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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **RFA NO. 469/2010**

% **Judgment delivered on 26.5.2011**

MCD

..... Appellant
Through: Ms. Maninder Acharya with Mr. Vikas
Sethi and Mr. Yashish Acharya, Adv.

versus

SANJAY KUMAR

..... Respondent
Through: Ms. Dimple Vivek, Adv

CORAM:
HON'BLE MR. JUSTICE G.S. SISTANI

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

G.S. SISTANI, J.

1. The present appeal is directed against the judgement and decree dated 24.02.2010 passed by the learned additional district judge granting a compensation of Rs. 2 lakhs to the respondent on account of the injuries sustained by him in a bull fight.
2. The brief facts necessary to be noticed for disposal of the present appeal are that the respondent had filed a suit against the appellant corporation for recovery of damages on account of his having sustained multiple injuries in a bull fight due to the failure of the appellant corporation to fulfil its duty of checking the menace of stray animals/bulls. As per the averments in the plaint, on 24.09.2005 at about 10.45 a.m. when the respondent was returning back to his house after attending his ailing son, he got

caught in a bull fight on Wazirabad Road, near Peer Mazar in front of Petrol Pump, Bhajanpura Chowk, Delhi and was hit by a bull in the said incident. The respondent sustained multiple injuries including head injury. He was rushed to GTB Hospital by the police where he was hospitalised for treatment. FIR No. 569/2005 dated 24.09.2005 under section 279 Indian Penal Code was registered at PS. Gokalpuri, Delhi. Later on, the respondent was shifted to LNJP Hospital for treatment of post traumatic optic neuropathy. Prior to the incident, the respondent was employed as a clerk in the office of Sh. S.S. Tyagi, Advocate at a monthly salary of Rs. 5000 but after the incident, the respondent lost his job as he was permanently blinded from the right eye and could not strain his left eye. As a result, the respondent is unemployed and is on the verge of starvation. Since the place of incident falls within the territorial jurisdiction of the appellate corporation, the respondent vide notice dated 08.12.2005 called upon the appellant corporation to pay a compensation of Rs. 10 lakhs to the respondent. Since the appellant corporation failed to comply with the said notice, the respondent was constrained to file a suit for recovery of damages from the appellant corporation. The learned trial court after hearing the arguments advanced by both the parties and considering the evidence placed on record, decreed the suit of the respondent awarding a sum of Rs. 2 lakhs as damages to the respondent. This has led to the filing of the present appeal.

3. The counsel for appellant contends that the impugned judgment is bad in law as the learned trial court has based its findings on surmises and conjectures and has failed to appreciate that the respondent has failed to prove that the injuries sustained by him are due to a bull fight. The counsel further contends that in the absence of any proof or evidence that the injuries sustained are due to an alleged bull fight, the trial court has wrongly applied the principle of *res ipsa loquitor* to reach the conclusion that the injuries could only be caused by a bull fight.
4. The counsel for appellant has strongly urged that the trial court has failed to appreciate the material contradictions in the evidence of the witnesses of the respondent. Pointing out the discrepancies, the counsel draws the attention of the court to the statement of the respondent to the police where the respondent stated that at the time of alleged incident, the respondent was going back to his house on a motorcycle whereas in his cross-examination by the counsel for appellant, the respondent states that he was walking on the footpath near the road. Attention of this court is also drawn to the testimonies of PW-1 (respondent herein) and PW-2, Sh.Yashpal where PW-1 has stated that three bulls were fighting and he got caught in the fight of two bulls whereas PW-2, Sh. Yashpal has stated that in his cross –examination *“I could not notice how exactly the plaintiff (sic .respondent) sustained injuries in the bull*

fight. There were three bulls, only two were fighting with each other and the third one was standing at the nearby place.”

5. The counsel next submits that the case of the respondent that he is injured in an alleged bull fight is only an afterthought to extort money from the appellant corporation. The counsel has further drawn the attention of the court to the FIR dated 24.09.2005 which states that the respondent was injured in an accident and nowhere is it stated that the respondent was injured in an alleged bull fight.
6. It is next submitted that no complaint was made by the respondent to the appellant corporation regarding the alleged incident and it was after a lapse of approximately two months, that the respondent made a request to the SHO Gokulpuri to record his statement regarding his alleged injury due to the alleged bull fighting.
7. Lastly, it is contended by the counsel for appellant that the learned trial court has erred in taking into account extraneous considerations and irrelevant circumstances in fixing the liability on the appellant corporation and has gone beyond the facts of the case in reaching the conclusion that the alleged incident is only due to a bull fight.
8. Per contra, it is contended by the counsel for respondent that there is no infirmity in the judgment of the trial court since it is the duty of the appellant corporation to check the menace of stray animals and remove nuisance from the roads and it is due to the negligence

of the appellant corporation in fulfilling its duty that the respondent got caught in a bull fight and sustained injuries. The counsel for respondent has placed reliance upon ***Shakuntala v. Govt. of NCT of Delhi & Anr*** reported at 162(2009) DLT 264 and more particularly at paras 22 to 29 which read as under:

“**22.** It would be necessary to see whether there is any obligation cast upon the authorities, in this regard, under the relevant enactments. Under Section 298 of the Delhi Municipal Corporation Act, 1957 and Section 202 of the New Delhi Municipal Council Act, 1994 (hereafter the Act) all the public streets within Delhi or New Delhi are vested in the Municipal Corporation of Delhi or the New Delhi Municipal Council, as the case may be. These streets are under the control of the MCD and the NDMC, which are also responsible for their maintenance and regulation. The MCD, which is primarily asked to account for its action here, is also empowered to regulate public streets; it has the right to invoke eminent domain, for the purpose of road development, expansion, etc. Sections 42 of the Act lists out that the Obligatory Functions of the Corporation, the ones in relation to public streets are—

“(n) the construction, maintenance, alteration and improvements of public streets, bridges, culverts, causeways and the like;

(o) the lighting, watering and cleansing of public streets and other public places;

(p) the removal of obstructions and projections in or upon streets bridges and other public places;

(q) the naming and numbering of streets and premises;”

23. In ***Common Cause (Regd. Society) v. Union of India (UOI) & Govt. of NCT of Delhi, MCD and NDMC*** and ***Ram Pratap Yadav v. MCD***, (decided on 3.11.2000) a decision of this Court, the Court was concerned with the precise duty of the MCD to maintain public roads and streets and ensure that they are free of stray cattle, for the safety of road users (which would include pedestrians, those plying vehicles and vendors on footpaths, etc.) it was observed that:

“14. The menace of stray cattle is hazardous and causes traffic snarls. It affects the safety of human beings on the road. It has the potential to cause accidents. Besides, it depicts a very dismal picture of the capital. It is also very cruel on the bovine animals as they are let loose on the roads because the owners do not want to feed them. These animals have to fend for themselves. They eat whatever comes in their way including garbage and plastic bags. This affects their health and causes extreme trauma to them. We also find that Gosadans, by and large, have not been able to fulfill the purpose for which they were established. The fact that the animals which were made over to Gosadans have disappeared speaks volumes about their working. The capital city of Delhi should be a show window for the world. The stray cattle on the roads gives a wrong signal. Cattle and other animals which are let loose on the roads by their owners and also responsible for filth, squalor and outbreak of diseases.

16. It appears that the State and its agencies are impervious to the menace of stray cattle. They have not taken any effective steps to prevent the cattle and the bovine animals from taking to the roads. This has affected the quality of life of the citizens. The inaction of the State and its agencies impinges upon the fundamental right of the citizens under Article 21 of the Constitution. Under Article 48 of the Constitution, the State *inter alia* is required to protect and safeguard the forests and wild life. The State by neglecting to perform its duty in preventing the menace of stray cattle is avoiding implementation of Article 48 of the Constitution. It is the duty of the State to keep in view the directive principles of the State policy which are fundamental in the governance of the country and to apply those principles in making the laws. No effective law has been made to prevent the owners of bovine animals including cattle and cows from being let loose. In the facts and circumstances, therefore, it has become necessary to give directions to the State to control and prevent the menace of stray cattle.

17. Accordingly, we direct and observe as follows:

.....

3. The MCD and the NDMC shall employ sufficient number of vehicles to ferry the impounded cattle.

4. The MCD, the NDMC and the police department should work together to stop the menace of stray cattle.

5. Co-ordination Committees shall be constituted in each of the Police Districts. Each committee shall consist of the Deputy Commissioner, MCD of the area/Secretary, NDMC, and the Deputy Commissioner of Police of the concerned District. The two-member Committee shall be responsible for eradicating the menace of stray cattle.

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7. Cattle and bovine animals located in Delhi shall have a tag number tied around their necks. The tag number must be indicative of the owner to whom the animal belongs so that there is no difficulty in tracing the owner.

8. Prosecutions should be launched under Section 98 of the Delhi Police Act, 1978, and Section 289 of the Indian Penal Code, 1860 against the owners of any cattle and bovine animals which are found on the streets and roads.

9. The MCD and the NDMC should employ sufficient number of persons to catch stray cattle and bovine animals. Once they are caught they shall be impounded and may be released only on payment of fine of at least Rs. 1,000 each. The vehicles which are used for carrying impounded cattle and bovine animals ought to be fitted with ramp in order to obviate the chance of injury to them. The transit and handling of cattle and bovine animals after being impounded shall be in consonance with the provisions of the Prevention of Cruelty to Animals Act, 1960.

.....

18. The roads of Delhi should be made free of stray cattle and bovine animals by 1st February, 2003.

No cattle or bovine animals shall be permitted on the roads after the aforesaid date. The responsibility to comply with the order will be that of the aforesaid Committee in their respective areas.”

24. In a decision of the Rajasthan High Court, ***Sanjay Phophaliya v. State of Rajasthan and Ors.***, AIR 1998 Raj. 96, placing reliance on ***L.K. Koolwal v. State of Rajasthan***, AIR 1988 Raj. 2 it was observed that:

“it is primary, mandatory and obligatory duty of Municipality to keep city clean and to remove insanitation, nuisance, etc. The Municipality cannot take plea whether funds or staff is available or not.”

It was further observed that—

“9. It is a serious matter when the dogs and other animals suffering from rabies bite animals and persons. The duty becomes more onerous on the respondents with regard to the dogs and such animals. The staff cannot say that its duty is complete if action is taken only on complaints. They must not sit in the office but should continuously take round of the city. If any inaction is found on the part of the staff, the respondents are bound to take disciplinary action against such staff. If still any accident happens, then the injured person or relative of the deceased person would be competent to invoke the provisions of Section 188 of IPC against such a negligent staff. It is expected that the roads of Jodhpur be cleaned from these stray animals within a period of four months from today. The respondents would be free to get work through contractors.”

25. In ***Milkmen Colony Vikas Samiti v. State of Rajasthan and Ors.*** and ***Shri Ghanchi Mahasabha, Jodhpur v. Rajasthan Chapter of Indian Association of Lawyers and Ors.***, III (2007) SLT 325=AIR 2007 SC 1048, the Supreme Court directed the Municipal Corporation of Jodhpur to remove unattended stray animals, such as, stray cattle, bulls, dogs, pigs, etc. from the city of Jodhpur as expeditiously as possible and in any event on or before 30th April, 2007. Further, in a string of decisions by various High Courts it was observed that keeping the public streets free

from the menace of stray animals is the primary duty of the municipal bodies. In the light of these decisions, it is held that the duty to maintain streets and public roads free of stray cattle is that of the MCD. This duty is owed to all members of the public, and is an absolute obligation.

26. In this case, the injuries on the deceased, recorded in the post mortem report, and the statement taken down by the police in the course of investigation, corroborate the findings in the inquest proceedings, that death occurred due to the injuries inflicted by the fighting animals. The statement recorded by the police, testifies the details regarding the events. In these circumstances, there is no “disputed question” as it were, that requires resolution through Civil Court proceedings. The Court is of opinion that in addition, the duty of care being statutorily cast on the MCD, this is an instance where the maxim *res ipsa loquitur* would apply. This rule was explained in ***Pushpabai Purshottam Udeshi v. Ranjit Ginning & Pressing Co. (P) Ltd.***, (1977) 2 SCC 745:

“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 Edn.) 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 this case, the petitioner has been able to establish the essential facts that pertained to the death of her husband; these are the circumstances where the two fighting bulls went near him, how in the ensuing

tangle, he was grievously injured; the post-mortem and inquest report corroborate these. The circumstances have been outlined in the FIR and the statement recorded in those proceedings. If the MCD disputes these facts, it has to displace them and not merely say that the petitioner has to establish the very same facts, through the same evidence in a civil suit. The facts shown by the petitioner are sufficient to shift the onus, through the *res ipsa loquitur* maxim, upon the MCD, to reveal why it cannot be held responsible. No such facts or evidence has been shown to the Court, to disclaim liability.

27. In ***Delhi Jal Board v. Raj Kumar & Ors.***, 125 (2005) DLT 120 (DB)=IV (2005) ACC 746 (DB)=2005 (VIII) AD Del. 533; the petitioner, who while riding a scooter drove over a manhole, that was three inches below the regular road surface and met with an accident. The Court held the Jal Board liable and observed that when power is given to do some act, it is often coupled with the duty to do that act properly. Therefore, the principle of strict liability is applicable against the State also. The Court further held that in cases where the principle of strict liability applies, the defendant has to pay damages for injury caused to the plaintiff, even though the defendants may not have been at any fault. In ***Chand (Shri) & Anr. v. Chief Secretary & Ors.***, 133 (2006) DLT 85 (DB)=2004 (IV) AD Del. 29; the petitioner's son suffered a tragic death when a concrete slab from the water tank fell on his head at the UTSC complex, PWD (E), Delhi. The Court held that it was undoubtedly the duty of the respondents (Chief Secretary, NCTD and Chief Engineer, PWD Zone, NCTD) to maintain the water tank and other amenities in the building in a manner so as not to endanger the lives of the passersby or those using such facilities. The Court held the respondents guilty of negligence and awarded compensation.

28. In ***Col. Dharamvir Kataria v. Union of India***, 79 (1999) DLT 683=I (1999) ACC 553=AIR 1999 Del. 291 the petitioner's wife died due to fall in the pit of a lift. The lifts were installed by M/s. Bharat Bijlee Limited under the supervision of CPWD. The contract for the operation and care of the lifts was awarded to M/s. A.G. Enterprises. That the CPWD office records revealed that a lift operator with knowledge of the lift mechanism and

an attendant was to be provided, which was not done. As to who should pay compensation the Court held:

General

“... in the first instance, the compensation shall be paid by the first respondent-Union of India as its functionary, the third respondent (Director of Works), was negligent in discharge of its duty which resulted in the breach of the right of Mrs. Mangla Kataria to life guaranteed by Article 21 of the Constitution. It will, however, be open to the Union of India and the third respondent to proportionately recover the amount for the fourth and fifth respondents (M/s. Bharat Bijlee Limited and M/s. A.G. Enterprises) as they were equally guilty of culpable negligence.”

29. In *Chitra Chary (Smt.) & Ors. v. DDA & Ors.*, 114 (2004) DLT 693=III (2004) ACC 866=2005 (I) AD Del. 29, Delhi Development Authority had awarded the work of construction to a private contractor. The work required trenches to be dug. The terms of contract required the contractor to take certain precautions, which were not adhered to. Due to this negligence the first petitioner’s husband fell into the trench and later on died. It was held:

“facts as noted aforesaid reflect the general cynical irrelevance towards safety norms to be followed as one notices every day whenever municipal agencies carry out construction work either by themselves or through a contractor. The facts evidence that usual mood of complacency seen each day. What is listed as a safety measure is observed more in breach and less in compliance. This Court has witnessed construction of flyovers in Delhi, digging of roads for sewer, repair work, etc., safety norms are found not being adhered to. It is the bounded duty of municipal agencies to ruthlessly require adherence to the safety norms in their minutest detail and in their exacting requirements. Evidence on record conclusively establishes breaches of putting barricades for the safety of passers by.”

It was also held that:

“any activity under authority of the State has to be reckoned as that of the State as itself. The State has to be held vicariously liable”.

In **Sunil Manoj Mathew & Anr. v. BSES Rajdhani & Ors.**, 126 (2006) DLT 570=I (2006) ACC 412=2006 (I) AD Del. 698, a person died in a fatal accident caused due to a metal ladder used for repairing street lighting rolling down from the pavement to the main road resulting in a collision with the motorcycle of the deceased. It was held by the Court that:

“... In any event it is not denied by BSES that the ladder was being used for repairing street lighting. This responsibility or duty is entirely that of BSES. The fact that the BSES had contracted this duty and responsibility to Shri Mudrax Parashar will not absolve it of its to liability. If the liability is not direct, it is certainly vicarious in nature..... Public and civic authorities have on a rampant and ubiquitous scale adopted a cavalier and careless attitude in fulfilling their functions, totally oblivious of the hazards and dangers that are caused to the public by their negligence functioning.”

9. A further reliance is placed on **Sanjay Phophaliya v. State of Rajasthan & Others** reported at AIR 1998 Raj 96 wherein the court held *“to leave the animals stray on roads is an offence and not to catch them by the Municipal Authorities is negligence”*. The court further held that:

“9. It is a serious matter when the dogs and other animals suffering from rabies bite animals and persons. The duty becomes more onerous on the respondents with regard to the dogs and such animals. The staff cannot say that its duty is complete if action is taken only on complaints. They must not sit in the office but should continuously take rounds of the city. If any inaction is found on the part of the staff, the respondents are bound to take disciplinary action against such staff. If still any accident happens, then the injured

person or relative of the deceased person would be competent to invoke the provisions of S.188 of IPC against such a negligent staff. It is expected that the roads of Jodhpur be cleaned from these stray animals within a period of four months from today. The respondents would be free to get work through contractors.”

10. The counsel next submits that due to the alleged incident, the respondent has lost his job and his prospects of future employment are also hampered since he is permanently blinded from the right eye and cannot even strain his left eye as a result of which he and his family are on the verge of starvation.

11. I have heard the counsel for the parties and have perused the entire evidence on record. In his evidence by way of affidavit, PW-1, the respondent has stated that on 24.09.2005, when he was returning home at 10.45 am after attending his ailing son, he was caught in a bull fight on Wazirabad Road, near Peer Mazar, in front of Petro Pump at Bhajanpura Chowk and one of the bulls hit him and threw him on the divider of the road causing him multiple injuries. He further stated that he was taken to the GTB Hospital where he regained his consciousness after two days. Since there were no proper facilities, the respondent was shifted to LNJP by his family members. The respondent further states that due the incident, the respondent lost vision in his right eye and his left eye became very weak and he was advised by the doctors not to strain his left eye. As a result of which he lost his job of a clerk in the office of an advocate where he was drawing a salary of Rs 5000 per

month. In his cross-examination by the counsel for appellant, PW-1, the respondent reiterated the entire incident. The respondent deposed that on the day of the alleged incident, three bulls were fighting on the road and he got caught in the fight of two bulls. He suffered serious injuries including a head injury and was bleeding from his nose and mouth. He also categorically negated the suggestion that he has not sustained any injuries due to any bull fight.

12. I further find that the testimony of PW-1 is corroborated by the testimony of PW-2, Sh. Yashpal who is an eye witness to the alleged incident. In his evidence by way of affidavit, PW-2 stated that on 24.05.2008 at about 10.45 am, he saw a man being caught in bull fight on Wazirabad Road, near Peer Mazar, in front of petrol pump, Bhajanpura Chowk, Delhi. He further stated in his affidavit that the respondent sustained multiple injuries on his person and had become unconscious. In his cross-examination by the counsel for appellant, PW-2, Sh. Yashpal deposed that he has no relation with the respondent and that he was waiting for the bus when he saw the bull fight in which the respondent sustained injuries. He further stated that the respondent was bleeding from his nose and mouth and was lying on the side of the road when somebody called the police. It is contended by counsel for respondent that there are material contradictions in the evidence of the witnesses of the

respondent. In **Syed Ibrahim v. State of AP** reported at (2006)10 SCC 601, the Apex Court has observed as under:

“10..... As observed by this Court in *State of Rajasthan v. Kalki*¹, normal discrepancies in evidence are those which are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence and those are always there however honest and truthful a witness may be. Material discrepancies are those which are not normal, and not expected of a normal person. The courts have to label the category to which a discrepancy may be categorised. While normal discrepancies do not corrode the credibility of a party's case, material discrepancies do so. These aspects were highlighted in *Krishna Mochi v. State of Bihar*² and in *Sucha Singh v. State of Punjab*³. It was further illuminated in *Zahira Habibulla H. Sheikh v. State of Gujarat*⁴, *Ram Udgar Singh v. State of Bihar*⁵, *Gorle S. Naidu v. State of A.P.*⁶ and in *Gubbala Venugopalaswamy v. State of A.P.*⁷

13. Applying the law laid down by the Apex Court in **Syed Ibrahim (supra)**, I find that there are no material contradictions in the testimony of PW-1 and PW-2. The minor contradictions pointed out by the counsel for appellant does not go to the root of the matter nor do they affect the substratum of the case since PW-2 has duly corroborated the evidence of PW-1 in material particulars. Further, nothing has been placed on record by the counsel for appellant to impeach the creditworthiness of PW-1 and PW-2.

¹ (1981)2 SCC 752 : 1981 SCC (Cri) 593

² (2002)6 SCC 81: 2002 SCC (Cri) 120

³ (2003)7 SCC 643 : 2003 SCC (Cri) 1697

⁴ (2004)4 SCC 158: 2004 SCC (Cri) 999

⁵ (2004)10 SCC 443: 2004 SCC (Cri) Supp 550

⁶ (2003)12 SCC 449: 2004 SCC (Cri) Supp 462

⁷ (2004)10 SCC 120 : 2004 SCC (Cri) 1764

14. It is contended by counsel for appellant that the respondent has sustained injuries in a motor vehicle accident as it is clearly mentioned in the FIR dated 24.09.2005 that the respondent met with an accident on the main road opposite Bhajanpura Petrol Pump. I do not find any force in the aforementioned contention of the counsel for appellant. Had it been a motor vehicle accident, the respondent would have stated that how the accident took place and that he was hit by a car or any other vehicle. Further, it cannot be said that the expression "accident" necessarily connotes a motor vehicle accident and cannot mean an accident with a bull in which injuries are sustained. I am in agreement with the view of the trial court that it is hard to believe that an individual who has sustained injuries in a motor vehicle accident would blame a bull or the appellant corporation for not taking care of the stray cattle especially when it is easier to claim compensation in a motor vehicle accident than in a bull fight case against the appellant corporation. Even otherwise, I find that the FIR was lodged at the instance of a third party and not by the respondent since he was not fit to make a statement.

15. Sufficient evidence has been placed on record by the counsel for respondent before the trial court to prove that multiple injuries were sustained by the respondent due to said incident. The counsel for respondent has placed on record the medical reports of the respondent to prove that on account of the alleged incident, the

respondent has lost vision in the right eye and the left eye is also very weak. A medical certificate by Dr. Rajender Prasad Centre for Ophthalmic Sciences certifying that the respondent is visually handicapped by 30% has also been placed on record as Ex. PW1/2. The respondent has also placed on record his treatment papers, discharge papers and bills which are duly exhibited as Ex. PW1/3 to Ex. PW-1/17. Ex PW-1/5 is a prescription/medical paper of the Lok Nayak Hospital wherein it has been very clearly stated that the respondent is undergoing treatment in AIIMS for loss of vision in his right eye. On the contrary, nothing has been placed on record by the counsel for appellant in support of her contention that the respondent has concocted a false story with an ulterior motive to extort money from the appellant corporation.

16. As far as the quantum of damages is concerned, the trial court has rightly assessed the damages of Rs. 2 lakhs taking into account the age of the respondent, the injuries sustained by him, his future employment prospects and the minimum wages prevalent at the time of the incident.
17. In view of the observations made above, I find no infirmity in the judgement of the trial court. Accordingly, the appeal is dismissed.

G.S.SISTANI, J.

May 26th, 2011