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

+ RFA 46/2016

DELHI DEVELOPMENT AUTHORITY Appellant

Through: Mr. Rajiv Bansal, Sr. Adv. with
Mr. Vaibhav Agnihotri, Mr. Vinayak
Harshwardhan, Ms. Parul Panthi and
Ms. Vaishali Rawat, Adv.

versus

RIVAITHANG & ORS Respondents

Through: Mr. K. Zou, Adv.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

% **10.04.2019**

1. This appeal has been filed by the appellant / Delhi Development Authority challenging the judgment / decree dated September 28, 2015 passed by the learned Additional District Judge-II, Central District, Tis Hazari Courts, Delhi in CS No.222/2015 whereby the learned Trial Court has allowed the suit of the plaintiffs / respondents 1 and 2 and directed payment of compensation / damages to the tune of Rs.5,00,000/- against the appellant / defendant No.2 in favour of the plaintiffs / respondents 1 and 2 along with interest @ 12% per annum till the date of realisation.
2. The facts as noted from the impugned judgment are that the plaintiffs / respondents 1 and 2 are the parents of Late Chingliensang Buhril ('Late Buhril' in short), who while riding his motorcycle bearing No.DL-9SY-2524

on March 14, 2009 was going towards IGI Airport. He collided with the railing of the flyover and fell down and hit the concrete slab almost 30 feet below. It was the case of the plaintiffs / respondents 1 and 2 that due to the accident their son Late Buhril had suffered multiple grievous injuries on head as well as on other parts of body after which he was taken to Deen Dayal Hospital, Hari Nagar, Delhi where he was declared brought dead. It was contended on behalf of the appellant / defendant No.2 that it was the seventh death on the flyover and sixth in just three days and in the year 2009 itself over 20 fatal accidents were reported from this flyover. It was the case of the plaintiffs / respondents 1 and 2 that even the Traffic Policemen and experts also feel that sharp bend had reduced road width of the flyover making this flyover highly prone to accidents and despite the number of accidents, the government and its public authorities failed to take any measures so as to safeguard the valuable lives of the people who are using this flyover for commutation.

3. It was the case of the plaintiffs / respondents 1 and 2 that the Late Buhril was working as Senior RPCS at Penta Software Pvt. Ltd. and was earning Rs.11,750/- per month and the plaintiffs / respondents 1 and 2 and their family members were fully dependent on the deceased for their

subsistence and now after the death of their only son, they have no source of income for their livelihood.

4. It was the case of the appellant / defendant No.2 that the death of the Late Buhril was caused due to sheer negligence of the officials who have constructed the faulty flyover and hence the government is liable to pay compensation to the plaintiffs for the demise of their son. The case of the appellant / DDA in its written statement was that the plaint was not maintainable in the eyes of law as the appellant / defendant No.2 constructed the flyover as per the plan approved by the technical committee and Delhi Urban Art Commission and the same was constructed for the benefit of general public at large. The death of Late Buhril had occurred owing to the rash and negligent driving by him. It was also pleaded that in the flyover the speed limit as well as the indication with regard to the deep curve has been specifically mentioned which was overlooked by the Late Buhril and hence the accident took place due to his fault.

5. On merits, the appellant / defendant DDA had contended that the pavement along with the flyover was at a substantial height and had the vehicle been at a normal speed, he would not have fallen from the flyover. In other words, but for the speed the vehicle, the deceased would not have

fallen from the flyover and hence allegations made against the appellant DDA are bogus. The Dwarka Flyover was having specific warning with regard to sharp turn and speed to be maintained which was overlooked by the deceased which had resulted in the fatal accident, which fact is confirmed from the news which appeared next day.

6. It was also stated that specific warning signals about the speed to be maintained by the commuters travelling on the said flyover and other instructions to be taken care of by the travellers were put, and that if the speed limit is crossed and the rash and negligent driving is being done without taking due care of the necessary instructions, then accidents do occur for which the person who overlooks the traffic rules and regulations would be responsible.

7. The learned Trial Court had framed the following three issues:

1. *Whether the plaintiff has no cause of action to file the present suit against the defendant No.2? (OPD-2)*
2. *Whether the plaintiff is entitled for decree of recovery of Rs.5,00,000/- as prayed for in the plaint? (OPP)*
3. *Whether the plaintiff is entitled for the interest? If yes, at what rate and for which period. (OPP)*

8. The plaintiffs / respondents 1 and 2 had produced the following five witnesses and documents (at page 26).

List of witnesses:

<i>Sr. No.</i>	<i>Name of the witness</i>	<i>Details</i>
<i>Witness of the Plaintiff</i>		
<i>1.</i>	<i>Ct. Rajender Kumar</i>	<i>Official witness who has proved the registration of FIR No. 106/2009, PS Palam Vihar.</i>
<i>2.</i>	<i>Sudesh Joshi (PW2)</i>	<i>Manager of Penta Software (P) Ltd. who has proved the employment record of the deceased.</i>
<i>3.</i>	<i>Ms. Rosy Lalnunsiem (PW3)</i>	<i>Daughter of the plaintiffs / Sister of the deceased Chingliensang Buhril</i>
<i>4.</i>	<i>Dr. Santosh Kumar (PW4)</i>	<i>Official witness who has proved the postmortem report of the deceased</i>
<i>5.</i>	<i>Ms. Smriti Singh (PW5)</i>	<i>Principal Correspondent, Times of India.</i>
<i>Witness of Defendant</i>		
<i>6.</i>	<i>Pramod Kumar Srivastava (DW2-1)</i>	<i>Executive Engineer, FOD-I, DDA.</i>

List of documents relied upon by the parties:

<i>Sr. No.</i>	<i>Exhibit No.</i>	<i>Details of the document</i>	<i>Relied upon by</i>
<i>1.</i>	<i>PW1/1</i>	<i>FIR No. 106/2009, Police Station Palam Vihar</i>	<i>Ct. Bijender Kumar (PW1)</i>
<i>2.</i>	<i>PW2/1</i>	<i>Service record pertaining to the deceased namely Sh. Chinliensang Buhril</i>	<i>Sudesh Joshi (PW2)</i>
<i>3.</i>	<i>PW3/1</i>	<i>Special Power of Attorney dated 04.12.2009</i>	<i>Ms. Rosy Lalnunsiem (PW3)</i>
<i>4.</i>	<i>PW3/2</i>	<i>Copy of Passport of Chinliensang Buhril</i>	
<i>5.</i>	<i>PW3/4</i>	<i>Copy of Driving Licence of Chinliensang Buhril</i>	

The appellant DDA produced its official.

9. Insofar as PW1 is concerned, he proved the FIR, PW2 Sudesh Joshi has proved the fact that Late Buhril was working at Penta Software Pvt. Ltd. He has also proved the salary drawn by Late Buhril. The Sister of Late Buhril had also appeared at PW3 who in her cross examination by the counsel for the DDA, had deposed that she visited the place where the accident had taken place. She was shown different photographs which included photograph at No.71 which depicts the signals pertaining to the curves on the road. On that she stated that the signals had been put by the authorities after the accident and not before that. She denied the suggestion that the proper sign was put at the curve and there was no negligence on the part of the department. She stated that there were serious flaws in the construction and design of the said flyover, since there were no barriers on the road nor there are any speed breakers. She also stated that there was a low fencing and no indicators on the flyover at the time of the accident. She had also denied the suggestion that the accident had taken place due to rash and negligent driving by the Late Buhril. The plaintiffs / respondents 1 and 2 also produced Ms. Smriti Singh, Principal Correspondent, Time of India as PW5 who had brought the certified micro-finch copy of the news paper dated March 15, 2009 published in Times of India which was Ex.PW/5/1.

She deposed that the concerned reporter namely Ms. Megha Suri who reported the said matter is no more in the services of the organisation. In her cross examination, the witness has deposed that while giving the news in the newspaper the initial steps which they take are, talking to the officials and collecting the documents relating to the story. She has denied that the reporting was made on the basis of hearsay.

10. The officer of the appellant DDA, who appeared as DW-2-1 has in his cross examination deposed that he was posted in the Flyover Division-I in October 2013 and the flyover was not constructed during his positing in this division. He had testified that he was deposing as per the record available in the office and he does not have any personal knowledge as he was not the incharge of the said work. The witness had deposed that the speed breakers, reflectors, direction boards for sharp curves etc. are to be provided as per the BIS Codes available or as per request of the Delhi Traffic Police. He had also deposed that the sanction of installation of such speed claiming measures are provided as per the approval of the competent authority. He had further deposed that the height of pavement along with crash barrier is approximately one meter. According to him, he is not aware about the speed of the motorcycle of the deceased at the time of accident nor he is aware as

to what were the final approvals and clearances given by the various departments.

11. He has further deposed that as per the directions received from DCP, Traffic Police to control the speed of the traffic moving on the flyover, they have installed / provided Road Marking Strip (Thermoplastic Paints) over flyover for speed calming measures on January 25, 2012. He also deposed that as per the directions received from DCP Traffic Police they have installed / provided Retro Reflective Tape on the side of bracket of railing and fixed glow studs and spring post over flyover for speed calming measures on June 06, 2012. According to the witness, the DDA has not executed any work on this flyover for safety measures before 2012.

12. He also deposed that they have not received any request or directions from Traffic Police prior to July 07, 2011. He also deposed that the DDA has not provided any safety measures not already provided by the original contractor i.e. L & T. The learned Trial Court on issue Nos.2 and 3 in para 38 onwards has, for granting compensation of Rs,5.00,000/- to the plaintiffs / respondents 1 and 2, held as under:

(i) the factum of death of Late Buhril is not disputed and in that regard the FIR No.106/2009 was recorded in the Police Station Palam Village and

duly proved by PW-1 Constable Rajender Kumar whereby it was confirmed that the deceased had fallen to death on account of sharp curve over flyover while he was driving his motorcycle No.DL-9SY-2524.

(ii) The PW4 Dr. Santosh Kumar, who conducted the postmortem confirmed that there were multiple injuries in the nature of bruises and lacerations all over the body and head injury and fracture of left parital bone and the cause of death has been opined to be failure of multiple vital organs following Road Traffic Accident, thereby establishing the fact that the deceased had expired due to fall from flyover.

(iii) That DW2-1 Executive Engineer of the DDA in his cross examination admitted that prior to year 2012 there were no speed calming measures put on the said flyover. The design of the flyover as seen from the photographs shows a sudden sharp curve at a height of 30 meters tends to reduce the width of the road and the absence of any signages makes it dangerous.

13. Ms. Smriti Singh (PW5) the Principal Correspondent of Times of India has also proved the news report which has not been controverted in any manner which confirms, that numerous requests were made by the Delhi Traffic Police to the DDA which maintains the flyover, to take corrective measures keeping in view large number of fatal accidents which have taken

place at the spot despite which the DDA had failed to put any warning signs, rumble strips, signages informing the road users about the speed limit and warning them to go slow; steel barriers on the bend to prevent people from falling off, rubber padding at the bend to reduce the impact of collusion and cats-eye to make the bends visible and the flyover safer for use. In other words, the inaction on the part of the DDA has given rise to an actionable claim.

14. By considering the aforesaid evidence, the Trial Court had granted the compensation of Rs.5 lacs against the appellant and in favour of the respondents 1 and 2 along with interest @ 12% per annum from the date of decree till realization of the aforesaid amount.

15. The only submission made by Mr. Rajiv Bansal, learned Sr. Counsel for the appellant is that the conclusion of the learned Trial Court that the design of flyover has resulted in the mishap causing the death of late Buhril is not sustainable. According to him, if such a conclusion continues to remain, then every mishap leading to injury or otherwise on that flyover, even at the fault of the driver / rider shall be construed to be in view of design resulting in serious consequences. In other words, every mishap must not be construed to be on account of the design.

16. On the other hand, learned counsel for the respondent has justified the impugned Judgment.

17. Having considered the only submission made by Mr. Bansal which is appealing, this court is still of the view that the final conclusion of the trial court granting compensation cannot be faulted. This is for the simple reason that it has come in evidence that on the date of mishap, there were no safeguards put by the DDA to warn the driver / rider to regulate the speed. It was only on June 6, 2012, such measures were put, that too on the asking of the Traffic Police. In other words, lack of sufficient warnings on the flyover has resulted in the mishap leading to death of Late Buhril. If that be so, any mishap thereafter cannot be automatically construed to be on account of the design of the flyover. Every case has to be seen in its own facts. But in this case, the fault was not of Late Buhril.

In view of the above, the present appeal filed by the appellant is without any merit. The same is dismissed.

The balance amount lying deposited in this court shall be released in favour of respondent nos.1 and 2 in equal shares through their counsel after completing all the formalities.

V. KAMESWAR RAO, J

APRIL 10, 2019/aky