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THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on: 16.05.2013
Judgment delivered on: 02.07.2013.

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WP(C) 5024/2007

SUBRAMANIAM AND ANR.

.....Petitioners

Vs

DELHI METRO RAIL CORPORATION AND ORS.

.....Respondents

ADVOCATES WHO APPEARED IN THIS CASE:

For the Petitioner:

Ms Aruna Mehta, Advocate.

For the Respondents:

Ms Anusuya Salwan & Ms Renuka Arora, Advocates for
respondent no. 1/DMRC.

Ms Zubeda Begum, Advocate for Respondent no. 2/
Commissioner of Police.

Ms Suparna Srivastava, Standing Counsel and Ms Anooja
Srivastava, Advocate for Respondent no. 3/ MCD.

CORAM :-

HON'BLE MR JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J

1. The petitioners are the hapless parents of an eight (8) year old, who died while playing with his friends in the area around the place of his residence. The eight (8) year old Lalu alias Bharat died on account of asphyxia caused by drowning in a storm water drain, which was meant to be enclosed. Deprived of a proper play ground, Lalu on the fateful day alongwith his friend, Master Rahul, slipped and fell into the open and unguarded storm water drain. While, Master Rahul Pandey survived due to the alacrity and efforts of the members of the public in the vicinity, Lalu perished. Lalu's death resulted in payment of a nominal sum of Rs.1 Lakh or

so, I am told, in the form of ex-gratia compensation to petitioners and the triggering of criminal investigation. Six (6) years have passed, the investigation is still on.

2. For the petitioners, there is no closure either qua the issue as to who was responsible for their son's untimely death or, as to the proper compensation to be paid to them.

3. The petitioners, who live on the margins of the society, have approached this court by way of petition under Article 226 of the constitution to seek compensation. The arduous and economically debilitating route of a civil suit is by passed. The respondents in defence have raised the predictable objection qua the maintainability of the action. The objections revolve around the following: the action involves disputed questions of fact; recourse would have to be had to oral testimony; and consequently, the writ court is not the proper forum to agitate the relief sought in the petition.

4. With this preface, let me advert to the broad facts, which are gleaned from the pleadings and the status report of the police, and thereafter, deal with the objections to the maintainability of the action, and the defence raised by the respondents on merits.

4.1 The petitioners, are residents of the *jhugi jhopri* cluster, located at Sonia Camp (in short JJ Cluster). In the vicinity of the JJ Cluster, ran an open storm water drain. The drain was separated by a wall. Respondent no.1 i.e., Delhi Metro Rail Corporation (DMRC), which was tasked with the responsibility of building a Metro Station at Dilshad Garden approached respondent no.3 i.e., Municipal Corporation of Delhi (MCD) for diversion of utility services, which included, in this case, the storm water drain.

4.2 MCD issued a no objection certification, after obtaining approval from the concerned authority, on 18.04.2006. In consonance with its mandate, and in expectation of an approval being received from MCD, DMRC awarded the

contract of construction of storm water drain and miscellaneous works in connection with Shahdara Dilshad Garden Corridor Phase-II of the Delhi MRTS Project, to a company by the name of Quality Buildcon Private Limited (QBPL).

4.3 As per the whomsoever certificate issued by DMRC, QBPL commenced work awarded to it on 22.03.2006, which was actually completed on 15.12.2006; overshooting the original period of completion, by nearly five (5) months. The original date of completion agreed to by QBPL was evidently 21.07.2006. Apart from time overrun, there was cost overrun as well. This aspect, however, may have little relevance to the present case. What is significant though is the fact that, there was no formal handing over of the site to MCD. Furthermore, DMRC appears to have utilized a portion of the area, approximately 100 sq. mts of the drain falling between Rajiv Raj Bajaj Showroom and the drain at Road No.56, for building a parking lot for its commuters interested in accessing the Dilshad Garden Metro Station. In order to convert the said area into a parking lot, a part of the drain evidently was covered and interlocking flooring was used in the process. The parking lot is segregated by a boundary wall.

4.4 However, in the interregnum, on 07.02.2007 at the very site where the parking lot was subsequently constructed by DMRC, as indicated above, by diverting the original drain (i.e., between Rajiv Raj Bajaj Showroom and the drain situate at Road No.56), Lalu alongwith his friend Master Rahul Pandey slipped and fell into the drain. At the time of the incident, as indicated above, the drain was open and neither protected nor covered; a defect which was cured post construction of the parking lot. These are assertions made by the MCD in its affidavit-in-reply to which, DMRC has made no specific rebuttal except to take the stand that on completion of the work on 15.12.2006, its responsibility qua the works stood discharged. The MCD, however, asserts to

the contrary and in particular, the fact that there has been no formal handing over of the site, where the incident of drowning took place which led to the death of Lalu.

4.5 As indicated above, while Master Rahul Pandey was saved by the members of the public, the petitioners' son Lalu died. Information with regard to the incident was received by the police station at Seema Puri via a PCR call received at 6.30 p.m., on 07.02.2007. Consequently, a DD entry No.47-B was made. ASI Meghan Singh and constable Satyavir were deputed to reach the place of the incident and enquire. Efforts were made with the help of Fire Brigade personnel to rescue the petitioners' son Lalu as the other child i.e., Master Rahul Pandey had already been retrieved from the drain. After some efforts, Lalu was also retrieved from the drain and taken to Guru Tegh Bahadur Hospital, where he was declared brought dead, by the doctors on duty.

4.6 A post mortem was conducted on the deceased Lalu which, revealed the cause of death as asphyxia, as a result of drowning. It was opined that asphyxia was ante-mortem in nature. A FIR bearing no.68/2007, under Section 337 and 304 A of the Indian Penal Code, 1860 (IPC) was registered against unknown persons.

4.7 Investigations by the police till now have revealed that: DMRC undertook the work of diversion and construction of a storm water drain from MCD on 21.02.2006; the contract was awarded to QBPL on 22.03.2006; and that the work was completed on 15.12.2006; which is also when, final payment was made to QBPL. Investigations have also revealed, as indicated above, that the diverted storm water drain passes underneath the Dilshad Garden Metro Station and the parking lot constructed over the said drain.

4.8 Evidently, as indicated above, the SDM has paid a nominal compensation to the petitioners.

5. It is in this background that the captioned petition was filed and notice issued by this court on 13.07.2007. Originally, DMRC and Commissioner of Police were impleaded as parties to the present proceedings. Subsequently, MCD was impleaded as a party, and accordingly, arrayed as respondent no.3 vide order dated 20.08.2009. It may be pertinent to note that by order dated 31.01.2012, and thereafter, by order dated 24.05.2012; the Investigating Officer was directed to place the copy of the case file on record.

6. Arguments were heard and judgment was reserved in the matter on, 16.05.2013.

SUBMISSIONS OF COUNSELS

7. On behalf of the petitioners, arguments were advanced by Ms. Aruna Mehta. Submissions on behalf of DMRC were made by Ms. Anusuya Salwan. Respondent no.2, was represented by Ms. Zubeda Begum, while respondent no.3 was represented by Ms. Suparna Srivastava.

8. Ms. Mehta submitted that both DMRC and MCD had admitted the factum of the incident. The only point of difference was, who was responsible for taking measures to prevent occurrence of the incident of the kind which occurred in the instant case. She submitted that, while DMRC took the stand that it could not be held liable for the incident as the work of diversion of the drain was completed on 15.12.2006, that is, a date well before the date of occurrence of the incident, the MCD on the other hand, has contended that the responsibility was of the DMRC as, the site in issue was never formally handed over to it. Ms Mehta submitted that MCD, to buttress its stand, had adverted to the fact that DMRC, had carried out the civil works for construction of a parking lot at the site of the incident. Ms Mehta pointed out that according to MCD, DMRC was thus responsible for maintenance of the drain.

8. Having regard to the broad but contrary stands, Ms. Mehta, submitted that either way, it could not affect the right of the petitioners to claim compensation as surely one of the two authorities, which were instrumentalities of the State, were vicariously responsible for the death of the minor Lalu. Ms. Mehta, invoked in this behalf the principle of *res ipsa loquitur*, and contended that, it was the vicarious liability of the State to compensate the petitioners for the loss caused to them on account of death of their child.

8.2 Ms. Mehta submitted that this court had powers to direct payment of compensation in the present proceedings and that this direction could be issued against any one of the parties. The party, which was aggrieved by this direction could always file a suit against the co-defendants i.e., respondents herein and recover the same by a civil action. In other words, the determination of attributability of fault qua a party could not inhibit a court from granting compensation to the petitioners. Therefore, according to Ms. Mehta, the petition was both maintainable for the reliefs sought for, without the petitioners, having to approach a court by way of a civil suit. In support of her submissions, Ms. Mehta relied upon the judgment of the Supreme Court in the case of *D.K. Basu Vs. state of West Bengal, (1997) 1 SCC 416* and a judgment of a Division Bench of this court in the case of *Darshan & Ors. (Smt.) vs. Union of India & Ors., (2000) ACJ 578 Delhi*.

8.3 Ms. Mehta further submitted that this court has ruled in the case of *Kumari Alka vs. Union of India & Ors., AIR 1993 Delhi 267*, and the judgment dated 03.07.2007, passed in *WP(C) 5072-73/2005*, titled *Kishan Lal vs. Govt. of NCT of Delhi*, that children cannot be imputed with contributory negligence; a judgment which cited with approval, amongst others, the judgment of a Division Bench of the Karnataka High Court, in the case of *Sundara Shetty Vs. K. Sanjiva Rao, AIR 1982 Karnataka 84*.

8.4 Qua the aspect of compensation, Ms. Mehta submitted that it would have to be awarded under two heads: "standard compensation for non pecuniary losses" and "compensation for pecuniary losses"; such as, loss of dependency. In this regard, she relied upon the methodology evolved both in the case of *Krishan Lal Vs. Govt. of NCT* and *Ram Kishore & Ors. Vs. Municipal Corporation of Delhi (2007) AD (Delhi) 441*.

8.5 For the purposes of award of compensation, the decision of the Supreme Court in the case of *Municipal Corporation of Delhi vs. Association of Victims of Uphar Tragedy & Ors., (2012) ACJ 48*, was also relied upon. It was contended that, in that case, the Supreme Court had opined that payment of Rs.7,50,000/- for persons, who were 20 years or below, in age, was reasonable. On this amount, it was submitted, an interest at the rate of 7% (sic 9%), was also awarded, from the date of institution of the writ petition.

8.6 Ms. Mehta, drew my attention to the calculations submitted by her based on the principles laid down in the aforementioned judgments; which pegged the compensation at Rs.6,99,081/- with interest at the rate of 7.5% p.a. from the date of the petition, till its realization.

9. As against this, the counsels for the three respondents argued in line with the affidavits-in-reply on behalf of each of the respondents. The common thread, though, being the objection taken to the maintainability of the petition.

9.1 Ms. Salwan, on merits, reiterated the fact that the contractor (i.e., QBPL) which was tasked with the responsibility of diverting the storm water drain having completed the job by 15.12.2006, DMRC could not mulcted with liability for payment of compensation. It was also contended, based on the assertions made in DMRC's counter affidavit, that issues arising in this petition could not be decided on the basis of emotion, sympathy or

humanitarian consideration. The cause of action had to be decided on the basis of settled legal principles. It was contended that the State has limited financial resources, and though, the law of tort has developed, it had not evolved to the extent of fixing liability on the State to pay damages qua alleged civil wrong for which the victim himself is negligent.

9.2 On the other hand, Ms. Srivastava, appearing for respondent no.3 stated that the liability, if any for compensation, would lie at the doorstep of DMRC and not MCD as DMRC had not handed over the possession of the site where the diverted storm water drain was being constructed i.e., the place where the incident occurred. As indicated above, Ms. Srivastava supported this submission by drawing attention to the fact that on the diverted storm water drain, a parking lot has been constructed by DMRC; the civil work with respect to which, was also, carried out at the behest of DMRC.

9.3 Ms. Zubeda Begum, who appeared for respondent no.2, stated that the factum of the incident occurring could not be disputed. The cause of death of the victim Lalu was on account of asphyxia, caused by drowning. The issue of liability could not be determined in these proceedings.

REASONS

10. Having heard the learned counsels for the parties and perused the record, in my view, the following issues arise for consideration:-

- (i). Would a remedy by way of a writ petition under Article 226 of the Constitution be available to the petitioners to claim compensation?
- (ii). Would a court grant compensation in situations where there is overlap of jurisdiction and responsibility of two or more authorities of the State, there being no clear evidence with regard to which of the authorities owed a duty of care to the victim?
- (iii). Could children of tender age be imputed with contributory negligence?

(iv). What would be the applicable principles for award of compensation, if any.

(v) Relief, if any.

Issue No.(i)

11. In so far as issue no.(i) is concerned, in my opinion, the courts in India have over a period of time unshackled its conservative approach of not entertaining causes while exercising extraordinary original jurisdiction under Article 226 of the Constitution, in such like cases. The rigour of conservatism has been relaxed, not only in the field of civil wrongs that is, torts, but also in the area of contracts where State or its instrumentalities are parties. As a matter of fact, the courts have gone to the extent of saying that it would be incorrect to state that where facts are disputed, a writ court would not have jurisdiction to entertain a petition under Article 226 of the Constitution. It is one thing to say that the court in its discretion may not entertain a petition in which disputed questions of fact arise for consideration, it is another thing to contend that a court does not have jurisdiction to entertain a petition which raises disputed questions of fact. The latter proposition is now discarded by the Supreme Court. [See. *Smt. Gunwant Kaur & Ors. Vs. Municipal Committee Bhatinda & Ors. (1969) 3 SCC 769* and *ABL International Ltd. And Anr. Vs. Export Credit Guarantee Corporation of India Ltd. and Ors. (2004) 3 SCC 553*]

11.1 The approach, with regard to civil wrongs committed by officers of the State or the instrumentalities of the State are on no different footing where claims are based on strict liability. While there is no gainsaying that, an affected person could vindicate his right qua a civil wrong committed on him, by instituting a civil suit, a claim in public law for compensation, for unconstitutional deprivation of the fundamental right to life, would also be available to him. This claim would be in addition to the claim available in

private law for damages caused on account of tortious acts of the public servants. Compensation, if any, would be paid by constitutional courts for ‘established infringement of rights granted under Article 21 of the Constitution’.

11.2 In this behalf, the courts have eschewed the policy of relegating an aggrieved party to a remedy of a civil suit, where there is established violation of the victim’s right under Article 21 of the Constitution, on the ground that it may be long drawn and cumbersome, and at times, result in illusory relief to the victim’s family. The power conferred on the court, whether under Article 32 or Article 226 of the Constitution is exercised, where the violation of the fundamental right is gross and patent – it affects a large number of persons, or it would be unjust or unduly harsh and oppressive either on account of the poverty of the claimant or his socially and economically disadvantaged position, to relegate him to a civil action for infringement of his rights. See observations of the Supreme Court in the case of *MC Mehta Vs. Union of India*, (1987) 1 SCC 395; *Nilabati Behera (Smt) alias Lalita Behera (through the Supreme Court Legal Aid Committee) Vs. State of Orissa and Ors.*, (1993) 2 SCC 746; *D.K. Basu Vs. State of West Bengal (supra)*; *Shakila Abdul Gafar Khan (Smt.) Vs. Vasant Raghunath Dhoble and Anr.*, (2003) 7 SCC 749; and *Sube Singh Vs. State of Haryana and Ors.*, (2006) 3 SCC 178.

11.3 Most of the aforementioned cases were reviewed by the Supreme Court in the case of *MCD Vs. Association of Victims of Uphar Tragedy and Ors.*; *AIR 2012 SC 100*, where the court sustained the grant of compensation, with some modification, to the families of the victims and those who were injured in the fire, which occurred in the Uphar Cinema Theatre at Delhi. A Division Bench of the Supreme Court after reviewing its own previous precedents pushed the envelope a little further by observing that:- “...*what*

can be awarded as compensation by way of public law remedy need not only be nominal palliative but something more. It can be by way of making monetary amounts for the wrong done or by way of exemplary damages, exclusive of any amount recoverable in a civil action based on tortious liability...”

11.4 Therefore, the respondent’s objection to the maintainability of the writ petition, for claim of compensation, is not tenable. The petitioners, as indicated above, are persons of modest means who seek compensation for violation of their child’s right under Article 21 of the Constitution.

12. In order to grant compensation, it would have to be ascertained as to whether the facts, as they stand, establish violation of the victim’s right under Article 21 of the Constitution. In this behalf, the following needs to be noticed:-

(i). The factum of the incident is not in dispute. The DMRC was given the task of diverting the storm water drain. In order to do so, a wall which was existing on the site, which separated the area within the JJ Cluster, used by children for playing, was demolished. Upon completion of the work, the site was left unattended. Both, the original storm water drain and the diverted drain were open. The only difference being that, earlier, a wall separated the area where the storm water drain obtained.

(ii). While, nothing has been brought on record to show that there was either a de jure or de facto handing over of the diverted storm water drain by DMRC to MCD, what does emanate from the record is that on the site in issue, DMRC constructed a parking lot. The parking lot is not only covered but has also been segregated by a wall.

(iii). It is, therefore, quite evident that one of the respondents i.e., DMRC or MCD or both, could have adopted the same approach upon completion of the work at site. The failure, on the part of the said respondents, to take measures

which could have prevented occurrence of a mishap of the nature which occurred in the instant case, resulted in breach of duty of care, which they owed to the victim. This court, in ***Kishan Lal's*** case, in somewhat similar circumstances, applied the principle of *res ipsa loquitur* to fix liability of the State. Since the victim in ***Kishan Lal's*** case was a child of tender age of seven years, the court clearly held that no contributory negligence could be attributed to the child. In applying the principle of *res ipsa loquitur*, the court cited with approval the following observations made in yet another decision of this court in ***Klaus Mittelbachert vs. East India Hotels Ltd.*** 65 (1997) DLT 428. The relevant observations are extracted hereunder :-

“...Under the doctrine of *res ipsa loquitur* a plaintiff establishes a *prima facie* case of negligence where (1) it is not possible for him to prove precisely what was the relevant act or omission which set in train the events leading to the accident, and (2) on the evidence as it stands at the relevant time it is more likely than not that the effective cause of the accident was some act or omission of the defendant or of someone for whom the defendant is responsible, which act or omission constitutes a failure to take proper care for the plaintiff's safety. There must be reasonable evidence of negligence. However, where the thing which causes the accident is shown to be under the management of the defendant or his employees, and the accident is such as in the ordinary course of thing does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of explanation by the defendant, that the accident arose from want of care. Three conditions must be satisfied to attract applicability of *res ipsa loquitur*: (i) the accident must be of a kind which does not ordinarily occur in the absence of someone's negligence; (ii) it must be caused by an agency or instrumentality within the exclusive control of the defendant; (iii) it must not have been due to any voluntary action or contribution on the part of the plaintiff. (See Ratanlal and Dhirajlal on Law of Torts, edited by Justice G.P. Singh, 22nd edition 1992, pp 499-501 and the Law of Negligence by Dr. Chakraborti, 1996 edition, pp 191-192)...” (emphasis is mine)

12.1 Having regard to the above principle, I am of the opinion that a civil wrong was committed qua the petitioners' child Lalu, on account of the negligence of DMRC and / or MCD.

Issue No.(ii)

13. As regards this issue, I am in agreement with Ms. Mehta that as long as the factum of the occurrence of the incident is not in dispute, the mere fact that the responsibility could not be fixed on one or other instrumentality of the State because of overlapping jurisdiction, need not inhibit the court in granting compensation to the victim's family. A Division Bench of this Court in the case of *Darshan and Ors. (Smt) Vs. Union of India 79 (1999) DLT 432* dealt with a case in which the petitioners made a claim for compensation in similar circumstances. The petitioners in that case were: the widow and minor children of a bus driver, who had died on account of drowning on having fallen in an open manhole. In that case, MCD and Public Works Department (PWD) had been impleaded as respondents. Both, MCD and PWD took the stand that the other authority was responsible for maintaining the manhole. The court repelled the submission made on behalf of the said respondents to the effect that in order to fix responsibility with regard to the liability for committing a tort, the matter be sent to a civil court. The observations of the Division Bench in this case were as follows:-

“....13. Learned counsel for the respondent had also urged before us that the issue whether the open manhole belonged to respondent nos. 1 and 2 or respondent nos. 3 and 4, required evidence and detailed enquiry which was not feasible in these proceedings. This and other disputed questions, it was submitted, ought to be determined in a regular civil trial. As noted by us earlier, the factum of death by fall in the manhole left uncovered by the instrumentality of the State is not denied. We have taken a prima facie view that death had occurred by a fall in manhole belonging to and maintained by respondent nos. 3 and 4. Relief to the unfortunate victims of the accident cannot be allowed to be lost in the quagmire or morass of a protracted civil trial, where inter se

liability between the respondents is to be determined. We, therefore, direct that the amount of compensation awarded, together with interest in the first instance be paid by respondent no. 4. Respondent no. 4 may, if so advised, seek to recover the amount of compensation from respondent no. 2 by initiating appropriate proceedings based on its claim that the manhole in question was under the jurisdiction of and maintained by respondent no. 2.

The writ petition is allowed in the above terms.”
(emphasis is mine)

13.1 I see no reason not to adopt the same approach. The issue is, accordingly, decided in favour of the petitioners.

Issue No.(iii)

14. As indicated above, in *Kishan Lal's* case and as rightly pointed out by Ms. Mehta in the case of *Kumari Alka vs. Union of India*, this court, has held that children of tender age cannot be imputed with contributory negligence. A similar view has been taken by a Division Bench of the Karnataka High Court in *Sunadra Shetty's* case. The relevant observations, for the sake of convenience, are culled out hereinbelow :-

“...28. The facts of the present case demanded greater care on the part of the driver of the care because children of tenders years cannot even be imputed with contributory negligence. They have not attained that age of discretion and what generally the adults can understand as rash or negligent acts cannot even be imputed to them as they are not in a position to understand the consequences of their acts. Many dangers which are open and obvious to the adults may be concealed and secret traps for the children...”

(emphasis is mine)

14.1 I am in respectful agreement with the view taken in the judgements cited above. This issue is, thus, also decided in favour of the petitioners. The child Lalu could not be imputed with contributory negligence. The argument of respondents, particularly DMRC, made in this behalf is thus rejected.

Issue No.(iv)

15. As regards this issue, I deem it fit to fruitfully adopt the principles alluded to in the case of ***Kishan Lal*** and ***Ram Kishore***. The court, bifurcated the compensation into two slots. The first slot pertained to standard compensation or what is known as conventional amount payable for non pecuniary losses such as loss of consortium, pain, suffering and loss of amenities. The other slot being: compensation for pecuniary loss of dependency.

15.1 The standard compensation needs to be corrected to counter inflation. This correction could be carried out by taking into account the Consumer Price Index of Industrial Workers [CPI(IW)] obtaining in the year when the incident occurred. As noted in ***Kishan Lal's*** case, which in turn is based on the judgment in the case of ***Smt. Kamla Devi Vs. Govt. of NCT of Delhi & Anr. 114 (2004) DLT 57***, the standard compensation in 1989 was Rs.50,000/- , when the average CPI (IW) was 171. In February, 2007, the CPI (IW) (General) was 593. Therefore, the petitioners would be entitled to a standard compensation (duly corrected); which is worked out in the following manner:- $\text{Rs.}50,000 \times \text{Rs.}593/171 = \text{Rs.}1,73,392/-$

15.2 As regards, pecuniary losses, the method adopted in ***Ram Kishore's*** case could be applied, in which case one of the petitioners was a vegetable seller and he had not given details as regards the exact annual income earned by him. The court took into account the prevailing minimum wages, for determining the estimated income. The prevailing minimum wage was multiplied by a factor of 1.5, to arrive at a reasonable estimate of income.

15.3 The minimum wages in 2007 for unskilled worker as per the petitioner, was a sum of Rs.3894/-. To be noted, the respondents have not disputed this fact. Multiplying the same, with a factor of 1.5, the resultant figure would come to Rs.5841/-. It would have to be assumed as in ***Ram Kishore's*** case that, half of this estimated income would have been spent by the victim on his

upkeep, while the remaining half, would be made available to the parents. Accordingly, the figure of Rs.5841 would have to be divided by 2. This figure would come to Rs.2920/- (rounded off) per month. The annual dependency would work out to Rs.35,050/- (rounded off). This would be the multiplicand.

15.4 Since, the victim was less than 15 years of age, the multiplier of 15 would be applicable if, one were to take recourse to the second schedule appended to the Motor Vehicles Act, 1988. Applying the multiplier of 15, the pecuniary loss would work out to: Rs.5,25,750/- (Rs.35050/- x 15). This would be, thus, the sum, which would be payable towards pecuniary loss. (See observations in *Ram Kishore's* case in paragraph 22 at page 454).

15.5 The total compensation, thus payable to the petitioners, would be a sum of Rs.6,99,142/- (Rs. 1,73,392 + Rs. 5,25,750). This sum can be rounded off to Rs.6,99,140/-.

15.6 The submission of the petitioner that, in *Association of victims of Uphar Tragedy's* case, a compensation in the sum of Rs.7,50,000/- (in regard to those cases where the age of the victim was 20 years or below), was considered appropriate, may not, in my view, provide an objective basis for quantification of principal sum as the said observation was made while taking into account the facts and circumstances obtaining in that case. It is, however, noted the Supreme Court in that case, granted interest at the rate of 9% from the date of institution of the petition. (See observations in paragraph 38 at page 74). The prayer in the writ petition is for grant of interest at the rate of 12% per annum while in the written submissions the petitioner has sought interest at the rate of 7.5% per annum, perhaps on a misreading of the Supreme Court judgment in the *Association of Victims of Uphar Tragedy's* case.

RELIEF

16. Having regard to the above, I am inclined to direct respondent nos.1 and 3 i.e., DMRC and MCD to pay to the petitioners, 50% each of the total amount of compensation, amounting to Rs.6,99,140/- with simple interest at the rate of 9% per annum from the date of the institution of the writ petition till the date of payment, which in any event, shall not be later than four weeks from today. It is ordered accordingly. Respondent nos. 1 and 3 will however be free to take recourse to an appropriate remedy in law against the other, if any one of them is of the view that it was not responsible for committing a civil wrong on the victim Lalu. The direction issued by me for payment of compensation by respondent nos. 1 and 3, will not come in the way of a competent court in arriving at a finding as to the extent of the liability, if any, of the defendant in an action filed by either of the respondents against the other. Needless to say, if such an eventuality arises, the competent court will be free to issue necessary directions in that behalf.

17. The writ petition is, thus, disposed of. There shall, however, be no orders as to costs.

RAJIV SHAKDHER, J

JULY 02, 2013

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