

REPORTABLE

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ WP(C) No. 2490 OF 2006

% Date of Decision : 7th March, 2008.

Hari Om Sharma. Petitioner

Through Mr. Pankaj Batra, Advocate.

VERSUS

Municipal Corporation of Delhi & Others Respondents.

Through Mr. Sanjeev Sabhhawal, Standing Counsel for the MCD.

Mr. Sandeep Aggarwal & Shadat Ahmed, Advocates for the Delhi Jal Board.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

%07.03.2008

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in the Digest ?

SANJIV KHANNA, J:

1. The present Petition has been filed by Mr. Hari Om Sharma, seeking compensation for injuries sustained by him in an accident that had occurred on the intervening night of 4th and 5th November 2004.
2. It is stated in the writ petition that the petitioner was traveling on a two wheeler scooter when he hit top of a drain cover and fell down suffering serious injuries. The drain cover was substantially above the road level and was not properly aligned. The petitioner became unconscious and went into coma. He was rushed to Din Dayal Upadhyaya Hospital but as no neurologist was available, the petitioner was shifted to Maharaja Agrasen Hospital, Punjabi Bagh, New Delhi. The petitioner remained in coma for 12 days and was discharged on 23rd November 2004. Even after he regained his consciousness, the petitioner failed to recognize his wife, children and relatives. After undergoing regular and extensive treatment in Maharaja Agrasen Hospital and Batra Hospital the petitioner has recovered his memory but his face has been disfigured and his chin tilted towards the right side. It is the case of the petitioner that he is still undergoing treatment. As per the diagnostic reports placed on record, the petitioner had suffered longitudinal fracture on his head, through the mastoid portion (bulging bone near the ear) of the left

temporal bone coursing along with long axis of the petrous (dense part of the temporal bone). The imaging report dated 7th November, 2004 of the CT scan of Head of the petitioner mentions as under :

- The study reveals multiple small hemorrhage contusions with mild surrounding hypodensity in right frontal and parietal lobes. Small petechial hemorrhages are seen in the left high frontoparietal lobe.
- Cortical sulci are effaced with the parietal effacement of ventricles suggestive of mild diffuse cerebral oedema.
- No evidence of extra axial hematoma seen.
- Basal cisterns are denied.
- No mid line shift seen.
- Both cerebellar hemispheres and brain stem appear normal in attenuation.
- Undisputed fracture left petrous temporal squamous temporal bone is seen.

3. There are other similar reports of different diagnostic and scan centers which have been placed on record. Thus, the injuries suffered by the appellant in the accident stand proved. To be fair to the respondents, in view of the documentary evidence placed on record, they have not specifically denied the nature and extent of injuries suffered.

4. The next question which arises for consideration is whether there exists any causal connection between the accident and the injuries suffered by the petitioner and negligence on the part of the respondents namely, Delhi Jal Board and Municipal Corporation of Delhi (hereinafter referred

to as DJB and MCD, for short). The petitioner has contended that the said accident had occurred on account of carelessness of the respondents-DJB and MCD. The cover of the manhole/drain cover and sewer line was installed by DJB and the road was maintained by MCD. It has been contended that since the drain cover was about 5 inches above the surface of the road and not properly aligned the petitioner's scooter hit the raised drain-cover and he fell down and sustained serious injuries.

5. In this regard I may refer to the Police First Information Report prepared by Head Constable, Mr. Jagdish Prasad who had visited the spot immediately after the accident at about 1.55 a.m on 5th November, 2004. As per FIR and the medical report, the petitioner was not smelling of alcohol but was badly injured and unconscious. He was unfit for statement. The said officer also prepared a site plan of the accident. He was careful to mark the spot where the scooter was lying and the sewer which was not aligned properly and raised above the road level. The site plan indicates that the scooter had hit the sewer line cover which was above the road level thereby causing the accident. The petitioner, in fact, has filed photographs as late as 28th January, 2008 of the accident spot which show that sewer line and manhole cover on the

said road, even on the said date, were not properly aligned and protruded above the road level.

6. MCD in their reply have not denied the accident or the fact that the sewer was not properly aligned and was protruding above the road. On the other hand, in their affidavit of about 2 pages MCD have stated that the petitioner had suffered the injuries due to negligence/derelection of duty on the part of DJB, who was entirely responsible for the said accident. It is stated by MCD that their duty is to repair roads and align the manholes and carry out repairs etc. It is further stated that there was no manhole on the road in question for which cover or lid was provided by MCD. In the additional affidavit filed on 11th December, 2007, it is further stated that no work of dense carpeting has been done by the MCD on the road in question from 1995 onwards.
7. The respondent-DJB in their reply have referred to Circular dated 4th November, 1992 issued by MCD that while working out estimates for widening/raising and strengthening of roads, proper provision should be kept for raising/lowering of manholes, if required. The said Circular, in fact, records that improper alignment of manhole covers are traffic hazards and a danger to the persons plying vehicles on the roads. This Circular further stipulates that normally raising or lowering of manholes should be undertaken and executed simultaneously with relaying or

widening of a road. The said Circular hardly supports the case of the DJB. It will apply to cases where MCD is relaying the road. DJB has not placed any document on record to show that the manhole or the sewer in question was not repaired immediately or shortly before the accident had taken place on the night intervening 4th – 5th November, 2004. It is also not the case of DJB that they had informed MCD to carry out necessary repairs and align the road with the manhole/drain cover. No such letter or document is placed on record. In fact, reliance placed by DJB on Circular dated 4th November, 1992 is irrelevant as MCD in their affidavit filed on 30th May, 2007 have stated that no dense carpeting work had been done on the road after 1995. DJB has also tried to put the blame on MCD by stating that the road accident had occurred mainly due to darkness as the road was not well lit. It is stated by DJB that if the road was well lit, the unfortunate accident would not have occurred. Thus, the respondents, government bodies viz.; DJB and MCD have not specifically denied the factum of accident and the cause of the accident, but only tried to shift the blame on to the other in a bid to escape their liability. Perhaps the respondents realized that they could not have denied the cause of the accident in view of the FIR and the site plan prepared by the police.

8. The counter affidavits filed by the two respondents bring to fore a despicable attempt at passing the buck onto the other. Both the respondents have sought to shift their responsibility why the drain cover was not properly aligned with the surface of the road. Mere existence of the said Circular does not absolve the respondent No. 2-DJB from it's duty to care. The workers of the said Department during their routine checks of the drainage system ought to have informed their counterparts in MCD about the wrong alignment. The two agencies of the Government have been created for the welfare of the general public and owe a duty from which they cannot escape by blaming each other or by hiding behind the other. Both of them are held to be liable.
9. The Respondents were/are under a statutory duty to take care that the roads and the sewer drain covers are properly maintained in a manner that does not threaten life and limb of commuters and road users. They have failed to carry out their duty. The respondents are aware that failure to properly align the manhole or the drainage cover can cause serious accidents and injuries to road users. The causal connection is therefore established. Negligence is failure to take reasonable care. Failure of the nature* indicated and mentioned above amounts to negligence. The Supreme Court in the case of ***Municipal Corpn. of***

Delhi versus Sushila Devi, reported in (1999) 4 SCC 317, at page 322

has observed as under :

“9. The law is stated in *Winfield and Jolowicz on Torts* (13th Edn., 1989, p. 415) in these words:

“If damage is done owing to the collapse of the projection on the highway or by some other mischief traceable to it, the occupier of the premises on which it stood is liable if he knew of the defect or ought, on investigation, to have known of it. At any rate this is the rule with respect to a thing that is naturally on the premises e.g. a tree.”

“13. By a catena of decisions, the law is well settled that if there is a tree standing on the defendant's land which is dried or dead and for that reason may fall and the defect is one which is either known or should have been known to the defendant, then the defendant is liable for any injury caused by the fall of the tree (see *Brown v. Harrison*, *Quinn v. Scott* and *Mackie v. Dumbartonshire County Council*). The duty of the owner/occupier of the premises by the side of the road whereon persons lawfully pass by, extends to guarding against what may happen just by the side of the premises on account of anything dangerous on the premises. The premises must be maintained in a safe state of repair. The owner/occupier cannot escape the liability for injury caused by any dangerous thing existing on the premises by pleading that he had employed a competent person to keep the premises in safe repairs. In *Municipal Corpn. of Delhi v. Subhagwanti* a clock tower which was 80 years' old collapsed in Chandni Chowk, Delhi causing the death of a number of persons. Their Lordships held that the owner could not be permitted to take a defence that he neither knew nor ought to have known the danger. “[T]he owner is legally responsible irrespective of whether the damage is caused by a patent or a latent defect,” — said their Lordships. In our opinion the same principle is applicable to the owner of a tree standing by the side of a road. If the tree is dangerous in the sense that on account

of any disease or being dead the tree or its branch is likely to fall and thereby injure any passer-by then such a tree or branch must be removed so as to avert the danger to life. It is pertinent to note that it is not the defence of the Municipal Corporation that vis major or an act of God such as a storm, tempest, lightning or extraordinary heavy rain had occurred causing the fall of the branch of the tree and hence the Corporation was not liable.

10. The above observations of the Supreme Court very clearly lay down

that the statutory bodies owe a duty to care and failure to take due care would amount to violation of Right to Life guaranteed under Article 21.

Reference can be made to the judgment of a learned Single Judge of this Court in the case of **Sh. Raj Kumar versus Union of India**

reported in (2005) VIII AD (Delhi) 303. In the said case, in similar

circumstances the Court awarded compensation of Rs. 6 Lacs on

account of the death of the motorist. The principle of *Res Ipsa Locquitor*

was applied. Reference was made to the decisions of the Supreme

Court in the cases of **Nilabati Behera versus State** reported in (1993)

2 SCC 746, **P.A Narayanan versus Union of India** reported in (1998)

3 SCC 67 and **D.K Basu versus State of Bengal** reported in (1997) 1

SCC 416. In these decisions the Supreme Court has held that the

scope and ambit of Article 21 of the Constitution is wide and far

reaching. It would, undoubtedly cover a case where the State or it's

instrumentality failed to discharge it's duty of care cast upon it, resulting

in loss of life, limb or injury to a person. When a manhole is not properly

aligned, the result would be disastrous, is a conclusion which the respondents could have easily foreseen and therefore they were under an obligation to rectify the alignment and prevent any mishap by taking remedial steps.

11. Learned Single Judge of this Court in **Raj Kumar's** case (Supra) has also referred to decisions of Division Benches of this Court in **Smt. Shyama Devi Versus National Capital Territory of Delhi** reported in 78 (1999) DLT 827 (DB), **Smt. Darshan Versus Union of India** reported in 79 (1994) DLT 432 **and Punam Sharma Versus Union of India** reported in 100 (2002) DLT 721.
12. A Division Bench of this Court has dismissed the appeal filed by the DJB in the case of **Raj Kumar** (supra). The Division Bench has elaborately examined several cases on the subject, negligence and liability of the respondents to pay damages. After referring to the principle as propounded in the case of **Rylands Versus Fletcher** reported in (866) LRI Ex 265, it was observed that when a power is given to do some act, it is coupled with the duty to do the act properly. It was observed that if a manhole is constructed then it should be properly aligned with the surface of the road. If a manhole is not properly aligned, it can cause accidents which would be solely attributable to negligence of the persons maintaining the road and those who had not

properly aligned the manhole. I have no doubt in saying that the said accident could have been avoided had the respondents carried out their duty to maintain the road as required and as is expected of them.

Roads have to properly maintained so that they do not become a cause for accidents to road users.

13. The petitioner is the sole bread winner for his entire family of five, which includes three children who as of today are aged 18 years, 15years and 13 years respectively. At the time of the of the accident he was earning Rs. 6500/- per month. The petitioner has claimed that he is presently unemployed as the nature of injuries suffered by him in the accident are such that he is not in a position to work in his previous place of employment. The petitioner has spent around a year recuperating after the said accident and during this period has been forced to make innumerable visits to the hospital and medical practitioners. Degree of the injuries and the extent to which the petitioner's normal life is affected can be gauged to some extent when we go through the various medical reports which suggest very high degree of damage to his locomotive* abilities. Special mention might be made to the report dated 30th November (year not mentioned, as annexed at page 30 of the paper book) where in it is said the "patient can now close left eye". The said note is suggestive of the fact that prior to this the petitioner was not able to close his eyes. This is only suggestive of the state in which the unfortunate accident had left him.
14. The petitioner has undergone hardships both physical as well mental and psychological on account of the injuries suffered by him and the

resultant loss of livelihood. The family members of the petitioner have also been made to suffer for failure of the respondents to carry out their primary duties. It is claimed that the petitioner is still not gainfully employed, as a consequence of the accident, though no material has been brought on record in support, in the nature of the termination order from previous employer, pay slips, etc. In view of lack of evidence, reasonable amount is being awarded.

15. It has been stated that the petitioner has incurred medical expenses to the tune of Rs. 61,380/- as per bills placed on record. Keeping in view the nature of injuries and cost of medical treatment in Delhi, the petitioner is held to be entitled to Rs.60,000/- on account of medical treatment.

16. In my opinion the petitioner is also entitled to Rs. 1 Lac as compensation on account of the physical injuries, mental trauma and loss of employment that the petitioner has been subjected to on account of the dereliction of duty by the respondents herein. Thus, the total amount to be paid to the petitioner is Rs. 1,60,000/-. The said amount will be payable by both respondents in equal share i.e. DJB and MCD will pay Rs.80,000/- each to the petitioner. Payment will be made by sending cross-cheque to the petitioner within 5 weeks. Failure to do so would attract interest @ 12% per annum on the amount from the date of

the judgment till payment. The petitioner is also entitled to costs of Rs.10,000/- which shall be equally borne and paid by both respondents.

In terms of the aforesaid observations the Writ Petition is disposed of.

(SANJIV KHANNA) JUDGE

MARCH 07, 2008.

vld/P