
(2012) 01 DEL CK 0151
In the Delhi High Court
Case No : Writ Petition (C) 8924 of 2007

Varinder Prasad

APPELLANT

Vs

B.S.E.S. Rajdhani Power Limited and Others

RESPONDENT

Date of Decision : 18-01-2012

Acts Referred:

Citation : (2012) 2 AD 959 : (2012) 190 DLT 293 : (2012) 127 DRJ 630 :
(2012) 3 ILR Delhi 467

Hon'ble Judges : Vipin Sanghi, J

Bench : Single Bench

Advocate : Aruna Mehta, for the Appellant; Sumeet Pushkarna and Jitendra Kumar, Advocates for DTL, Mr. Samrat Nigam for R-2 and Mr. Sachin Chopra and Shashi Mohan for R-4, for the Respondent

Final Decision : Allowed

Judgement

Vipin Sanghi, J.—The present writ petition under Article 226 of the constitution of India has been preferred for issuance of an appropriate writ, order or direction, inter alia, to direct the respondents to pay a sum of Rs. 26 lacs as compensation to the petitioners.

2. The petitioners are the parents of an unfortunate boy named Ajay Kumar, who died on 16.06.2007 when he was only about 10 years of age, due to the collapsing of the shed (chajja) of a house situated at DESU colony, Najafgarh.

3. The petitioner No. 1 claims to be an electrician, working with Delhi Transco Ltd., i.e. respondent no. 3. His family consisted of his wife (petitioner No. 2), two daughters, namely Nisha (17 years) and Neha (15 years), and one son Ajay Kumar (now deceased).

4. The case of the petitioners is that their son along with his friend Mohit Sharma were playing in the park of DESU colony, Najafgarh in the morning of 16.06.2007. Suddenly, at about 6:30 am, it started to rain and in order to protect themselves from the rain, both the children took shelter under the shed

of House no. 1, Type-5 in DESU colony, Najafgarh. Suddenly the said shed collapsed and their son Ajay got buried under the debris that rained. One lady Smt. Kamlesh, who was doing her morning walk in the area rushed to the spot and picked up the boy Ajay from the debris. But the boy had already succumbed to the injuries.

5. The petitioners submit that the said house was constructed about 8-10 years back and was poorly maintained by the officials of respondent BSES Rajdhani Power Ltd. Petitioners also submit that the said flat was in a dilapidated condition, and due to this reason the shed (chajja) collapsed. The petitioners also complain that the flats are poorly maintained by respondent no.1, despite huge funds being allocated for the maintenance of the colony.

6. The FIR of the incident was registered in P.S. Najafgarh vide FIR No. 558/2007 u/s 304A/288 IPC against unknown officials responsible for the maintenance of the said building. The Post mortem of the deceased was done and the report is also filed with the petition, which shows the cause of the death as shock following blunt force, likely to occur in the manner as alleged i.e. on account of falling of the shed (chajja).

7. The petitioners claim that their only son was studying in Ring Midways Sr. Secondary Public School, Palam More, New Delhi in class V and was an extraordinary student. The petitioners were having very high hopes from their son. The petitioners have placed on record his certificates of merit issued to him on his standing first in the Art competition held in 2004 at Mt. St. Garjiya School. His report card for class III and class IV have also been filed, which show that he was a meritorious student.

8. The petitioners state that they were making all endeavors so that their son could become a software engineer some day in the hope that he will become the support system for their old age. They state that they have suffered immense mental pain and agony, due to the sudden demise of their only son.

9. The petitioners also state that the investigation in the said FIR has been going on very slowly and at a snail's pace, and till date no arrest has been made by the police in the said case. They also seek that the police authorities complete the investigation expeditiously, and arrest the persons who were responsible for the said mishap. They also complain that the police officials are not discharging their duty effectively and they have also refused to give the site plan, photographs, inquest report and other documents to the petitioners.

10. Earlier, the petitioners had made Govt. of NCT of Delhi as respondent No. 1, which was deleted from array of respondents by this court vide order dated 09.08.2010, as no relief is claimed against them. The petitioners have also filed the amended memo of parties which arrays BSES Rajdhani Power Ltd. as respondent no. 1, M/s Delhi Transco Ltd. as respondent No. 2 and the Commissioner of police as respondent No. 3. The respondents will be referred in this judgment according to their description in the amended memo of parties.

11. The petitioners submit that this is a clear case of negligence on the part of respondents, as they owed a duty to maintain the structures, so as to keep them from harming those who rightfully assume that they would not collapse, only on account of rain. The respondent nos.1 and 2 failed to discharge their said duty. The petitioners submit the maxim *Res ipsa loquitur* is squarely applicable in this case, and the petitioners are entitled for compensation due to the irretrievable loss suffered by them on account of the respondents negligence. Petitioners also submit that the State has failed to protect the fundamental rights of the petitioner's son, and this public law remedy is available to them to claim compensation. The petitioners submit that strict liability principles are attracted in this situation.

12. Upon issuance of notice, the Respondents have filed their counter affidavits in which they have not denied the occurrence of the aforesaid incident, or the registration of the FIR. The respondents have not denied that the death of the child Ajay Kumar occurred due to falling of the shed. It is not their case that his death occurred due to some other reason.

13. The case of the respondents is that the present case involves disputed questions of fact, which can only be settled by leading evidence and thus the proper remedy for the petitioners is to file a civil suit and this writ is not maintainable. Both the respondents i.e. BSES Rajdhani Power Ltd. and Delhi Transco Ltd. have sought to shift the blame on each other for not maintaining the aforesaid flat, of which the shed/ canopy/ chajja collapsed resulting in the death of Master Ajay Kumar.

14. The stand taken by respondent no. 1 is that they were not responsible for the maintenance of the said flat at the relevant time, and it was the duty of respondent no. 2 i.e. Delhi Transco Ltd. to maintain the said flats. The respondent no. 1 with its counter affidavit has placed on record an office order dated 12.11.2001 issued by Department of Power, Govt. of NCT of Delhi, in which the maintenance of the colonies/ residential quarters was declared to be the responsibility of the transferee company. So the respondent No. 1 contends that the overall responsibility for the maintenance in the said colony was that of the Delhi Transco Ltd., and not of respondent no. 1.

15. On the other hand, the Delhi Transco Ltd. i.e. respondent No. 2, has stated that the said flat had been placed under the supervision of the respondent no. 1. Vide letter dated 29.01.2003 respondent no. 1 asked its officials to take the possession of the said flat. So the stand of respondent no. 2 is that they were in no way involved in maintenance, repair and upkeep of the said flat.

16. Respondent no. 3 i.e. commissioner of police has stated in his counter affidavit that the investigation in the said FIR is still pending and the complete responsibility for maintenance of the said flat will be fixed thereafter. The police has also filed a status report dated 12.05.2010 regarding the progress of the case wherein, inter alia, it is mentioned that the responsibility of either

respondent no. 1 or respondent no. 2 couldn't be fixed and the matter requires further investigation.

17. The questions which arise for consideration are : Whether the present writ petition to claim compensation is maintainable ; (ii) If so, whether the death of the child Ajay Kumar occurred due to the negligence of one or the other, or both of the respondent nos. 1 and 2, and if yes; (iii) What compensation is to be awarded to the petitioners.

18. Learned counsel for the petitioner has relied upon the judgment of this court in *Ram Kishore Vs. Municipal Corporation of Delhi*, , to contend that a writ petition to claim compensation is maintainable where it involves infraction of the fundamental rights of citizens. The Court in *Ram Kishore (supra)*, after taking note of decisions of supreme court in *Rudul Sah Vs. State of Bihar* and *Another*, , *Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa* and others, and *D.K. Basu Vs. State of West Bengal*, , held that a writ petition to claim compensation is maintainable under Article 226 of the Constitution of India, in case there is violation of fundamental rights.

19. Learned counsel for the petitioners has also relied upon various judgments to contend that the principle of strict liability will apply, and the negligence of the respondents is writ large in the face of the falling of the shed. He placed reliance on *Municipal Corporation of Delhi Vs. Subhagwanti and Others*, , in which the Supreme Court held that the mere fact, that there was a collapse of the clock tower, told its own story in raising the inference of negligence so as to establish a prima facie case against the corporation.

20. The petitioner has also placed reliance on the decisions of this court in *Darshan and Others (Smt.) Vs. Union of India and Others*, and *Swarn Singh Vs. Union of India (UOI) and Others* and *Ram Kishore (supra)*.

21. In *Darshan (supra)* the deceased had died of drowning after falling into an open manhole. The Division Bench of this court held as follows ?

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

22. In *Swarn Singh (supra)* ten persons were buried under the debris due to the collapse of a wall. The court held the falling of the wall was a negligent act on the

part of the authorities, as it was in a dilapidated condition and thus this court awarded compensation to the victims.

23. In the case of Ram Kishore (*supra*), the death of the child Mahesh had been caused due to falling of the wall of a municipal lavatory maintained by the MCD. The court applied the strict liability principle and held the MCD liable for the up-keep of the public lavatory so that it did not endanger the life and safety of its users.

24. On the other hand, counsel for the respondent no.2 has placed reliance on Chairman, Grid Corporation of Orissa Ltd. (Gridco) and Others Vs. Smt. Sukamani Das and Another, , to contend that the present claim should not be considered under Article 226 of the Constitution, as disputed questions of fact arise for determination. In this case, the deceased had come in contact with a live wire which had been lying on the road, after it snapped from the overhead electric line. The defence of the Grid Corporation was that the wire had got snapped because of thunderbolt and lightening, and immediately after learning of it, the power in the line was disconnected. The Supreme Court held that such a case was not a fit one to be entertained under Article 226 of the Constitution of India, as the same was an action in tort, and the negligence of the authorities must first be established. Mere ownership of the electric transmission line by the corporation was not sufficient to award compensation in such a case. This decision has been followed in S.D.O. Grid Corporation of Orissa Ltd. and Others Vs. Timudu Oram, .

25. He has also placed reliance on the two decisions of this court in Munna Singh & ors. V. GNCT of Delhi & ors W.P. (C) 3230/2010, and in Duli Chand & Anr. V. State NCT of Delhi & Anr. W.P. (C) 12457-58/2006. In both these cases this court has refused to invoke the jurisdiction of this court under Article 226 for award of compensation.

26. In Munna Singh (*supra*), the petitioner had claimed that the deceased had died due to electrocution, when he was doing some work for a private party ? respondent no. 3, under the supervision and control of the Delhi Jal Board ? respondent no. 2. The court found that the petitioner had not taken steps to serve the private party. The stand of DJB was that there was no record relating to the engagement of the private party, i.e. respondent no. 3 as a contractor with respondent no. 2 DJB. By a short order, the writ remedy was not found appropriate. In this set of circumstances, the writ petition for claiming compensation was held to be not maintainable.

27. In Duli Chand (*supra*) a minor boy had died due to electrocution, when he had come into contact with an electricity line of 66,000 KV. The stand of Delhi Transco Ltd. was that such class of cables and wires do not exist, and are used by the distribution companies, such as NDPL, if at all, which mans the area. NDPL, the other respondent also disputed its liability. By relying upon the two judgments of the Supreme Court in the cases of Grid Corporation, referred to

above, the court held that proper remedy for the petitioners was to seek civil remedies, and a writ petition was held to be not maintainable.

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

6. The normal rule is that it is for the plaintiff to prove negligence but as in some cases considerable hardship is caused to the plaintiff as the true cause of the accident is not known to him but is solely within the knowledge of the defendant who caused it, the plaintiff can prove the accident but cannot prove how it happened to establish negligence on the part of the defendant. This hardship is sought to be avoided by applying the principle of *res ipsa loquitur*. The general purport of the words *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. It will then be for the defendant to establish that the accident happened due to some other cause than his own negligence. Salmond on the Law of Torts (15th Ed.) at p. 306 states : "The maxim *res ipsa loquitur* applies whenever it is so improbable that such an accident would have happened without the negligence of the defendant that a reasonable jury could find without further evidence that it was so caused". In Halsbury's Laws of England, 3rd Ed., Vol. 28, at page 77, the position is stated thus : "An exception to the general rule that the burden of proof of the alleged negligence is in the first instance on the plaintiff occurs wherever the facts already established are such that the proper and natural inference arising from them is that the injury complained of was caused by the defendant's negligence, or where the event charged as negligence "tells its own story" of negligence on the part of the defendant, the story so told being clear and unambiguous". Where the maxim is applied the burden is on the defendant to show either that in fact he was not negligent or that the accident might more probably have happened in a manner which did not connote negligence on his part. ?. ?. ?.

29. Now coming to present case, the incident in question has not been disputed by the respondents, nor the factum of death of Master Ajay Kumar due to the falling of the chajja upon him is in dispute. The occurrence of the said incidence has been recorded in the FIR and the cause of the death has also been verified by the post mortem report. Though respondent nos. 1 and 2 are shifting the liability for the maintenance of the said flat on each other, they do not dispute that one or the other of them is indeed responsible for acting negligently in not maintaining the said flat. There can be no dispute or denying the fact that one of them, if not both the respondents, owed a duty of care to the general public, so that no action or inaction of theirs causes harm to the public at large. There can be no quarrel that the flat should have been maintained, so that no part of it fell suddenly on its own, only on account of some rain. The falling of the shed (chajja) is *prima facie* evidence of negligence. Nothing has been brought out by

the respondents, to suggest that the shed fell despite the respondents taking proper care of the flat, or for some other cogent reason. Therefore, in my view, the principle of strict liability will be squarely applicable in this case, and the irresistible conclusion is that the respondent nos. 1 and 2 were negligent in the maintenance of the said flat, due to which the chajja fell on the deceased, and he died.

30. As far as the two cases Grid Corporation of Orissa Ltd. are concerned, in those cases the negligence on the part of the corporation had still to be proved - whether the wire snapped due to the negligence of the corporation, or due to some other reason, such as lightening, was required to be established. Thus those cases are distinguishable on facts. Also the cases of Munna Singh (supra) and Duli Chand (supra) are distinguished from the present case, as they are not the cases of *Res ipsa loquitur*, as is evident from the facts of those cases.

31. Consequently, I have no hesitation in concluding that the present being a case of glaring and evident negligence, to which the maxim *Res Ipsa Loquitur* applies, the present writ petition under Article 226 of the Constitution of India is maintainable as the said negligence has led to complete infraction of the fundamental right to life of the deceased. The inter se dispute between the two respondents, i.e. respondent nos. 1 and 2, would not come in the way of the petitioners for claiming compensation for breach of the fundamental rights of the deceased Ajay Kumar. The tendency of the public authorities, when more than one of them is involved, to shift the burden on each other is not new. Same was the position in *Darshan* (supra), and *Ram Kishore* (supra) and *Swarn Singh* (supra). The said inter se dispute was held, not to disentitle the petitioner from claiming relief under Article 226 of the Constitution of India, as negligence, resulting in breach of fundamental rights was held to have been established in each of these cases. The Court shall, however, *prima facie* examine the aspect of responsibility, only with a view to fix the responsibility of one of the respondents to pay the awarded compensation, leaving it open to the respondents to battle out and settle their inter se liability in appropriate proceedings.

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

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

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

33. The courts have evolved a two tier compensation mechanism. It has two components, i.e. the conventional sum, and pecuniary compensation, in such cases. The court in Kamala Devi (supra) held as follows-

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

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

(b) Compensation for pecuniary loss of dependency.

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

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

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

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

34. This principle has been taken note of in Ram Kishore (supra). The petitioners have filed an affidavit, calculating the compensation claimed by them as per the method provided in Kamla Devi (supra).

35. The standard compensation has to be awarded by taking the base amount as Rs. 50,000 in 1989, as mentioned in Kamla Devi (supra). The said amount would require to be adjusted for June 2007, when Ajay Kumar's death occurred, based on the consumer Price Index for industrial workers(CPI-IW), published by Labour Bureau, Government Of India. With the base year as 1982, when the index is taken as 100, the average CPI(IW) for the month of June 2007 works out to 602. Thus the standard compensation, as per inflation corrected value, comes out to $50,000 \times 602/171$ Rs. 1,76,023.39. Thus the standard compensation to be awarded in this case should be Rs. 1,76,023.

36. As far as pecuniary compensation is concerned, as already explained in Kamla Devi (supra) the income of the parents can be taken as a standard measure for arriving at the expected annual income of the children. The method of calculating the compensation for pecuniary loss of dependency depends upon the potential earning capacity of the deceased Ajay Kumar, had he attained adulthood. As per the affidavit of the petitioner no. 1 dated 15.12.2011, his monthly salary at the time of this incident was Rs. 10,000. At the time of filing of the affidavit, the earnings of petitioner no. 1 were Rs. 30,000/- per month approximately. The petitioners have applied a multiplication factor of 1.5 to counter inflation and erosion of the value of money. Considering the fact that in a span of about four years, there has been a threefold increase in the earnings of petitioner no. 1 from Rs. 10,000/- p.m. to Rs. 30,000/- p.m., in my view, the multiplicand factor of 1.5, to off set the effects of inflation and erosion of the value of money should be adopted. It can be assumed that Ajay Kumar would have, at least, earned what his father was earning, if not more. Therefore, the multiplicand would be the expected annual income, less what he required for himself. As Ajay would have grown up, his personal expenses would have only risen. The contribution to the household would not have exceeded half of the income. Thus the multiplicand work out to be Rs. 90,000/- i.e. $(1,80,000/2)$. This multiplicand is to be multiplied by the multiplier of 15, in terms of the second Schedule to the Motor Vehicles Act, 1988. This comes out to be a figure of Rs. 13,50,000.

37. Taking the above calculation into account the total compensation to which the petitioners are entitled works out to be Rs. 1,76,023 + Rs. 13,50,000 = Rs. 15,26,000/-.

38. Since the liability of maintenance of the said flat is being disputed by both respondent no. 1 and respondent no. 2, it would not be appropriate to decide the

inter se liability of maintenance of the flat in this petition. Without deciding this issue, it is deemed appropriate that respondent no. 1 i.e. BSES Rajdhani Power Ltd. should pay the aforesaid amount of compensation to the petitioners, as the possession of the flat in question had been delivered to respondent no. 1 BSES Rajdhani Power Ltd. The amount shall carry simple interest at the rate of 9% per annum from the date of filing of this petition till the date of payment. Respondent no. 1 may, it is so advised, stake its claim against respondent no. 2. If such a claim is made, the same shall be independently adjudicated, without being influenced, in any manner, by this decision.

39. So far as the relief against respondent no. 3 is concerned, in my view, the grievance of the petitioner that respondent no. 3 Delhi Police is not proceeding with the investigation of the case with any seriousness, and is acting with lethargy, is clearly made out in the facts of this case. Though the incident in question is of 16.06.2007 and the FIR was registered on the same date, the police has not been able to complete the investigation and fix the responsibility of the concerned officers of respondent nos. 1 and/or 2. As per the status report dated 12.05.2010, the case has been sent as untraced on 01.10.2009 with the comment that it would be reopened for further investigation if any evidence would come on record in future. The status report is wholly unsatisfactory. It is too much for the Delhi Police to expect that evidence would surface on its own. It is for the police to gather the evidence and proceed further in the matter, upon identification of the officers who were responsible for maintenance of the flat in question at the relevant time. Consequently, I direct respondent no. 3, i.e. the Commissioner of Police to expedite further investigation into the matter, and to take the case to its logical conclusion. In case the Delhi Police does not take any further action in the matter within a reasonable period, or within three months at the most, it shall be open to the petitioner to seek further directions in this respect.

40. This writ petition is allowed in the aforesaid terms with costs quantified at Rs. 50,000/- to be shared equally by respondent nos. 1 and 2.