discussed the doctrine of *res ipsa loquitur*. In para 10, the Supreme Court observed as under:

The maxim is stated in its classic form by Erle, C.J. [See: *Scott Vs. London & St. Katherine Docks* (1865) 3 H & C 596, 601]:

.... where the thing is shown to be under the management of the defendant or his servants, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence in the absence of explanation by the defendants, that the accident arose from want of care.

In para 15, the Supreme Court held as follows:

Res ipsa loquitur is an immensely important vehicle for importing strict liability into negligence cases. In practice, there are many cases where *res ipsa loquitur* is properly invoked in which the defendant is unable to show affirmatively either that he took all reasonable precautions to avoid injury or that the particular cause of the injury was not associated with negligence on his part. Industrial and traffic accidents and injuries caused by defective merchandise are so frequently of this type that the theoretical limitations of the maxim are quite over shadowed by its practical significance. [See: Millner: "Negligence in Modern Law" 92].

(Emphasis supplied)

In para 16, the Supreme Court further held as under:

Over the years, the general trend in the application of the maxim has undoubtedly become more sympathetic to plaintiffs. Concomitant with the rise in safety standards and expanding knowledge of the mechanical devices of our age, less hesitation is felt in concluding that the miscarriage of a familiar activity is so unusual that it is most probably the result of some fault on the part of whoever is responsible for its safe performance [See: John G. Fleming. *The Law of Torts*, 4th Ed. p. 260].

18. In *Syad Akbar Vs. State of Karnataka*, the Supreme Court held that the rule of *res ipsa loquitur* in reality belongs to the law of torts. Where negligence is in issue, the peculiar circumstances constituting the event or accident, in a particular case, may themselves proclaim in concordant, clear and unambiguous voices the negligence of somebody as the cause of the event or accident. The Supreme Court held as under:

19... The peculiar circumstances constituting the event or accident, in a particular case, may themselves proclaim in concordant, clear and unambiguous voices the negligence of somebody as the cause of event or accident. It is to such cases that the maxim *res ipsa loquitur* may apply, if the cause of the accident is unknown and no reasonable explanation as to the cause is coming forth from the defendant. The event or accident must be of a kind which does not happen in the ordinary course of things if those who have the management and control use due care. Further the event which caused the accident must be within the defendant's control. The reason for this second requirement is that where the defendant has control of the thing which caused the injury, he is in a better position than the plaintiff to explain how the accident occurred...

(Emphasis supplied)

19. In *Kerala State Electricity Board Vs. Kamalakshy Amma*, a person died by accidentally coming into contact with the live wire which snapped out of the cup joint on electric post. The legal representatives of the victim instituted a suit against Kerala State Electricity Board (KSEB) for damages on account of his death alleging that KSEB was negligent in maintaining the electric line under their management. The Division Bench of the Kerala High Court applied the rule of *res ipsa loquitur* and upheld the compensation awarded by the Trial Court. The Court held as under:-

9. When the plaintiffs succeeded in proving that a pedestrian (in this case, the deceased) was electrocuted from a live wire hanging down from an electric post, there is a presumption of fact that there was lack of proper care on the part of those in the management or control of the power supply system at the particular place. The maxim *res ipsa loquitur* is a principle which aids the court in deciding as to the stage at which the onus shifts from one side to the other. S. 114 of the Evidence Act gives a wide discretion to the courts to draw presumptions of fact based on different situations and circumstances. This is in a way, a recognition of the principle embodied in the maxim *res ipsa loquitur*. The leading case on the subject is *Scott v. London and St. Katherine Docks Co.* (1865) 3 H & C 596. Erle C.J. in the said case has stated that, "where the thing is shown to be under the management of the defendant or his servants and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of explanation by the defendants, that the accident arose from want of care". Evershad M. R. in *Moore v. R. Fox & Sons* (1956) 1 OB 596 affirmed and followed the principle laid down in *Scott's* case. Winfield in his famous treatise on Tort, after referring to

the decisions which founded the above doctrine, has mentioned the two requirements to attract the above principle. They are, (i) that the "thing" causing the damage be under the control of the defendant or his servants and (ii) that the accident must be such as would not in the ordinary course of things have happened without negligence. This principle which was often found to be a helping guide in the evaluation of evidence in English decisions has been recognised in India also. The Supreme Court in *Syad Akbar Vs. State of Karnataka*, has discussed the applicability of the maxim *res ipsa loquitur* in civil as also criminal cases, in the light of the provisions of the Evidence Act...

(Emphasis supplied)

20. In *State of Gujarat Vs. Purnimaben*, the Division Bench of the Gujarat High Court explained the rule of *res ipsa loquitur* as under:-

18. In the realm of tort negligence, at times, it becomes difficult to establish the nexus, with the result or the consequence or the cause thereof by leading direct evidence. In order to mitigate such a contingency, a very interesting concept and philosophy of doctrine of "*res ipsa loquitur*" has been evolved in English Law and we have also followed in tort negligence. Rule of "*res ipsa loquitur*", in reality, belongs to law of tort. Where negligence is in issue, peculiar circumstances constituting the event or accident in a particular case might themselves proclaim in concordant, clear, consistent and unambiguous basis the negligence of somebody as a cause of the event or the accident. The primary facts, constituted from the record would give a rise to such a concept if cause of accident is unknown and no reasonable explanation as to its cause is coming forth from the opposite party. In such a fact situation, the maxim of "*res ipsa loquitur*" comes into play.

19. It is, therefore, necessary to invoke such a doctrine in examining, determining and adjudicating upon the claim of compensation founded upon the tort negligence. The event or the accident must be a kind which would not happen in ordinary course of event or nature or thing if those who have the management and control of the thing has exercised due, appropriate and reasonable standard of care and caution. Further, the events are caused, the accident must be within the control of the defendant or the adversary. The reason for second requirement is that where the defendant or the adversary has the control of the thing which caused the injury, he was in a better position than the plaintiff to explain as to how the incident or the accident has occurred. Moreover, "*res ipsa loquitur*" must not be speaking negligence but pin it on the defendant. In our country, the rules of evidence are governed by the Evidence Act, 1872, under which the general rule is with the burden of proving negligence as to the cause of the accident is on the party who propounds it. In order to lighten this burden, there are certain provisions and the doctrines, namely,

(1) permissive presumption,

(2) presumption of fact,

(3) rebuttable presumption of law

(4) irrebuttable presumption of law.

20. Presumptions of fact are inferences on fact patterns drawn from the experience and experiments. It is, therefore, the discretion of the Court to draw an inference about the existence on certain factual situation, if primary facts brought out on record warrants such presumption. In fact, doctrine of "res ipsa loquitur" could only create an aid in evaluation and analysis and assessment of evidence on record. When such a doctrine is applied properly to the facts, the burden of proof, initially, rests with the victims of the tort or their heirs or legal representatives is lightened or reduced as the Court would be able to presume certain things and therefore, it will be for the defendant or the adversary to explain or rebut such a presumption. No doubt, this doctrine could be invoked where direct evidence is not obtainable....

* * *

23. The rule that it is for the plaintiff to prove negligence and not the defendant to disprove it, in some cases, is one of the considerable hardship to the plaintiff because, it may be that the true cause of the accident lies solely within the knowledge of the defendant who caused it. The plaintiff can prove the accident, but he cannot prove how it happened so as to show its genesis or origin in the negligence of the defendant. This hardship is avoided to a considerable extent by the principle of "res ipsa loquitur". To sum up, the effect of the doctrine of "res ipsa loquitur" depends on the cogency of the inference to be drawn, and will vary from case to case, if for instance, a vehicle mounts to pavement, this is evidence of negligence, but reasonable men may differ about the inference to be drawn from it, so that a verdict of no negligence would not be upset although a withdrawal from the jury would be - yet something may fall from the defendant's window in such circumstances that only an inference of negligence can be drawn, whereupon a verdict of no negligence might be set aside.

24. Truly and plainly speaking, the effect of doctrine of "res ipsa loquitur" is to shift the onus to the defendant in the sense that the doctrine continues to operate unless the defendant calls credible evidence which explains how the accident or mishap may have occurred without negligence, and it seems that the operation of the rule is not displaced merely by expert evidence showing, theoretically, possible ways in which the accident might have happened without the defendant's negligence. The doctrine of "res ipsa loquitur", therefore, plays a very significant role in the law of tort and it is not the relic of the past, but the living force of the day in determining the tortious liability.

(Emphasis supplied)

21. The principle of res ipsa loquitur laid down in the aforesaid four judgments is summarized as under:

i. Res ipsa loquitur means that the accident speaks for itself. In such cases, it is

sufficient for the plaintiff to prove the accident and nothing more.

ii. Where the thing is shown to be under the management of the defendant or his servants, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence in the absence of explanation by the defendants, that the accident arose from want of care.

iii. There are two requirements to attract *res ipsa loquitur*, (i) that the "thing" causing the damage be under the control of the defendant and (ii) that the accident must be such as would not in the ordinary course of things have happened without negligence.

iv. *Res ipsa loquitur* is an exception to the normal rule that mere happening of an accident is no evidence of negligence on the part of the driver. This maxim means the mere proof of accident raises the presumption of negligence unless rebutted by the wrongdoer.

v. 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. This hardship is to be avoided by applying the principle of *res ipsa loquitur* 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.

vi. The effect of doctrine of "*res ipsa loquitur*" is to shift the onus to the defendant in the sense that the doctrine continues to operate unless the defendant calls credible evidence which explains how the accident or mishap may have occurred without negligence, and it seems that the operation of the rule is not displaced merely by expert evidence showing, theoretically, possible ways in which the accident might have happened without the defendant's negligence. The doctrine of "*res ipsa loquitur*", therefore, plays a very significant role in the law of tort and it is not the relic of the past, but the living force of the day in determining the tortious liability.

vii. The principal function of the maxim is to prevent injustice which would result if a plaintiff were invariably compelled to prove the precise cause of the accident and the defendant responsible for it, even when the facts bearing in the matter are at the outset unknown to him and often within the knowledge of the defendant.

viii. The doctrine of *res ipsa loquitur* has been applied by the Courts in the following cases:-

? Where victim was sleeping on a cot placed in front of his house by the side of the road when the offending vehicle dashed against the cot and injured the claimant.

? Where a bus had dashed against a tree, causing death of a passenger.

? Where a vehicle negotiating a sharp "U" turn dashed against a tree, moved away to a distance of 150 feet from the road and then overturned.

? Where a vehicle went-off the road, hit against the tree and rolled down killing a passenger.

? Where a truck dashed against the victim standing by roadside.

? Where a truck came at breakneck speed without blowing horn and dashed against a 9 years old boy, who was walking on the extreme left side of the road, from behind resulting in instantaneous death.

22. This case is squarely covered by the aforesaid judgments. Following the aforesaid judgments, it is held that since the sewage tank was under the management of the appellant, the accident in the ordinary course of events would not have happened if the appellant had properly maintained it. The deceased has not in any manner contributed to the accident. DW-1 in cross-examination admitted that he never inspected the septic tank. In the circumstances, it is held that the accident occurred due to the negligence of the appellant as well as its contractor and the appellant is liable to pay the compensation to the legal representatives of the deceased, Constable Ranbir Singh.

23. The next question which arises for consideration is as to the amount of compensation to which the legal representatives of the deceased are entitled.

24. The plaintiffs/respondents No. 1 to 7 are entitled to just compensation under Sections 1A and 2 of the Fatal Accidents Act, 1885 which has to be computed according to the multiplier method. Reference may be made to Gobald Motor Service Ltd. and Another Vs. R.M.K. Veluswami and Others, Dr. Laxman Balkrishna Joshi Vs. Dr. Trimbak Bapu Godbole and Another, Ishwar Devi Malik. v. Union of India, ILR (1968) 1 Del59, Lachman Singh v. Gurmit Kaur, I (1984) ACC 489 (SB), Lachhman Singh and Others Vs. Gurmit Kaur and Others, , Bir Singh and Another Vs. Sm. Hashi Rashi Banerjee and Others, The multiplier method has been accepted as legally sound method for determining compensation in death cases by the Supreme Court in Lata Wadhwa v. State of Bihar, (2001) 8 SCC 1997; Municipal Corporation of Delhi, Delhi Vs. Association of Victims of Uphaar Tragedy and Others, and Delhi High Court in Jaipur Golden Gas Victims Association Vs. Union of India (UOI) and Others, ; Nagrik Sangarsh Samiti and Others Vs. Union of India (UOI) and Others, ; Ram Kishore Vs. Municipal Corporation of Delhi, ; Ashok Sharma and Others Vs. Union of India (UOI) and Others,

25. In Lata Wadhwa v. State of Bihar (supra), a fire broke out in a factory in which sixty people died and one hundred and thirteen got injured. The Supreme Court awarded compensation to the victims on the basis of the multiplier method.

26. In Assn. of Victims of Uphaar Tragedy and Others Vs. Union of India (UOI) and Others, the Division Bench of this Court applied the multiplier method and the Second Schedule of the Motor Vehicles Act, 1988 to compute the compensation payable to the victims of the Uphaar Tragedy. The Division Bench held that the victims of the fire incident belonged to reasonably well-placed families and presumed that the average income of the victims above age of 20 years to be not less than Rs. 15,000/- per month, 1/3rd was deducted towards the personal expenses and the multiplier of 15 was applied to compute the compensation as Rs. 18,00,000/-. With respect to the children, the Division Bench awarded compensation of Rs. 15,00,000/-. The Division Bench also awarded interest @ 9% per annum. The Municipal Corporation of Delhi challenged the aforesaid judgment of the Division Bench before the Supreme Court. The Supreme Court in Municipal Corporation of Delhi v. Association of Victims of Uphaar Tragedy (supra) reduced the compensation from Rs. 18 lakhs to Rs. 10 lakhs in respect of victims aged more than 20 years and from Rs. 15 lakhs to Rs. 7.5 lakhs in respect of the victims aged less than 20 years. The findings of the Supreme Court are reproduced hereunder :-

38. ... It can be by way of making monetary amounts for the wrong done or by way of exemplary damages, exclusive of any amount recoverable in a civil action based on tortious liability. But in such a case it is improper to assume admittedly without any basis, that every person who visits a cinema theatre and purchases a balcony ticket should be of a high income group person. In the year 1997, Rs. 15,000 per month was rather a high income. The movie was a new movie with patriotic undertones. It is known that zealous movie goers, even from low income groups, would not mind purchasing a balcony ticket to enjoy the film on the first day itself. To make a sweeping assumption that every person who purchased a balcony class ticket in 1997 should have had a monthly income of Rs. 15,000 and on that basis apply high multiplier of 15 to determine the compensation at a uniform rate of Rs. 18 lakhs in the case of persons above the age of 20 years and Rs. 15 lakhs for persons below that age, as a public law remedy, may not be proper. While awarding compensation to a large group of persons, by way of public law remedy, it will be unsafe to use a high income as the determinative factor. The reliance upon Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others, in this behalf is of no assistance as that case related to a single individual and there was specific evidence available in regard to the income. Therefore, the proper course would be to award a uniform amount keeping in view the principles relating to award of compensation in public law remedy cases reserving liberty to the legal heirs of deceased victims to claim additional amount wherever they were not satisfied with the amount awarded. Taking note of the facts and circumstances, the amount of compensation awarded in public law remedy cases, and the need to provide a deterrent, we are of the view that award of Rs. 10 lakhs in the case of persons aged above 20 years and Rs. 7.5 lakhs in regard to those who were 20 years or below as on the date of the incident, would be appropriate. We do not propose to

disturb the award of Rs. 1 lakh each in the case of injured. The amount awarded as compensation will carry interest at the rate of 9% per annum from the date of writ petition as ordered by the High Court, reserve liberty to the victims or the L.Rs. of the victims as the case may be to seek higher remedy wherever they are not satisfied with the compensation. Any increase shall be borne by the Licensee (theatre owner) exclusively.

39. Normally we would have let the matter rest there. But having regard to the special facts and circumstances of the case we propose to proceed a step further to do complete justice. The calamity resulted in the death of 59 persons and injury to 103 persons. The matter related to a ghastly fire incident of 1997. The victims association has been fighting the cause of victims for more than 14 years. If at this stage, we require the victims to individually approach the civil court and claim compensation, it will cause hardship, apart from involving huge delay, as the matter will be fought in a hierarchy of courts. The incident is not disputed. The names and identity of the 59 persons who died and 103 persons who were injured are available and is not disputed. Insofar as death cases are concerned the principle of determining compensation is streamlined by several decisions of this Court. (See for example Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, If three factors are available the compensation can be determined. The first is the age of the deceased, the second is the income of the deceased and the third is number of dependants (to determine the percentage of deduction for personal expenses). For convenience the third factor can also be excluded by adopting a standard deduction of one-third towards personal expenses. Therefore, just two factors are required to be ascertained to determine the compensation in 59 individual cases. First is the annual income of the deceased, two-third of which becomes the annual loss of dependency the age of the deceased which will furnish the multiplier in terms of Sarla Verma. The annual loss of dependency multiplied by the multiplier will give the compensation.

Conclusions

46. In view of the foregoing, we dispose of the appeals as follows:

xxx

(v) CA No. 6748 of 2004 is allowed in part and the judgment of the High Court is modified as under:

(a) The compensation awarded by the High Court in the case of death is reduced from Rs. 18 lacs to Rs. 10 lacs (in the case of those aged more than 20 years) and Rs. 15 lacs to Rs. 7.5 lacs (in the case of those aged 20 years and less). The said sum is payable to legal representatives of the deceased to be determined by a brief and summary enquiry by the Registrar General (or nominee of learned Chief Justice/Acting Chief Justice of the Delhi High Court).

(b) The compensation of Rs. One lakh awarded by the High Court in the case of

each of the 103 injured persons is affirmed.

(c) The interest awarded from the date of the writ petition on the aforesaid sums at the rate of 9% per annum is affirmed.

(d) If the legal representatives of any deceased victim are not satisfied with the compensation awarded, they are permitted to file an application for compensation with supporting documentary proof (to show the age and the income), before the Registrar General, Delhi High Court. If such an application is filed within three months, it shall not be rejected on the ground of delay. The Registrar General or such other Member of Higher Judiciary nominated by the learned Chief Justice/Acting Chief Justice of the High Court shall decide those applications in accordance with paras above and place the matter before the Division Bench of the Delhi High Court for consequential formal orders determining the final compensation payable to them.

(Emphasis Supplied)

27. In *Jaipur Golden Gas Victims Association v. Union of India* (supra), the Division Bench of this Court awarded compensation to the victims of Jaipur Golden Fire Tragedy by applying the multiplier method.

28. In *Ashok Sharma v. Union of India* (supra), six children lost their lives by drowning during an annual training camp of NCC on account of negligence on the part of respondents. The compensation was awarded by applying the multiplier method.

29. The compensation in death cases according to the multiplier method is based on the pecuniary loss caused to the dependants by the death of the victim of the road accident. The dependency of the dependants is determined by taking the annual earning of the deceased at the time of the accident. Thereafter, effect is given to the future prospects of the deceased. After the income of the deceased is established, the deduction is made towards the personal expenses of the deceased which he would have spent on himself. If the deceased was unmarried, normally 50% of the income is deducted towards his personal expenses. If the deceased was married and leaves behind two to three dependents, 1/3rd deduction is made; if the deceased has left behind four to six family members, deduction of 1/4th of his income is made and where the number of dependent family members exceeds six, the deduction of 1/5th of the income is made. The remaining amount of income after deduction of personal expenses is taken to be the loss of dependency to the family members which is multiplied by 12 to determine the annual loss of dependency. The annual loss of dependency of the dependants of the deceased is multiplied by the multiplier according to the age of the deceased or claimant whichever is higher. A table of multiplier is given in Schedule-II of the Motor Vehicle Act, 1988 but there was some error in the said table which has been corrected by the Supreme Court in the judgment of *Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another*, The summary of principles laid down by the Supreme Court in *Sarla Verma v. DTC*

(supra) is as under:-

30. The deceased was aged 32 years at the time of the accident and was working as a Constable with CRPF. His salary at the time of the death was Rs. 4,857/- per month (Basic Pay of Rs. 3,350 + Dearness Allowance of Rs. 1,507). 50% has to be added towards future prospects and 1/5th has to be deducted towards his personal expenses and the appropriate multiplier at the age of 32 is 16. Taking the income of the deceased as Rs. 4,857/-, adding 50% towards future prospects, deducting 1/5th towards personal expenses and applying the multiplier of 16, the loss of dependency is computed to be Rs. 11,19,052/-. Rs. 10,000/- is awarded towards loss of consortium, Rs. 10,000/- towards loss of love and affection, Rs. 10,000/- towards loss of estate and Rs. 10,000/- towards funeral expenses. The respondents are entitled to total compensation of Rs. 11,59,052/-.

31. Learned counsel for the appellant submits that the plaintiffs/respondents No. 1 to 7 have not filed any cross-objections and, therefore, the compensation cannot be enhanced. The argument of the learned counsel for the appellant is misconceived and contrary to law. It is well settled that under Order XLI Rule 33 of the Code of Civil Procedure, the Appellate court has power to enhance the compensation even in the absence of cross-objections. Reference in this regard can be made to the recent judgment of this Court in National Insurance Co. Ltd. Vs. Komal and Others in which this Court enhanced compensation in the absence of cross-objections following the catena of the judgments of the Supreme Court and various High Courts in Pannalal Vs. State Bombay and Others, , Rameshwar Prasad and Others Vs. Shyam Beharilal Jagannath and Others, , Nirmala Bala Ghose and Another Vs. Balai Chand Ghose and Others, , Giasi Ram and Others Vs. Ramjilal and Others, , Harihar Prasad Singh and Others Vs. Balmiki Prasad Singh and Others, , Mahant Dhangir and Another Vs. Madan Mohan and Others, , The State of Punjab and Others Vs. Bakshish Singh, , Nagappa Vs. Gurudayal Singh and Others, , Managing Director, Thanthai Periyar Transport Corp., Villupuram Vs. Sundari Ammal and four Others, and Prakramchand Vs. Chuttan and Others,

32. In the present case, the plaintiffs/respondents No. 1 to 7 are entitled to just compensation of Rs. 11,59,052/- according to multiplier method. The plaintiffs have in fact taken a specific plea before the Trial Court and also proved in evidence that they have suffered loss to the tune of Rs. 13,50,000/-. However, due to poverty and legal advice received by them, they restricted the claim to Rs. 5,00,000/-. This Court agrees with the submission of the Ld. Amicus Curiae that it is the duty of the Court to compute just compensation in accordance with law. This is a fit case where this Court should exercise jurisdiction under Order XLI Rule 33 of the CPC to do complete justice to the plaintiffs/respondents No. 1 to 7.

33. The learned counsel for respondents No. 1 to 7 submits that respondent No. 8 has not provided compassionate appointment to the widow/children of the

deceased. It is submitted that on the basis of the report, Ex. DW2/1, the Commandant had recommended that Jeevan Raksha Padak be awarded to the deceased, Ranbir Singh. The Commandant also recommended that the widow or the children may be given compassionate appointment and if any child was a minor, he may be considered for the job on attaining majority. The learned counsel for respondent No. 8 submits that the widow or children have not applied for the compassionate job. The learned counsel for respondents No. 1 to 7 submits that the wife/children had in fact applied for the job. Be that as it may, the learned counsel for respondent No. 8 submits that if any application is submitted even now, the same shall be considered in accordance with the rules. The statement of learned counsel for respondent No. 8 is taken on record. The widow/children may apply for compassionate appointment to respondent No. 8 which shall be considered in accordance with the rules.

34. In the facts and circumstances of this case, the appeal is dismissed with costs. However, in exercise of jurisdiction under Order XLI Rule 33 of the Code of Civil Procedure, the decree is enhanced from Rs. 5,00,000/- to Rs. 11,59,052/-. The Trial Court has awarded interest @ 18% which is on a higher side. The Trial Court has awarded interest after the expiry of 30 days of the judgment. However, no interest has been awarded from the date of filing of the suit. This Court is of the view that the plaintiffs/respondents No. 1 to 7 are entitled to the interest @ 9% per annum from the date of filing of the suit i.e. 5th April, 2003 upto the date of payment. The interest @ 9% per annum is awarded on Rs. 11,59,052/- from the date of filing of the suit i.e. 5th April, 2003 till the date of payment.

35. The plaintiffs/respondents No. 1 to 7 shall pay additional Court fees of Rs. 19,771.56 on the enhanced decretal amount before the decree is drawn up. The additional Court-fees is awarded to the plaintiffs/respondents No. 1 to 7 as costs to be paid by the appellant.

36. The appellant has deposited the decretal amount in terms of the decree passed by the Trial Court with this Court in terms of the order dated 26th February, 2007. The balance decretal amount in terms of this judgment be deposited by the appellant with UCO Bank, Delhi High Court Branch by means of a cheque drawn in the name of UCO Bank A/c Raj Rati within 30 days.

37. The order for disbursement of the decretal amount shall be passed after hearing the plaintiffs/respondents No. 1 to 7.

38. List for directions on 7th December, 2012. The plaintiffs/respondents No. 1 to 7 are directed to remain present on the said date. Court notice be issued to the respondents No. 1 to 7 as well as their counsel. Before parting with this case, this Court would like to record the appreciation for the valuable assistance provided by the *Ld. Amicus Curiae*. Mr. A.J. Bhambhani not only provided valuable assistance on the question of law but also inspected the entire record of this Court. The *Ld. Amicus Curiae* has discharged his obligation towards the profession in an exemplary manner.