

REPORTABLE

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ WRIT PETITION (CIVIL) NO. 1077 OF 2007

% Reserved on : 15th May, 2009.
Date of Decision : 7th July, 2009.

MADHU KAUR

.... Petitioner.

Through Mr. Monohar Singh Bakshi, Mr.
Lakhbir Singh Bakshi and Mr. K.K. Baid,
Advocates.

VERSUS

GOVT. OF NCT OF DELHI& ANR.

.... Respondents.

Through Ms. Zubeda Begum, Advocate
for PWD and Police.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA

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

SANJIV KHANNA, J:

1. The petitioner-Ms. Madhu Kaur is mother of late Mr. Harpreet Singh, who expired in a road accident on 4th May, 2006. The petitioner claims that the said road accident in which she lost her son, aged about 22-24 years, was directly attributable to negligence of the respondents Government of NCT of Delhi and Municipal

Corporation of Delhi as they had failed to maintain the road in front of base hospital near Balaji temple at Brar Square, Naraina, Delhi. It is stated that the deceased, who was driving a scooter at about 9:30 p.m. at night on 4th May, 2006 got imbalanced and died after hitting a pit (khada), which was more than 4 inches below the regular tarred surface of the main road. The petitioner claims compensation of Rs.50 lacs from the respondents alleging negligence due to failure to maintain road and to display sign boards of caution in case the road had a pit or a khada, which required repairs.

2. On the question of accident and the death of the son of the petitioner, late Mr. Harpreet Singh, there is no dispute or doubt. The petitioner has filed on record copy of FIR No. 186 dated 5th May, 2006, lodged at Police Station Naraina in which it is mentioned that on 4th May, 2005 at about 9.55 p.m. information was received about an accident on the road proceeding from Brar Square to Naraina. On reaching the spot near Balaji Temple, adjacent to boundary of Base Hospital, a two wheeler scooter bearing No. DL 4S AB 6772 was found to have met with an accident and a young man, who was driving the scooter was found to be dead. Later on, the name of the deceased young man was identified as Mr. Harpreet Singh. The FIR records that no eye witness could be found at the spot but on general enquiry it was found that a pillion rider who was on the same

scooter was also injured and was taken to a hospital by an unknown car owner whose car number could not be ascertained. It is further stated that at that stage one Mr. Manmeet Singh reached the accident site and stated that he had been informed that his brother late Sh. Harpreet Singh had met with an accident. The petitioner has also filed copy of the post mortem report issued by Safdarjung Hospital in which the cause of death has been mentioned as injuries of scalp, head and face with multiple fracture of the skull and facial bones.

3. Delhi Police pursuant to directions of this Court has filed status report dated 22nd August, 2007. It is mentioned in the status report that DD number 30A was lodged with the police station Naraina by the duty Constable of ESI Hospital that one Mr. Chandra Mohan, resident of B-910, Avantika, Sector-1, Rohini was admitted by one Mr. Amit Kumar in the said hospital. The said Mr. Chander Mohan died in the hospital. It is further stated that on further enquiry it was found that one Mr. Amit Sharma, resident of 175, Bharat Nagar, Ashok Vihar, Delhi, who was coming from Gurgaon had taken the injured Mr. Chander Mohan in his car to ESI hospital with one Mr. Nitin Kumar but no eye witness was found. The photographs taken at the spot of the deceased and the scooter have been also enclosed. The photographs do not show that the scooter or the deceased had

been crushed under any vehicle. The photographs reveal scratches and dents on one side of the scooter which was facing the ground. The other side of the scooter virtually was unscratched and untouched.

4. ASI, Dharampal, who was the investigating officer in the present case has also filed his affidavit. In the said affidavit, he has reiterated the aforesaid facts as mentioned in the FIR and has stated that no eye witness of the accident was found. He has also stated that he had prepared a site plan on a separate paper. The site plan has been enclosed with the writ petition. In the said site plan, ASI, Dharampal Singh has specifically identified a pit on the road, which has been given mark 'B'. The said pit is before the place where the scooter was found. Obviously, when the FIR was written, contemporaneous investigation was undertaken regarding the cause of the accident. The investigating officer was of the opinion that the accident was caused as the scooter slipped and the driver had lost control after hitting the pit. ASI, Dharampal, in his affidavit has stated that the pit was about 6-7 feet from the place where the scooter was found with the dead body of Mr. Harpreet Singh. It is stated in the affidavit that tarcol and concret on the road surface were badly eroded, which had created a pit about 3 to 4 inch deep and about one square foot in area. However, he has stated that no

direct evidence came to the notice that the deceased had met with the accident because he had hit the pit shown in the site plan. I may, however, note that the affidavit filed by ASI, Dharampal was prepared by the same counsel, who is appearing for the Government of NCT of Delhi and is defending the present case. The petitioner along with the rejoinder affidavit has filed photographs of the pit in question.

5. The aforesaid facts reveal that there was a pit on the road in question and the said pit was in line with and before the point where scooter driven by deceased Mr. Harpreet Singh found lying after the accident. The pit was about 3 to 4 inch deep and the road surface as well as the grit was eroded. The photographs of the scooter as well as the dead body show that the side of the scooter facing upwards was undamaged and not scratched. Therefore, no tyre or vehicle had run over the scooter. The back side of the scooter and the front side of the scooter do not have any scratches or dents. Even the plastic carrier box fixed on the back side of the scooter and the back lights were intact as per the photographs. Similarly, the front lights and the front face of the scooter were intact. Therefore, the possibility of any vehicle hitting the scooter on the back side or from the front side is not there. It may also be noted that the ASI, Dharampal who had prepared the site plan was cautious enough and

has specifically referred to mark 'B' on the site plan to identify the pit/khada. In his affidavit, however he has tried to absolve and save Government of NCT of Delhi by stating that he had identified a pit at point 'B' only for the purpose of identification. However, this statement does not commend acceptance because he has identified the place of accident with reference to boundary wall of Base Hospital and through Balaji Temple. Clearly, the investigating officer ASI, Dharampal was of the opinion immediately after examining the site that the accident was caused as a result of the scooter driver losing control of the vehicle after hitting the pit. The note prepared by ASI, Dharamvir Singh on the site plan reads as under:-

"Note: The mark A is the place where accident has taken place Scooter NO. DL 45 AB 6772 LML NV and deceased Harpreet Singh both found on accident site Mark B is the pit (Khada) shown on the road."

6. The aforesaid facts lead to the conclusion that late Mr. Harpreet Singh was at about 9 to 9.30 p.m. driving a scooter and coming from Dhaula Kuan to Naraina on the Ring Road when he lost balance after hitting into a pit/khada on the road and he fell down and died. There does not appear to be any other possibility. Police in investigation have not found that there was any sign or indication that any other vehicle was involved in the said accident. All indicators and

preponderances point towards the khada/pit as the cause of the accident.

7. Admittedly, the khada/pit was 3 to 4 inch deep and in the middle of the road. A two wheeler being driven at a normal speed when it hits and runs over a pit/khada, which is 3 to 4 inch deep, can lose balance and hurt and cause injuries to the driver and the pillion rider on the scooter. It may be noted that in the present case, the deceased was a Sikh by religion and was not bearing helmet. By law also, he was not required and mandated to wear a helmet for driving a two wheeler.

8. Before any damages can be awarded to the petitioner against the respondents, negligence on the parts of the respondents is required to be established. Negligence means failure to exercise due care expected from a reasonable prudent person. It is breach of a duty to take care for safety of others. Negligence implies breach of duty or lack of proper care in doing something. In short, it is want of attention and doing something which a prudent and reasonable man would or would not do. Clerk & Lindsell on Torts (18th Ed.) sets out four requirements of the tort of negligence and the same read:

“(1) the existence in law of duty of care situation, i.e. one in which the law attaches liability to carelessness. There has to be recognition by law that the careless infliction of the kind of damages in suit on the class of person to which the claimant

belongs by the class of person to which the defendant belongs is actionable;
(2) breach of duty of care by the defendant, i.e. that it failed to measure up to the standard set by law;
(3) a casual connection between the defendant's careless conduct and the damage;
(4) that the particular kind of damage to the particular claimant is not so unforeseeable as to be too remote."

9. The road in question was maintained and under the supervision and control of Government of NCT of Delhi. Roads are meant for being used by vehicles including two wheelers in Delhi. It is/was the responsibility and obligation of the Government of NCT of Delhi to maintain the said road in question. As a reasonable person, Government of NCT of Delhi is/was aware that in case there are/were pits on the road, a person driving a two wheeler can lose balance and suffer injuries including fatal injury. Government of NCT of Delhi was required to act in a prudent manner and ensure that the road in question was properly maintained and not act in a manner which would show a shameful disregard of safety of persons using the road. Failure to properly maintain the road and display caution notice/sign when a road is damaged results in failure to take due care as was expected of a reasonable prudent person and amounts to negligence. The fact that the respondent Government of NCT of Delhi had appointed a contractor does not absolve them from their own responsibility. It was the duty of the Government of NCT of Delhi to

see that the contractor was properly performing the work and task entrusted to them. Moreover, I find that the Government of NCT of Delhi has not placed on record the relevant contract with the Maheshwari Brothers Limited. In any case, it is open to the Government of NCT of Delhi to recover the amount awarded to the petitioner from Maheshwari Brothers Limited in view of the contract between both of them.

10. The Delhi High Court has repeatedly taken the view that improper maintenance of roads amounts to negligence and in such cases when an accident occurs the road maintaining agency is liable to pay compensation for the loss suffered and damage caused. In ***Raj Kumar versus Union of India and Another***, 124 (2005) DLT 218, a scooterist drove over a manhole which was three inches below surface of the road and lost control and died after hitting the side/divider railing. The road maintenance agencies, viz. MCD as well as Delhi Jal Board who were required to maintain and repair manhole were found guilty and the compensation was awarded. Appeal filed by Delhi Jal Board before the Division Bench was dismissed by a detailed judgment in ***Delhi Jal Board Versus Raj Kumar & Ors.***, 125 (2005) DLT 120. The Division Bench noted that when power is given to do some act, it also implies duty to act properly. The Division Bench quoted observations in ***Forbes versus Lee Cons***

Board, (1879) 4 EX. D. 116, wherein it was observed that a public authority authorized to make a project and take tolls is impliedly bound to keep it in proper repair. Reference was also made to observations of Lord Cairns in **Julius versus Lord Bishop of Oxford**, (1874-80) All ER Rep 43 (HL), where it is stated:-

“There may be something in the nature of the thing empowered to be done, something in the object for which it is to be done, something in the conditions under which it is to be done, something in the title of the person or persons for whose benefit the power is to be exercised, which may couple the power with a duty and make it the duty of the person in whom the power is reposed to exercise the power when called upon to do so.”

11. In aforesaid case the Division Bench has further observed that similar view has been taken by the Supreme Court in **State (Delhi Administration) versus I.K. Nangia**, 17 (1980) DLT 164 (SC); AIR 1979 SC 1977 (vide para 15); **Tara Prasad Singh versus UOI**, AIR 1980 SC 1682 (vide para 14); **Ambica Quarry Works versus State of Gujarat**, AIR 1987 SC 1073 (vide para 13); **Superintending Engineer, Public Health versus Kuldip Singh**, AIR 1997 SC 2133, (vide p. 2137).”

12. The Division Bench in the aforesaid case was of opinion that the principle of Strict Liability would apply and referred to the

decision in the case of ***Rylands versus Fletcher*** (1866) LRI EX. 265.

13. In another decision by a Division Bench of this Court in ***Smt. Darshan & Ors. versus Union of India & Ors.***, 79 (1999) DLT 432 (DB), the accident had occurred due to uncovered manhole. The Court observed that Doctrine of Strict Liability was applicable and negligence was writ large. Reference can be also made to judgment of this Court in ***Hari Om Sharma Versus Municipal Corporation of Delhi & others***, W.P. (C) 2490 of 2007 in which the court observed that:

“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.”

14. Another contention raised by respondent Government of NCT of Delhi pertains to public right remedy and maintainability of the present writ petition. The said contention has no merit and has been repeatedly rejected by this Court by relying upon public law doctrine. Reference can be made to the decisions in the case of ***Raj Kumar (supra)***, wherein the case law on the subject has been examined and it has been held that a writ petition is maintainable. Similar view has also been taken in the case of ***Smt. Darshan*** (supra). Reference can be also conveniently made to another Division Bench judgment of this Court in the case of ***Shanti Mukand Hospital Vs. Ms. Rinchu and Ors.***, 146(2008)DLT148 (DB).

15. It may be appropriate here to reproduce observations of the Supreme Court in the case of ***Nilabati Behera Alias Lalita Behera versus State of Orissa and Others***, (1993) 2 SCC 746.

“12. In view of the decisions of this Court in Rudul Sah v. State of Bihar and Anr., Sebastian M. Hongray v. Union of India and Ors., Bhim Singh v. State of J&K, Saheli, A Women's Resources center and Ors. v. Commissioner of Police, Delhi Police Headquarters and Ors. and State of Maharashtra and Ors. v. Ravikant S.Patil, the liability of the State of Orissa in the present case to pay the compensation cannot be doubted and was rightly not disputed by the learned Additional Solicitor General. It would, however, be appropriate to spell

out clearly the principle on which the liability of the State arises in such cases for payment of compensation and the distinction between this liability and the liability in private law for payment of compensation in an action on tort. It may be mentioned straightway that award of compensation in a proceeding under Article 32 by this court or by the High Court under Article 226 of the Constitution is a remedy available in public law, based on strict liability for contravention of fundamental rights to which the principle of sovereign immunity does not apply, even though it may be available as a defence in private law in an action based on tort. This is a distinction between the two remedies to be borne in mind which also indicates the basis on which compensation is awarded in such proceedings. We shall now refer to the earlier decisions of this Court as well as some other decisions before further discussion of this principle.

36. The public law proceedings serve a different purpose than the private law proceedings. The relief of monetary compensation, as exemplary damages, in proceedings under Article 32 by this Court or under Article 226 by the High Courts, for established infringement of the indefeasible right guaranteed under Article 21 of the Constitution is a remedy available in public law and is based on the strict liability for contravention of the guaranteed basic and indefeasible rights of the citizen. The purpose of public law is not only to civilize public power but also to assure the citizen that they live under a legal system which aims to protect their interests and preserve their rights. Therefore, when the court moulds the relief by granting "compensation" in proceedings under Article 32 or 226 of the Constitution seeking enforcement or protection of fundamental rights, it does so under the public law by way of penalising the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizen. The payment of compensation in such cases is not to be understood, as it is generally understood in a civil

action for damages under the private law but in the broader sense of providing relief by an order of making 'monetary amends' under the public law for the wrong done due to breach of public duty, of not protecting the fundamental rights of the citizen. The compensation is in the nature of 'exemplary damages' awarded against the wrong doer for the breach of its public law duty and is independent of the rights available to the aggrieved party to claim compensation under the private law in an action based on tort, through a suit instituted in a court of competent jurisdiction or/and prosecute the offender under the penal law.

37. This Court and the High Courts, being the protectors of the civil liberties of the citizen, have not only the power and jurisdiction but also an obligation to grant relief in exercise of its jurisdiction under Articles 32 and 226 of the Constitution to the victim or the heir of the victim whose fundamental rights under Article 21 of the Constitution of India are established to have been flagrantly infringed by calling upon the State to repair the damage done by its officers to the fundamental rights of the citizen, notwithstanding the right of the citizen to the remedy by way of a civil suit or criminal proceedings. The State, of course has the right to be indemnified by and take such action as may be available to it against the wrongdoer in accordance with law - through appropriate proceedings. Of course, relief in exercise of the power under Article 32 or 226 would be granted only once it is established that there has been an infringement of the fundamental rights of the citizen and no other form of appropriate redressal by the court in the facts and circumstances of the case, is possible. The decisions of this Court in the line of cases starting with *Rudul Sah v. State of Bihar and Anr.* granted monetary relief to the victims for deprivation of their fundamental rights in proceedings through petitions filed under Article 32 or 226 of the Constitution of India, notwithstanding the rights available under the civil law to the aggrieved party where the courts

found that grant of such relief was warranted. It is a sound policy to punish the wrongdoer and it is in that spirit that the Courts have moulded the relief by granting compensation to the victims in exercise of their writ jurisdiction. In doing so the courts take into account not only the interest of the applicant and the respondent but also the interests of the public as a whole with a view to ensure that public bodies or officials do not act unlawfully and do perform their public duties properly particularly where the fundamental rights of a citizen under Article 21 is concerned. Law is in the process of development and the process necessitates developing separate public law procedures as also public law principles. It may be necessary to identify the situations to which separate proceedings and principles apply and the courts have to act firmly but with certain amount of circumspection and self restraint, lest proceedings under Article 32 or 226 are misused as a disguised substitute for civil action in private law. Some of those situations have been identified by this Court in the cases referred to by Brother Verma, J."

16. The respondent authorities should be conscious and aware of their duty to maintain roads and ensure that the road surface does not have any pits or khada so as to cause accidents, thus resulting in injuries and even loss of life. It is the obligation and responsibility of the road owning agencies to ensure that the roads are maintained properly and repairs undertaken. Even if they have entered into third party contracts for road maintenance, road users should not suffer injuries fatal or otherwise because of lack of maintenance, proper care and repairs. In case road is found to be damaged, necessary caution board/sign boards or barricades should be fixed. In case

accidents take place as a result of negligence and failure to maintain roads, damages can always be awarded to persons who have suffered or lost a near and dear one. Loss of life because of negligence of state instrumentalities results in violation of right to life and liberty under Article 21 of the Constitution. In such cases of violation of fundamental right to life, a High Court under Article 226 of the Constitution has power to award compensation and direct the State instrumentality or its servants to ensure enforcement of fundamental rights. This remedy is available in public law.

17. The last question relates to quantum of compensation. Compensation in case of loss of life is calculated on the basis of pecuniary loss and non pecuniary loss. Pecuniary loss compensates a person/claimant of the financial loss suffered. As the financial loss suffered pertains to uncertain future, arithmetical niceties are not required and a rough and a fair estimate is made on the basis of evidence and material placed on record. The Supreme Court after examining various theories for calculating quantum of pecuniary compensation, has repeatedly held that the multiplier method is logically sound and legally well established (refer, ***Lata Wadhwa versus State of Bihar***, (2001) 8 SCC 197, ***GM Kerala, SRTC versus Susama Thomas***, (1994) 2 SCC 176 and other cases). In ***R.K. Malik and Anr. Vs. Kiran Pal and Ors.***, Civil Appeal No.

3608 of 2009 (Arising out of SLP (C) No. 17525 of 2006), decided on 15th May, 2009 the Supreme Court observed that :

"13. For calculating pecuniary loss or loss of dependency, this Court has repeatedly held that it is the multiplier method which should be applied. The said method is based upon the principle that the claimant must be paid a capital sum, which would yield sufficient interest to provide material benefits of the same standard and duration as the deceased would have provided for the dependents, if the deceased had lived and earned. The multiplier method is based upon the assessment that yearly loss of dependency should be equal to interest that could be earned in normal course on the capital sum invested. The capital sum would be the compensation for loss of dependency or the pecuniary loss suffered by the dependents. Needless to say, uniform application of the multiplier method ensures consistency and certainty and prevents different amounts being awarded in different cases.

14. For calculating the yearly loss of dependency the starting point is the wages being earned by the deceased, less his personal and living expenses. This provides a basic figure. Thereafter, effect is given to the future prospects of the deceased, inflation and general price rise that erodes value and the purchasing power of money. To the multiplicand so calculated, multiplier is to be applied. The multiplier is decided and determined on the basis of length of dependency, which must be estimated. This has to be necessarily discounted for contingencies and uncertainties. Reference in this regard may be made to the judgments of this Court in the case of *Sarla Dixit v. Balwant Yadav*; *Managing Director TNSTC Ltd. v. K.T. Bindu*; *T.N. State Transport Corporation Ltd. v. S. Rajapriya*; *New India Assurance Co. Ltd. v. Charlie*, and *United India Insurance Co. Ltd. v. Patrica Jean Mahajan*."

18. The multiplier method involves ascertaining of loss of dependency or the multiplicand having regard to the circumstances of the case and capitalizing the multiplicand by appropriate multiplier. The multiplier is determined by the age of the deceased or the claimant. The object is to compute a capital sum which if invested would yield interest in a stable economy equal to the annual dependency. While ascertaining the dependency, regard is to be also given to the fact that ultimately the capital sum should be consumed over a period of time for which the dependency is expected to last.

19. The petitioner has mentioned the age of the deceased as 24 years. As per photocopy of the driving licence placed on record, his date of birth was 28th July, 1982 and he was about 24 years old at the time of death. The petitioner, however, has not stated her date of birth. The petitioner being a mother must be older than the deceased. Her dependency depends upon her life expectancy. In the petition, it is stated that the deceased was earning about Rs.6,500/- per month at the time of his death. It is also claimed that the deceased was earning about Rs.10,000/- per month as a partner in a partnership firm. It is difficult to believe that the deceased was working as employee Sales/Executive in Maximus India Private Limited and was also a partner. The deceased admittedly was not filing his income tax returns. It is, therefore, safe to presume that

the deceased was working as a sales executive and drawing about Rs. 6,500/- per month as salary. In normal course, the deceased would have got married and had his own immediate family. Only a proportion of his income would have been used and was for benefit of the petitioner. Normally in such cases, 50% is deducted towards his personal and immediate family expenses. In some cases future prospects due to possible increase in income of the deceased during the period of dependency have been taken into consideration. In these circumstances, the average monthly wage of the deceased considering the future prospects can be taken as Rs.8,000/- per month, out of which the petitioner's dependency is presumed to be 50% or Rs.4,000/-. The annual dependency is Rs.4000/- x 12= Rs.48,000. Multiplier of 11 is applied in the present case keeping in view the probable age of the petitioner. The total pecuniary compensation payable is Rs 5,28,000/-.

20. In addition, the petitioner is also entitled to non pecuniary compensation. Death of a member of the family cannot be calculated only in terms of money and monetary compensation. The petitioner being the mother has suffered irreparable emotional loss of her young budding son. Compensation has to be paid to uplift the pain and soothen the loss suffered by the bereaving mother. Loss of company, loss of protection and motherhood is to be compensated.

Compensation of Rs. 1 lac is awarded on this account. In other words, total compensation of Rs.6,28,000/- will be payable by the respondent No. 1, Government of NCT of Delhi to the petitioner.

21. To protect interest of the petitioner, 50% compensation will be paid in cash and the balance amount will be paid in form of deposit in the monthly income scheme of the post office. The petitioner will be entitled to monthly interest accruing on the said scheme and the principal amount will be paid after the scheme has lapsed. The aforesaid compensation will be paid within eight weeks from today, failing which the respondent Government of NCT of Delhi will be liable to pay interest @ 10% per annum from the date of judgment till payment is made.

The writ petition is disposed of. No costs.

(SANJIV KHANNA)
JUDGE

JULY 7th, 2009.
VKR/P