

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

Judgment reserved on: 06.03.2012

% **Judgment delivered on: 09.04.2012**

+ **W.P.(C) 13310/2009**

CHOB SINGH Petitioner

Through: Mr. Sachin Sharma, Adv.

versus

GOVT. OF NCT OF DELHI AND ANR Respondents

Through: Mr. Amitabh Verma and Mr. Arvind
Kr. Verma, Advs. for R-2.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

J U D G M E N T

VIPIN SANGHI, J.

1. This writ petition has been filed by the petitioner namely, Chob Singh under Article 226 of the constitution of India to claim compensation of Rs. 10 Lakhs for the death of his only son, Nand Kishore due to the alleged negligence of the respondents Govt. of NCT of Delhi and Delhi Jal Board (DJB).
2. The petitioner is the father of an unfortunate boy who died on 14.04.2009 by falling into a sewer tank. The petitioner claims to be a three wheeler auto driver. His family consisted of his wife (already

dead), daughter (mentally and physically handicapped) and Nand Kishore (now deceased).

3. The case of the petitioner is that his son, Nand Kishore along with his friend, Rahul went to deliver lunch to the maternal uncle of Rahul, at one of the pumping stations of the respondent/DJB located at sector 7, Dwarka. The sewage pumping station is a prohibited place and the general public is not allowed to enter the premises without permission since it is a risky and an unsafe place due to storage of sewage in huge tanks/wells. On 14.04.2009 there was no guard posted on the pumping station, and the 2 children had an unhindered entry to the entire complex and went upto the danger zone where the huge pumping machines and tanks were located.

4. Nand Kishore's friend, Rahul went inside the pumping room to deliver lunch to his maternal uncle (Sh. Sanju) while the little Nand Kishore, unmindful of the consequences, aged only eleven years strayed towards one of the open uncovered tank which had stairs leading to the bottom of the tank. Out of curiosity, he climbed down the stairs and was overtaken by strong fumes thereby losing his balance. He fell into the tank full of sewage. Rahul reached the tank, searched for Nand Kishore and was unable to locate him. He thereby informed his uncle who, in turn, called the police and the fire brigade. After the operation of six hours, the dead body of Nand Kishore was retrieved. The F.I.R. of the incident was recorded being F.I.R. no.

141/09 at Police Station Palam Village, New Delhi under section 304 of I.P.C.

5. Respondent no. 2/DJB made a payment of Rs. 30,000 vide cheque bearing no. 6067 dated 11.09.2009 as compensation to the petitioner. The petitioner has filed an affidavit stating that his only son was studying in MCD Primary Boys School, Mahavir Enclave II, ND-45 in Class II. He states that he had high hopes from his son.
6. The petitioner submits that the precious life of his only son, who was his only personal and emotional support died due to the sheer negligence on part of the respondents and due to their acts of omissions and commissions. The petitioner seeks adequate compensation from the respondents.
7. Upon issuance of notice, respondent no. 2, Delhi Jal Board filed their counter affidavit. The said respondent has not denied the occurrence of the aforesaid incident, nor the registration of the F.I.R.
8. The respondents have also not denied that the death of the child, Nand Kishore occurred due to falling into the sewage tank. It is not their case that the death of Nand Kishore occurred due to some other reason.
9. Respondent no. 2 has taken the stand that they have already paid compensation of Rs. 30,000/- as stated by the petitioner and apart from that Rs.50,000/- was given as compensation by the Delhi Kalyan Samiti, Govt. of NCT of Delhi, Finance Department, respondent no.1,

and that there was no negligence on their part which caused the death of the deceased.

10. Respondent no. 2 also contended that the sewage pumping station at Sector 7 is surrounded by a boundary wall and it has only one entrance, which was always manned by a security guard round the clock. The guard allowed the children to enter, in order to enable them to deliver food to Sanju. He left them at the pump house where the maternal uncle was present and went back to the entrance. Respondent no.2 stated that the boys went to attend nature's call while Sanju was having food. It was then that the incident took place. The matter was immediately brought to the notice of the police and fire rescue team by the guard and immediately they commenced the rescue operation.

11. Respondent no. 2 has also contended that the sump well inside the premises of the pumping station, as well as the staircase was fully covered and protected with the hand railing. The staircase with the hand railing was provided for manually taking out the floating material. The entire system was constructed in accordance with the consultant's design.

12. The said pumping station of Delhi Jal Board was a restricted area where the general public was not permitted. The area is a protected one and no one is allowed to enter in the premises, except the

authorized persons. The children were allowed to enter the premises for delivering food.

13. 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 Nand Kishore 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 the petitioner entitled to, if any?

14. The incident in question has not been disputed by the respondents, nor is the factum of death of Nand Kishore due to falling into the sewage well in dispute. The occurrence of the said instance has been recorded in the F.I.R. and has not been denied by the respondents. Respondent no. 2 has contended that there was a guard at the main entry. However the said guard failed to perform his duty by permitting two minor children to enter the prohibited area.

15. There can be no dispute or denying the fact that the respondents owed a duty of care to the general public, so that no action or inaction of theirs causes harm to the general public at large. Further there can be no dispute that the tanks should have been maintained as well as covered and locked, so that no person could enter into the wall, where Nand Kishore met the accident. The duty of the respondent DJBs guard did not end by leaving the two children with Sanju. He should have, in the first instance, not permitted the childrens entry. Even if they were permitted to enter the compound, it was his responsibility to ensure

that they did not loiter inside or go into dangerous areas. The said area posed a high risk to any stranger, much more to children, who may go into areas where poisonous gas was being produced. The principle of strict liability will be applicable in the present case and the Delhi Jal Board is liable to pay compensation.

16. In **MCD V. Suhagwanti**, AIR 1966 SC 1750, the Supreme Court applied the strict liability principle in awarding compensation to the victim. The Court applied the maxim *Res Ipsa Loquitur* as the mere fact that the clock tower fell, told its own story in raising the inference of negligence so as to establish a *prima facie* case against the Corporation.

17. This court in the recent judgment of **Santu Ram & Anr. v. State & Ors**, W.P.(C) 768/2009 decided on 07.02.2012 had dealt with the similar issue. In that case, the place where the poles were kept was a public place and anybody could have access to that place without any hindrance. It was held that it was the duty of the respondent BSES to ensure that their actions or omissions do not cause harm or injury to any other person who may come into contact with that poles stacked in an open public place. The respondents were found to be negligent in keeping the cemented poles in an open public area, where the general public had access, without any warning or taking proper safety measures. So, the principle of strict liability was applied in that case and the BSES was held liable to pay compensation to the petitioners

for the ultimate breach of their only son's most valuable fundamental right to life, guaranteed under Article 21 of the Constitution of India.

18. In ***Darshan & Others V. Union of India & Others***, 2000 ACJ 578, 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 derivation 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.”

19. In the case of ***Varinder Prasad v. BSES Rajdhani Power Ltd. and Others***, W.P.(C.) No. 8924/2007 decided on 18.01.2012, the High Court took into account the earlier decision of this Court in ***Ram Kishore V. MCD***, 2007(97) DRJ 445, to hold 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. In ***Varinder Prasad*** (supra) an unfortunate boy died in an accident when the shed of the house collapsed on him.

20. The Supreme Court in ***Pushpabhai Purshottam Udeshi & Ors. v. M/s Ranjit Ginning & Pressing Co. (P) Ltd. & Anr.***, (1977) 2 SCC 745 has explained the doctrine of Res Ipsa Loquitor in the following words:

“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".

21. 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.

22. The mere fact that the entry was allowed was sheer negligence on the part of the respondents. As aforesaid, the respondents owed a duty of care to the said children by not permitting their entry into the compound as the same was a prohibited area. The said area posed a high risk to any stranger – much more to small children, who may go into areas where poisonous gases were being produced and present.

23. I, therefore, hold that the maxim *Res Ipsa Loquitor* is clearly attracted in the present case and the incident in question itself establishes the negligence on the part of the respondents. The petitioners are, therefore, entitled to grant of compensation in these proceedings for breach of the most basic fundamental right of Nand Kishore under Article 21 of the Constitution of India.

24. The Courts have evolved a two-tier compensation mechanism in such cases. It has two components, i.e. the conventional sum, and pecuniary compensation. The Court in ***Kamala Devi V. Govt. of NCT of Delhi***, 2004 (76) DRJ 739, 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 raised 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 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 multiplicand 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."

25. 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 April 2009, when Nand Kishore's death occurred, based on the Consumer Price Index for industrial workers (CPI-1W), published by Labour Bureau, Govt. of India. With the base year as 1982 when the index is to be taken as 100, the average CPI (IW) for the month of April 2009 works out to 695. Thus the standard compensation, as per inflation corrected value, comes out to $(50,000 \times 695/171)$ Rs.2,03,216.38. Thus the standard compensation to which the petitioners are entitled is Rs.2,03,216.38.

26. As far as the peculiarly 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. In this case, the petitioner is a three wheeler auto driver. Unfortunately, in this case the petitioner has not placed, on record any income proof of his earnings. It is only stated by him that he is an auto driver. In such a situation, to minimize the element of guess work it would be appropriate if the minimum wages are taken as the basis for determining the expected income. The minimum wages multiplied by a factor of 1.5 would enable in arriving at a reasonable estimate of income. The minimum wages for skilled workers notified by the office of the Labour Commissioner, government

of NCT for the year 14.04.2009 was Rs.4,358/- per month. If the same is multiplied by a factor of 1.5, it becomes Rs.6,537/- per month.

27. It can safely be assumed that Nand Kishore as an adult would have earned at least as much as his father if not more. Therefore the multiplicand would be the expected annual income less required by himself. Since the expected income would only arise when Nand Kishore grew up to be an adult, it would be safe to assume that his personal expenditure would be higher. The contribution to the household would have not exceeded half of the income. Accordingly, the figure of Rs.6,537/- ought to be divided by 2 to provide a monthly figure of Rs.3,268.50 and an annual figure of Rs.39,222/-. This multiplicand is to be multiplied by the multiplier of 15, in terms of second schedule of Motor Vehicles Act, 1988. This comes to be a figure of Rs.5,88,330/-. Taking the above calculation into account, the total compensation to which the petitioners are entitled works out to be Rs.2,03,216.38 + Rs.5,88,330/- = Rs.7,91,546.38. The petitioner has disclosed that he has already received Rs.80,000/- till date towards compensation. Therefore, the compensation amount payable on the date of filing of the petition works out to Rs.7,11,546.38. This amount shall carry simple interest @ 6% p.a. from the date of filing this petition till the date of payment. The amount should be paid to the petitioner within three months.

28. It appears that the liability is primarily of the respondent no.2 DJB, as it was the pumping station of DJB where the accident took place due to the negligence of the officials of DJB. The compensation should, therefore, in the first instance be paid by DJB. However, I am not required to go into this issue of fixing the inter se liability between the two respondents in these proceedings. Therefore, it shall be open to the Delhi Jal Board to pursue its claim against respondent no.1 in appropriate proceedings.

This writ petition is allowed in the aforesaid terms.

(VIPIN SANGHI)
JUDGE

APRIL 09, 2012
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