

REPORTABLE

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

+ WRIT PETITION (CIVIL) NO.12787-90 OF 2006

% Reserved on : 5th November, 2009.
Date of Decision : 27th January, 2010.

SMT. RISHALO DEVI & ORS. Petitioners.

Through Mr. Manish Kumar Singh, Advocate.

VERSUS

THE SECRETARY (NCT OF DELHI) & ORS. ... Respondents

Through Mr. Gaurang Kanth & Ms. Liza,
Advocates for MCD.

Ms. Zubeda Begum & Ms. Sana Ansari,
Advocates for Delhi Police and PWD.

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 ?
3. Whether the judgment should be reported in the Digest ?

SANJIV KHANNA, J.:

1. The present writ petition is filed by the legal representatives of Late Mr. Karamvir Ruhil, seeking compensation for his death caused by falling in an open drain on account of negligence on the part of respondent no.1 Govt. of NCT of Delhi and respondent no.2 Municipal Corporation of Delhi.

2. Mr. Karamvir Ruhil's dead body was found floating in an open drain at Britania Chowk situated at Sakarpur Colony on 13th May, 2003. The dead body of Mr. Karamvir Ruhil was taken out from the drain, he was identified and his relatives were informed. The police took photographs of the spot/surroundings and the dead body, after it was taken out from the drain. These photographs have been placed on record. As per the post mortem report, Mr. Karamvir Ruhil died due to asphyxia on account of ante mortem drowning and injuries mentioned on external examination were not sufficient to cause his death. The factum and the cause of death are not disputed by the respondents.
3. It is an admitted position that the drain in question, which is open and not covered in the said location, belongs to and is maintained by Municipal Corporation of Delhi. The Municipal Corporation of Delhi in addition to other defences raised in the counter affidavit, claims that the Government of NCT of Delhi was constructing a culvert on the drain through a contractor without their permission or coordination and this led to the mishap resulting in the death of the deceased. Government of NCT of Delhi, on the other hand, have filed an affidavit that they were constructing a culvert but the drain in question belongs to Municipal Corporation of Delhi and their drain is beneath the footpath and did not disrupt the existing drain belonging to the Municipal Corporation. In this connection, my attention was drawn to the photographs placed on record by the Government of NCT of Delhi along with their counter affidavit. Thus, the attempt by the Municipal Corporation of Delhi and the Government of NCT of Delhi is to shift burden and blame on the other.

4. Photographs taken by the police of the drain and the surrounding area do not show that there was any warning board or railings had been fixed to prevent anyone from falling in the drain. The photographs, therefore, filed by the Government of NCT of Delhi with the warning board and with temporary bamboo railing, it is apparent were taken at a distinct point of time and the said precautions were not taken when the mishap had occurred.
5. As per the police records, dead body of Mr. Karamvir Ruhil was found floating in the drain at about 9.50 a.m. on 13th May, 2003 and as per the post mortem report dated 13th May, 2003, the stomach of the deceased, lungs and other parts of the body were filled up with dirty water mixed with sand. It is apparent that the deceased in the night intervening 12th and 13th of May, 2003 while coming on foot did not notice the said drain and fell into the same. As per the writ petitioners, viz. widow Babita and the two minor children Ms. Shakshi and Master Dev, their father Mr. Karamvir Ruhil was to return back from work as watchman-cum-cleaner in American Express Bank, Connaught Place, New Delhi in the night of 12th May, 2003 between 10 a.m. to 12 p.m. and to reach his residence he had to walk through the said area where the drain is located. The petitioners have specifically alleged in paragraph 3 of the writ petition that in the area near the drain there was complete darkness and proper lights and barricades had not been provided. It is stated that no warning signs or boards were put up. The fact that there were no lights and the area was not properly illuminated is not disputed by the Municipal Corporation of Delhi and the Government of NCT of Delhi.

6. The drain admittedly belongs to and was maintained by Municipal Corporation of Delhi and, therefore, it was their primary responsibility to ensure that the drain was properly barricaded, the area was illuminated and warning signs were displayed. Lack of duty to take reasonable care on the part of the MCD is apparent. An open drain without any warning sign or proper barricade can result in injuries or even death due to a person incidentally falling in it. A reasonable person would have easily foreseen the said danger and taken required precautions to prevent injury or death to third persons. Obviously, the respondents-Municipal Corporation of Delhi has failed to take necessary action and has been negligent in their duty to take care of the safety of others.
7. Government of NCT of Delhi was constructing a culvert over the drain itself. They would have noticed that the open drain did not have necessary protection and hence was a potential hazard. They have not placed any document on record to establish that they had written to the MCD about construction of the culvert. Photographs taken by the police and placed on record by the petitioners, show construction activity and building material around the open drain, where the dead body of Mr. Karamvir Ruhil was found. Culvert was being constructed on the drain in question. Govt. of NCT of Delhi should have taken precautions to protect anyone from falling in the open drain. Therefore, it cannot be said that the Government of NCT of Delhi can be completely absolved and not blamed. They too have been negligent. However, degree of negligence on their part is not of the same level and the major blame and lack of duty to take care rests mainly on the shoulders of the Municipal Corporation. For the purpose of payment of compensation,

looking at the nature and degree of negligence on the part of the Municipal Corporation of Delhi and the Government of NCT of Delhi, the same is proportioned in the ratio of 2/3 and 1/3, respectively.

8. Causal connection between the negligence on the part of the Municipal Corporation of Delhi and the Government of NCT of Delhi and the death of Mr. Karamvir Ruhil in view of the FIR and post mortem report is established. Municipal Corporation of Delhi in their counter affidavit have submitted that Mr. Karamvir Ruhil was well acquainted with the area and was aware that there exists an open drain and he should have taken precaution. This contention of the Municipal Corporation of Delhi cannot be accepted. A citizen/common man may not be able to judge the exact location of the drain when it is dark at night. It is normal for a citizen to presume that in case there is a deep open drain which is a potential hazard, local authorities would take necessary precautions to barricade the area to prevent anybody from toppling or falling in the same. A citizen may not be aware and is not required to know and verify depth of a drain and the quantum of water/discharge in the drain. It is obvious that Mr. Karamvir Ruhil, who used to reside in an area near the place of incident, did not notice that he was walking near the drain and incidentally toppled into the same. It is not even alleged that Mr. Karamvir Ruhil deliberately jumped into the drain to kill himself. There is no allegation that Mr. Karamvir Ruhil was under influence of any intoxicant. The post mortem report does not state that Mr. Karamvir Ruhil was intoxicated.

9. In view of the aforesaid, negligence as well as causal connection between the negligence and the death of Mr. Karamvir Ruhil is established.
10. The question whether local authorities/municipal bodies can be held responsible for negligence and failure to take reasonable care and caution is now well established. It is well established that public law proceedings in form of a writ petition seeking monetary compensation can be filed under Article 226 of the Constitution in case there is infringement of right to life guaranteed under Article 21 of the Constitution. (Refer, *Smt. Shyama Devi & ors. Vs. National Capital Territory & ors.*, ILR (1999)1 Del 303; *Darshan Vs. U.O.I 1999* (79) DLT 432; *Dharamvir Kataria Vs. U.O.I* AIR 1999 (Del) 291; *Kamla Devi (Smt.) Vs. Govt. of NCT of Delhi* 2004(114) DLT57; *Ashwani Gupta Vs. Govt. of India* 117(2005) DLT112; *Ashok Sharma Vs. U.O.I* ILR(2008)1 Del 96).
11. One of the contentions raised by the Municipal Corporation of Delhi is that the private contractor, who was constructing the culvert, has not been made a party/co-respondent. The said contractor was engaged by the Government of NCT of Delhi and was constructing the culvert on their behalf. No such plea raised by the Govt. of NCT of Delhi. Government of NCT of Delhi has been held liable to the extent of 1/3. This plea, therefore, of the Municipal Corporation of Delhi does not have any merit. It will be, however, open to the Government of NCT of Delhi to claim/recover the amount awarded from the contractor if they are so advised and if it is deemed appropriate.

12. On the question of quantum of compensation, the petitioners have placed on record the salary slip of late Mr. Karamvir Ruhil for the month of April, 2003. His estimated gross income was about Rs. 108609/-. His age was 36 years. He had left behind after the death of his aged mother, a widow wife and two minor children; a daughter, who was aged about nine years at the time of death and a minor son aged about five years at the time of death. Mr. Karamvir Ruhil was working as Security Guard-cum-Watchman cleaner with the American Express Bank, Connaught Place, New Delhi. He had a job and had studied upto class XII. Looking at the clothes, which are visible from the photographs and his general appearance, he belonged to middle class. He had a long working life ahead him.
13. In case we apply II schedule to the Motor Vehicles Act, 1988 and the dependency factor is taken at 60%, the compensation payable will be as follows:
 - (a) Estimated Gross Income less tax payable per annum) i.e.
 $\text{Rs.}108609 - 10000 = \text{Rs.}98608/-$.
 - (b) Dependency factor at 60% (60% of 98608) 59165/-
 - (c) As per the judgment of the Supreme Court in *Sarla Verma (Smt.) Vs. DTC* (2009) 6 SCC 121, the multiplier as mentioned in Column (4) of the table provided in the said judgment is taken i.e. multiplier 15. Thus, the total compensation arrived at after taking multiplier 15 comes to Rs. 887475/-.

The aforesaid compensation calculated does not take into account inflation and future prospects. Nothing extra is being added on this account looking at the nature of employment, uncertainty and educational qualification of the deceased.

Rs.10,000/- has been deducted towards income tax on estimate basis without taking into account benefit under section 80C of the Income Tax Act,1961 which the deceased had claimed as per the salary statement. The dependency factor has been taken as 60% keeping in view the nature of allowances being paid to the deceased-Mr.Karamvir Ruhil, which were directly relatable to him and personal in nature.

14. In addition to loss of dependency, non-pecuniary damages of Rs.1,00,000/- are also awarded for loss of companionship and emotional factors. Accordingly, total compensation of Rs.9,87,475/-, rounded off to Rs.10,00,000/- is awarded to the petitioners. The said compensation will be paid in the ratio of 2/3 and 1/3rd by the Municipal Corporation of Delhi and Government of NCT of Delhi. The aforesaid amount will be paid within a period of two months from the date copy of this judgment is received in the office of the said respondents. In case of failure to pay the said amount, the said respondents will be liable to pay interest @ 8% per annum from the date of judgment till payment is made. The petitioners are also entitled to costs of Rs.10,000/-.The aforesaid compensation amount will be shared in the ratio of 50% by Babita, the mother and 25% each by the two children. The amount payable to the minor children and 50% of the amount payable to the mother will be kept in FDR/post office scheme at the option of

the petitioner No. 1 for a period of six years in the case of Ms. Babita/children and till the children attain the age of majority, whichever is later. Interest accruing on the aforesaid deposits will be paid periodically to the petitioners.

(SANJIV KHANNA)
JUDGE

JANUARY 27, 2010.
VKR/P