

Sr. No. 08

Suppl. List

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CM 8154/2023 in LPA 276/2023, CM 8155/2023

UNION TERRITORY OF J AND K AND ANR. ...Petitioner(s)/appellant(s)

Through: Mr. Faheem Nisar Shah, GA and
Ms. Maha Majeed, Assisting Counsel
Vs.

DAWOOD AHMAD BHAT AND ORS. ...Respondent(s)

Through: Ms. Rehana Qayoom, Advocate vice
Mr. T. M. Shamsi, DSGI for R 2 & 3

CORAM:

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE M. A. CHOWDHARY, JUDGE

O R D E R (ORAL)
26.12.2023

(N. Kotiswar Singh, CJ)

1. Heard Mr. Faheem Nisar Shah, learned Government Advocate appearing for the appellants and Ms. Rehana Qayoom, learned counsel appearing vice Mr. T. M. Shamsi, DSGI for respondents 2 & 3.
2. Though this appeal has been filed belatedly after a delay of 83 days in challenging the judgment and order dated 01.08.2023 passed in OWP No. 517/2012 by the Ld. Single Judge, considering the nature of the case, and having gone through the impugned judgment, we are of the

CM 8154/2023 in LPA 276/2023

view that the matter does not warrant issuance of notice to the respondents including the writ petitioner but warrants disposal of this appeal at this stage.

3. The primary grievance of the appellants, i.e., the UT of Jammu and Kashmir, as can be seen from the memo of appeal is that the learned Single Judge while granting compensation apparently did not consider the plea of the appellants that the case of the writ petitioner-respondent No.1 herein was covered by the policy decision of the State Government for grant of ex-gratia payment and that the petitioner had been given ex-gratia payment. Further, the learned Single Judge awarded a sum of Rs. 5,32,000/-, by importing the mechanism applied for award of compensation under Motor Vehicles Act, 1988, which is not warranted.

4. Before considering the submissions advanced, it may be necessary to briefly refer to the facts of the case.

5. As noted by the Ld. Single Judge based on the pleadings, the petitioner, a farmer, who was on his way from his agricultural field to his home was fired upon by the Army personnel of 21 RR stationed at Zachaldara at around 7.10 pm, as a consequence whereof the petitioner-respondent No.1 herein sustained bullet injury on his right forearm. After the petitioner sustained the said injury, he was shifted by the Army personnel to their camp at Zachaldara and thereafter, taken to the Sub District Hospital, Zachaldara for treatment. The police were also informed of the incident, and the incident was entered in the Daily Diary under report No. 25. Thereafter, the petitioner was referred to the District

Hospital, Handwara for treatment of the bullet injury and was then referred to Bone and Joint Hospital, Srinagar where he was operated upon. After he was admitted for five days at Bone and Joint Hospital, Srinagar, he was referred to SKIMS, Soura, for further treatment where he remained under treatment for one and a half month and had undergone plastic surgery and then again referred to Bone and Joint Hospital, Srinagar for further treatment. Initially, the concerned Medical Board had issued a disability certificate on 12.02.2011 certifying the degree of disability at 30% which was to be reviewed after 2 years.

6. On subsequent review after two years, the disability was assessed as 50% permanent disability by the District Medical Board, Kupwara.

7. Learned Single Judge after considering the fact that the petitioner had suffered bullet injury in the aforesaid incident, which is not in dispute, and also considering the disability suffered by the petitioner which was assessed to be of 50% permanent disability by the Medical Board, and in view of the stand taken by the appellants before the Writ Court that the SRO 229 of 2013 dated 23.04.2013 read with SRO 394 of 2013 dated 09.09.2013 which provided for higher ex-gratia payment was not applicable to the case of the petitioner as the petitioner suffered injury in the year 2010, as the aforesaid SROs came into effect from the year 2013, held that the right to claim compensation under Article 226 cannot be curtailed by any scheme and proceeded to award the compensation by invoking the mechanism provided under the provisions of Motor Vehicles Act, 1988 in the following manner:-

i)	Compensation for pain and agony:	Rs. 25,000/-
ii)	Compensation for loss of amenities:	Rs. 25,000/-
iii)	Compensation on account of medical expenses:	Rs. 25,000/-
iv)	Compensation for disability and disfigurement due to crush injury:	Rs. 25,000/-
v)	Loss on account of future earnings: Considering the minimal monthly income as Rs. 8000/- and taking into consideration 25% of overall disability of the whole body as against 50% permanent disability received in respect of right arm monthly loss would work out to be Rs. 2,000/-and annually it would be Rs. 24,000/- applying the multiplier of 18 keeping in view his age, the compensation on account of earnings would work out to Rs. 24,000 x 18 = Rs. 4,32,000/-:	Rs. 4,32,000/-
		<u>Total Rs. 5,32,000/-</u>

8. The grounds on which the aforesaid judgment of the Ld. Single Judge is sought to be challenged are as follows.

- (i) Whatever relief which was entitled to the writ petitioner had already been granted and compensation disbursed to him in terms of the Government order No. 723-GR (GAD of 1990 dated 10.07.1990) which provides for grant of relief to those persons affected by law and order disturbances. The said Government order prescribes for payment of Rs.75,000/- in respect of injuries which required hospitalization for more than 20 hours. In the present case, since the writ petitioner had claimed to have suffered injuries and was hospitalized more than 25 hours, he was entitled to aforesaid amount and if the impugned

judgment of the Ld. Single Judge is to be implemented, it will open a flood gate for similar claims.

- (ii) It has been also submitted that the writ petitioner was stated to have suffered from 30% permanent disability in 2011, which was claimed to have increased to 50% in 2015 on the basis of certain document whose genuineness was not established.
- (iii) It has been further contended that the application of principles governing award of compensation under the Motor Vehicles Act, 1988 in the present case is misplaced as the present case did not arise out of any accident involving motor vehicles.
- (iv) It is also contended the circumstances leading to the bullet injury received by the petitioner was not properly appreciated by the Ld. Single Judge. It has been submitted that it is on record, as reported by the pro forma respondent Nos. 3 and 4 that an ambush was laid on 23.08.2010 and on observing suspicion movement towards the jungle, on being challenged the unidentified the individual started running and thereafter he was fired upon, which fact has not been disputed by the writ petitioner. The writ petitioner was immediately provided first aid on the spot and was evacuated to the Civil Hospital, Handawara later, for treatment and also a sum of Rs. 10,000 was provided by

the Army to the petitioner in addition to the hospital fees and cost of medicine etc., where he was under treatment in the Civil Hospital, Handwara.

- (v) It is also contended that he received a single injury out of use of fire arms and it cannot be said he has been permanently disabled with 50% disability which would warrant grant of such compensation by the Ld. Single Judge.
- (vi) It has also been contended that the petition was filed after more than two years of the alleged incident by seeking Rs. 20 lakhs as compensation.
- (vii) However, the Ld. Single Judge did not consider the said delay in approaching the Court and proceeded to award Rs. 5,32,000/- on principles which are unknown to law for grant of compensation under Article 226 of the Constitution.
- (viii) It has been submitted that the petitioner had been duly compensated under the existing policy of the Government. The Ld. Single Judge, thus, erred in awarding the compensation as above.

9. From the above, it is clear that the petitioner-respondent No. 1 herein had received a bullet injury for which he had undergone treatment in various hospitals as mentioned above. It is also on record that the petitioner who was earlier found to have suffered disability from 30%

was subsequently found to be suffering from 50% permanent disability in 2015 as certified by the competent Medical Board. Though the appellants had sought to discredit the said certificate issued by the competent authority in assessing the disability of petitioner as 50% permanent disability in 2015, we are not inclined to accept the said plea for the reason that on examination of record, it is clearly evident that the disability certificate was issued on 23.07.2015 by a team of 04 Doctors of the District Medical Board, Kupwara consisting of Senior Consultant (Medicine), Consultant (Surgery), Consultant (Orthopedics) and the Chairman of the District Medical Board. The said certificate was filed by the writ petitioner on 24.07.2017 with due notice to the appellants, but the appellants chose not to question the same. Hence, the appellants cannot question the authenticity or correctness of the same at this stage. In fact, no such plea is reflected in the pleadings/memo of appeal.

10. Thus, the fact remains that the petitioner had suffered injury in connection with which he had undergone treatment as mentioned above, and suffered 50% permanent disability.

11. The next question which arises for consideration as contended by the appellants is, whether, it was permissible for the learned Single Judge to have invoked the principles applied under the Motor Vehicles Act to award compensation to the petitioner as mentioned above, when there was already a policy of the Government for award of compensation on account of injuries suffered in the circumstances mentioned above.

12. As regards the contention of the appellants that the petitioner was duly compensated under the existing policy under Government Order No. 723-GR (GAD) of 1990 dated 10.07.1990, it is to be noted that the said scheme is for *ex-gratia* payment for the benefit of persons who suffered injuries under certain circumstances mentioned in the order. According to Black's Law Dictionary, 9th Edition (1999), "*ex-gratia*" has been defined as a favour which is not legally necessary. "*Ex- gratia payment*" has been further defined as a payment not legally required. "*Ex-gratia payment*" therefore, would mean that the benefit given under the a scheme by the State is a beneficial measure to ameliorate the sufferings underwent by a citizen without any reference to the legal liability of any of the parties, even of the victim. Thus, the *ex-gratia* payment made under the Government Order dated 10.07.1990 being a benevolent, voluntary and gratuitous act by the State conferred upon the citizen, it cannot come in the way of any claim made by a citizen under the normal law. A person certainly can make a claim for damages or compensation as available under the normal civil law and he can also approach the High Court under Article 226 of the Constitution of India as part of public law remedy.

13. The power of the High Court under Article 226 of the Constitution to grant compensation under public law remedy is no more *res-integra*. It has been settled through a series of judicial pronouncements over the decades that when a person suffers any injury to his life or limb as guaranteed under Article 21 of the Constitution, the

Court in exercise of power under Article 226 can grant appropriate compensation as may deemed fit and proper under the facts and circumstances.

14. In this regard one may refer to the decision rendered by a Division Bench of the Gauhati High Court in **State of Nagaland Vs. Moba Changkai and Anr, 2021 SCC Online Gau 2552**, wherein the Gauhati High Court traced the development of Constitutional law remedy observing that through a series of decisions noticeable, starting from **Khatri (2) Vs. State of Bihar, (1981) 1 SCC 627**, **Rudul Sah Vs. State of Bihar, (1983) 4 SCC 141**, **Sebastian Hongray Vs. Union (1984) 3 SCC 82**, **M. C. Mehta Vs. Union of India (Shriram-Oleum Gas), (1987) 1 SCC 395**, **MCD Vs. Uphaar Tragedy Victims Asnn., (2011) 14 SCC 481**, liability of the State to pay compensation under public law for deprivation of life, personal liberty has been well settled.

15. In this regard, one may refer to decision of **Uphaar Tragedy Victims Asnn. (supra)**, where the legal position has been succinctly put in the following words.

“RAVEENDRAN, J

The Legal position :

45. In Rabindra Nath Ghosal Vs. University of Calcutta and Ors. - (2002) 7 SCC 478 this Court held:

“9. The Courts having the obligation to satisfy the social aspiration of the citizens have to apply the tool and grant compensation as damages in a public law proceedings. Consequently when the Court moulds the relief in proceedings under Articles 32 and 226 of the Constitution seeking enforcement or protection of fundamental rights and grants compensation, it does so under the public law by way of penalising the wrongdoer and fixing the liability

for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizens. But it would not be correct to assume that every minor infraction of public duty by every public officer would commend the Court to grant compensation in a petition under Articles 226 and 32 by applying the principle of public law proceeding. The Court in exercise of extraordinary power under Articles 226 and 32 of the Constitution, therefore, would not award damages against public authorities merely because they have made some order which turns out to be ultra vires, or there has been some inaction in the performance of the duties unless there is malice or conscious abuse. Before exemplary damages can be awarded it must be shown that some fundamental right under Article 21 has been infringed by arbitrary or capricious action on the part of the public functionaries and that the sufferer was a helpless victim of that act."(emphasis supplied)

46. This Court in *Rajkot Municipal Corporation v. M.J. Nakum* (1997) 9 SCC 552 dealing with a case seeking damages under law of torts for negligence by municipality, held as follows:

"63. The conditions in India have not developed to such an extent that a Corporation can keep constant vigil by testing the healthy condition of the trees in the public places, road-side, highway frequented by passers-by. There is no duty to maintain regular supervision thereof, though the local authority/other authority/owner of a property is under a duty to plant and maintain the- tree. The causation for accident is too remote. Consequently, there would be no Common Law right to file suit for tort of negligence. It would not be just and proper to fasten duty of care and liability for omission thereof. It would be difficult for the local authority etc. to foresee such an occurrence. Under these circumstances, it would be difficult to conclude that the appellant has been negligent in the maintenance of the trees planted by it on the road-sides."

54. It is evident from the decision of this Court as also the decisions of the English and Canadian Courts that it is not proper to award damages against public authorities merely because there has been some inaction in the performance of their statutory duties or because the action taken by them is ultimately found to be without authority of law. In regard to performance of statutory functions and duties, the courts will not award damages unless there is malice or conscious abuse. The cases where damages have been awarded for direct

negligence on the part of the statutory authority or cases involving doctrine of strict liability cannot be relied upon in this case to fasten liability against MCD or the Licensing Authority. The position of DVB is different, as direct negligence on its part was established and it was a proximate cause for the injuries to and death of victims. It can be said that in so far as the licensee and DVB are concerned, there was contributory negligence.

58. We may next consider whether the compensation awarded in this case is proper and in accordance with the principles of public law remedy. As noticed above, the High Court has awarded compensation to the legal heirs of 57 deceased victims at the rate of Rs.18 lakhs where the deceased was aged more than 20 years and Rs.15 lakhs where the deceased was aged 20 years or less. It awarded Rs.1 lakh for each of the 103 injured. In regard to the death cases, the High Court adopted the following rationale : Each person who was sitting in the balcony class where the rate of admission was Rs.50 per ticket, can be assumed to belong to a strata of society where the monthly income could not be less than Rs.15,000. Deducting one-third for personal expenses, the loss of dependency to the family would be Rs.10,000 p.m. or Rs.120,000/- per annum. Applying a common multiplier of 15 in all cases where the deceased was more than 20 years, the compensation payable would be Rs.18 lakhs. The High Court deducted Rs.3 lakhs and awarded compensation at a flat rate of Rs.15,00,000/- where the deceased was 20 years or less. The High Court also awarded interest at 9% per annum on the compensation amount from the date of filing of the writ petition (14.7.1997) to the date of payment.

61. Rudul Sah vs. State of Bihar [1983 (4) SCC 141] was one of the earliest decisions where interim compensation was awarded by way of public law remedy in the case of an illegal detention. This Court explained the rationale for awarding such interim compensation thus:

“12. This order will not preclude the petitioner from bringing a suit to recover appropriate damages from the state and its erring officials. The order of compensation passed by us is, as we said above, in the nature of a palliative. We cannot leave the petitioner penniless until the end of his suit, the many appeals and the execution proceedings. A full-dressed debate on the nice points of fact and law which takes place leisurely in compensation suits will have to await the filing of such a suit by the poor Rudul Sah.”

62. In *Nilabati Behera alias Lalita Behera vs. State of Orissa* [1993 (2) SCC 746] this Court observed

“34. Therefore, when the court moulds the relief by granting "compensation" in proceedings under Article 32 or 226 of the Constitution seeking enforcement or protection of fundamental rights, it does so under the public law by way of penalising the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizen. The payment of compensation in such cases is not to be understood, as it is generally understood in a civil action for damages under the private law but in the broader sense of providing relief by an order of making 'monetary amends' under the public law for the wrong done due to breach of public duty, of not protecting the fundamental rights of the citizen. The compensation is in the nature of 'exemplary damages' awarded against the wrong doer for the breach of its public law duty and is independent of the rights available to the aggrieved party to claim compensation under the private law in an action based on tort, through a suit instituted in a court of competent jurisdiction or/and prosecute the offender under the penal law.”

63. In *Sube Singh vs. State of Haryana* [2006 (3) SCC 178] this court held:

"It is now well-settled that award of compensation against the State is an appropriate and effective remedy for redressal of an established infringement of a fundamental right under Article 21, by a public servant. The quantum of compensation will, however, depend upon the facts and circumstances of each case. Award of such compensation (by way of public law remedy) will not come in the way of the aggrieved person claiming additional compensation in a civil court, in the enforcement of the private law remedy in tort, nor come in the way of the criminal court ordering compensation under Section 357 of Cr. PC. Award of compensation as a public law remedy for violation of the fundamental rights enshrined in Article 21 of the Constitution, in addition to the private law remedy under the law of torts, was evolved in the last two-and-a-half decades."

64. Therefore, what can be awarded as compensation by way of public law remedy need not only be a nominal palliative amount, 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 tortuous liability. But in such a case it is improper to assume admittedly without any basis, that every person who visits a cinema theatre and purchases a balcony ticket should be of a high income group person. In the year 1997, Rs.15,000 per month was rather a high income. The movie was a new movie with patriotic undertones. It is known that zealous movie goers, even from low income groups, would not mind purchasing a balcony ticket to enjoy the film on the first day itself. To make a sweeping assumption that every person who purchased a balcony class ticket in 1997 should have had a monthly income of Rs.15,000 and on that basis apply high multiplier of 15 to determine the compensation at a uniform rate of Rs.18 lakhs in the case of persons above the age of 20 years and Rs.15 lakhs for persons below that age, as a public law remedy, may not be proper.

67. Insofar as death cases are concerned the principle of determining compensation is streamlined by several decisions of this court. (See for example SarlaVerma v. Delhi Transport Corporation (2009) 6 SCC 121. If three factors are available the compensation can be determined. The first is the age of the deceased, the second is the income of the deceased and the third is number of dependants (to determine the percentage of deduction for personal expenses). For convenience the third factor can also be excluded by adopting a standard deduction of one third towards personal expenses. Therefore just two factors are required to be ascertained to determine the compensation in 59 individual cases. First is the annual income of the deceased, two third of which becomes the annual loss of dependency the age of the deceased which will furnish the multiplier in terms of SarlaVerma. The annual loss of dependency multiplied by the multiplier will give the compensation. As this is a comparatively simple exercise, we direct the Registrar General of Delhi High Court to receive applications in regard to death cases, from the claimants (legal heirs of the deceased) who want a compensation in excess of what has been awarded that is Rs.10 lakhs/Rs.7.5 lakhs. Such applications should be filed within three months from today. He shall hold a summary inquiry and determine the compensation. Any amount awarded in excess of what is hereby awarded as compensation shall be borne exclusively by the theatre owner. To expedite the process the concerned claimants and the Licensee with their respective counsel shall appear before the Registrar without further notice. For this purpose the claimants and the theatre owner may appear before the Registrar on 10.1.2012 and take further orders in the matter. The hearing and determination of compensation may be assigned to any Registrar or other Senior Judge

nominated by the Learned Chief Justice/Acting Chief Justice of the Delhi High Court.”

RADHAKRISHNAN, J

“96. Courts have held that due to the action or inaction of the State or its offices, if the fundamental rights of a citizen are infringed then the liability of the State, its officials and instrumentals is strict. Claim raised for compensation in such a case is not a private law claim for damages, under which the damages recoverable are large. Claim made for compensation in public law is for compensating the claimants for deprivation of life and personal liberty which has nothing to do with a claim in a private law claim in tort in an ordinary civil court.

98. But, in a case, where life and personal liberty have been violated the absence of any statutory provision for compensation in the Statute is of no consequence. Right to life guaranteed under Article 21 of the Constitution of India is the most sacred right preserved and protected under the Constitution, violation of which is always actionable and there is no necessity of statutory provision as such for preserving that right. Article 21 of the Constitution of India has to be read into all public safety statutes, since the prime object of public safety legislation is to protect the individual and to compensate him for the loss suffered. Duty of care expected from State or its officials functioning under the public safety legislation is, therefore, very high, compared to the statutory powers and supervision expected from officers functioning under the statutes like Companies Act, Cooperative Societies Act and such similar legislations. When we look at the various provisions of the Cinematographic Act, 1952 and the Rules made thereunder, the Delhi Building Regulations and the Electricity Laws the duty of care on officials was high and liabilities strict.

CONSTITUTIONAL TORTS - MEASURE OF DAMAGES

“99. Law is well settled that a Constitutional Court can award monetary compensation against State and its officials for its failure to safeguard fundamental rights of citizens but there is no system or method to measure the damages caused in such situations. Quite often the courts have a difficult task in determining damages in various fact situations. The yardsticks normally adopted for determining the compensation payable in a private tort claims are not as such applicable when a constitutional court determines the compensation in cases

where there is violation of fundamental rights guaranteed to its citizens.

100. In D.K. Basu vs. Union of India (1997) 1 SCC 416, a Constitution Bench of this Court held that there is no strait jacket formula for computation of damages and we find that there is no uniformity or yardstick followed in awarding damages for violation of fundamental rights. In Rudal Shah's case (supra) this Court used the terminology "Palliative" for measuring the damages and The formula of "Ad hoc" was applied in Sebastian Hongary's case (supra) the expression used by this Court for determining the monetary compensation was "Exemplary" cost and the formula adopted was "Punitive". In Bhim Singh's case, the expression used by the Court was "Compensation" and method adopted was "Tortious formula". In D.K. Basu v. Union of India (supra) the expression used by this Court for determining the compensation was "Monetary Compensation". The formula adopted was "Cost to Cost" method. Courts have not, therefore, adopted a uniform criteria since no statutory formula has been laid down.

101. Constitutional Courts all over the world have to overcome these hurdles. Failure to precisely articulate and carefully evaluate a uniform policy as against State and its officials would at times tend the court to adopt rules which are applicable in private law remedy for which courts and statutes have evolved various methods, such as loss earnings, impairment of future earning capacity, medical expenses, mental and physical suffering, property damage etc. Adoption of those methods as such in computing the damages for violation of constitutional torts may not be proper.

102. In Delhi Domestic Working Women's Forum v. Union of India (supra) the apex Court laid down parameters in assisting the victims of rape including the liability of the State to provide compensation to the victims and held as follows :-

“15. (7) It is necessary, having regard to the directive principles contained under Article 38(1) of the Constitution of India to set up Criminal Injuries Compensation Board. Rape victims frequently incurred substantial financial loss. Some, for example were too traumatized to continue in employment.

(8) Compensation for victims shall be awarded by the Court on conviction of the offender and by the Criminal Injuries Compensation Board whether or not a conviction has taken place. The Board will take into account the pain, suffering and shock as well as loss of earnings due to

pregnancy and the expenses of the child but if it is occurred as a result of rape."

103. Legal liability in damages exist solely as a remedy out of private law action in tort which is generally time consuming and expensive and hence when fundamental rights are violated claimants prefer to approach constitutional courts for speedy remedy. Constitutional courts, of course, shall invoke its jurisdiction only in extraordinary circumstances when serious injury has been caused due to violation of fundamental rights especially under Article 21 of the Constitution of India. In such circumstances the Court can invoke its own methods depending upon the facts and circumstances of each case.

Constitutional Torts and Punitive Damages

104. Constitutional Courts' actions not only strive to compensate the victims and vindicate the constitutional rights, but also to deter future constitutional misconduct without proper excuse or with some collateral or improper motive. Constitutional courts can in appropriate cases of serious violation of life and liberty of the individuals award punitive damages. However, the same generally requires the presence of malicious intent on the side of the wrong doer, i.e. an intentional doing of some wrongful act.

105. Compensatory damages are intended to provide the claimant with a monetary amount necessary to recoup/replace what was lost, since damages in tort are generally awarded to place the claimants in the position he would have been in, had the tort not taken place which are generally quantified under the heads of general damages and special damages. Punitive damages are intended to reform or to deter the wrong doer from indulging in conduct similar to that which formed the basis for the claim. Punitive damages are not intended to compensate the claimant which he can claim in an ordinary private law claim in tort. Punitive damages are awarded by the constitutional court when the wrong doer's conduct was egregiously deceitful.

108. Several factors may gauge on constitutional court in determining the punitive damages such as contumacious conduct of the wrong doer, the nature of the statute, gravity of the fault committed, the circumstances etc. Punitive damages can be awarded when the wrongdoers' conduct 'shocks the conscience' or is 'outrageous' or there is a willful and 'wanton disregard' for safety requirements. Normally, there must be a

direct connection between the wrongdoer's conduct and the victim's injury.

16. The above decisions would clearly indicate that the compensatory jurisdiction as part of the public law remedy has evolved in course of time and has been invoked primarily to uphold the right to life where the constitutional courts have found violation of rights by illegal acts and omissions by State agencies.

17. However, as regards quantum of compensation awarded by the Courts in exercise of extraordinary jurisdiction under Article 226 or the Article 32 as the case may be, there is no uniformity, or any settled set of principles to determine the quantum of compensation as also observed in **D.K. Basu** (supra) and **Uphaar Tragedy Victims Assn** (supra).

18. In a case titled, **Sri Konto Waria Vs. Union of India, 2022, SCC Online GAU 2113**, the Gauhati High Court considered the same and observed as follows:-

“103. Though law is now firmly settled that Constitutional Courts can grant compensation for violation of fundamental rights, more particularly, Article 21, we are, however, unable to find a consistent view as regards the quantum of compensation.

In fact, the Courts have been granting varying amounts of compensation. There is no uniformity or any set of principles to determine the quantum of compensation.”

104.2 In Nilabati Behera (supra) (1993) of which a reference was also made by the Hon'ble Supreme Court in the aforesaid case of Rohtash Kumar (supra), the Hon'ble Supreme Court granted a sum of Rs.1,50,000/- as compensation.

104.3 In Chandrima Das (supra) a sum of Rs.10 lakhs was awarded to the victim of rape.

104.4 In M.P. Electricity Board Vs. Shail Kumari, (2002) 2 SCC 162, the Hon'ble Supreme Court upholding the decision of the Hon'ble High Court awarded a sum of Rs.4.34 lakhs.

104.5 In Delhi Jal Board vs. National Campaign & Rights of Sewerage & Allied Workers, (2011) 8 SCC 568, the Hon'ble Supreme Court awarded a sum of Rs.5 lacs to the families of those who died due to negligence of the public authority, Delhi Jal Board, which did not take effective measures for ensuring safety of the sewerage workers.

104.6 In MCD Vs. Uphaar Tragedy Victims Assn., (2011) 14 SCC 481, the Hon'ble Supreme Court considered at length the various decisions regarding grant of compensation and ultimately, directed payment of Rs.10 lacs in case of death (in the case of three aged more than 20 years) and Rs.7.5 lacs (in the case of those aged 20 years or less) to the legal representatives of the deceased. The Hon'ble Supreme Court further awarded a compensation of Rs.1 lac in case of each of the 103 injured persons.

19. In the present case, though we are not ascribing any criminal intent on the security personnel in firing upon the petitioner as the firing occurred while laying an ambush as mentioned above, it cannot be denied that it was certainly a case of mistaken identity inasmuch as it was not alleged at any subsequent point of time that the petitioner was involved in any manner with any terrorist activity, but was a simple villager and farmer who happened to be in the wrong place at the wrong time without any fault of him. Yet, the fact remains that he did suffer bullet injury on his fore-arm for no fault of him on account of firing by the security personnel and that he suffered 50% permanent disability as certified by the competent Medical Board, Kupwara. Though, the appellants had questioned the correctness of the said certificate, in this appellate forum we are not at all inclined to examine this issue as the certificate was filed by the petitioner as part of the pleadings before the Writ Court and the appellants had all the opportunities to verify the correctness or genuineness of the same, but they chose not to do so. On

perusal of the aforesaid certificate issued by the Medical Board, Kupwara from the records, we do not see any reason to doubt the genuineness of the same. Thus, it is clearly evident that the petitioner has suffered 50% permanent disability due to bullet injuries received by the petitioner on account of firing by the security forces in which the petitioner had no contributory role, nor any fault, for which he cannot be held responsible in any manner. Further, as observed by the Ld. Single Judge, the petitioner was about 19-year-old when he received the bullet injury.

20. Thus, in view of the fact that he had suffered 50% permanent disability, and he was young man of about 19 years old when he received the bullet injury for no fault, the procedure adopted by the Ld. Single Judge in applying the mechanism provided under the provisions of Motor Vehicle Act, 1990 to compute the amount of compensation cannot be said to be unreasonable or impermissible.

21. As discussed above, the Supreme Court also had invoked the principles applicable in dealing with claims under Motor Vehicles Act, in *Uphaar Tragedy Victims Assn* (supra). It was observed therein as follows:

“67. Insofar as death cases are concerned the principle of determining compensation is streamlined by several decisions of this Court. (See for example Sarla Verma v. DTC [(2009) 6 SCC 121 : (2009) 2 SCC (Cri) 1002 : (2009) 2 SCC (Civ) 770] .) If three factors are available the compensation can be determined. The first is the age of the deceased, the second is the income of the deceased and the third is number of dependants (to determine the percentage of deduction for personal expenses). For convenience the third factor can also be excluded by adopting a standard deduction of one-third towards personal expenses. Therefore just two factors are required to be ascertained to determine the compensation in 59 individual cases. First is the

annual income of the deceased, two-thirds of which becomes the annual loss of dependency; and second, the age of the deceased which will furnish the multiplier in terms of Sarla Verma [(2009) 6 SCC 121 : (2009) 2 SCC (Cri) 1002 : (2009) 2 SCC (Civ) 770] . The annual loss of dependency multiplied by the multiplier will give the compensation. As this is a comparatively simple exercise, we direct the Registrar General of the Delhi High Court to receive applications in regard to death cases, from the claimants (legal heirs of the deceased) who want a compensation in excess of what has been awarded, that is, Rs 10 lakhs/Rs 7.5 lakhs. Such applications should be filed within three months from today. He shall hold a summary inquiry and determine the compensation. Any amount awarded in excess of what is hereby awarded as compensation shall be borne exclusively by the theatre owner. To expedite the process the claimants concerned and the licensee with their respective counsel shall appear before the Registrar without further notice. For this purpose the claimants and the theatre owner may appear before the Registrar on 10-1-2012 and take further orders in the matter. The hearing and determination of compensation may be assigned to any Registrar or other Senior Judge nominated by the learned Chief Justice/Acting Chief Justice of the Delhi High Court.”

22. Hence, we are of the opinion that no illegality was committed by the Ld. Single Judge in adopting the criteria applied for assessing compensation under the Motor Vehicle Act in the present. We hold that the same is undoubtedly a permissible method to assess the quantum of compensation.

23. We would also like to reiterate that *ex-gratia* payment under any scheme of the Government cannot come in the way of claim for compensation either under the constitutional law remedy or the normally remedy available under civil law.

24. Thus, the aforesaid amount awarded by the Ld. Single Judge will be in addition to any compensation given to the petitioner either by the security personnel or by the State Government as the case may be.

25. Before we part, we would like to make the observation that it is unfortunate that the State has sought to file an appeal against an award which cannot be considered to be plenteous or exorbitant in respect of a very young person of about 19 years, who had received bullet injury and suffered 50% permanent disability in an incident which occurred as far back on 28.10.2010, i.e., now more than 13 years, in which he had no contributory role.

26. Under the circumstances and for the reasons discussed above, we do not find any merit in this appeal and accordingly, the appeal is dismissed at the threshold.

27. Since the writ petitioner has not challenged the quantum of compensation made, we do not wish to make any alteration in the quantum of compensation awarded. However, since the appellants had not paid the compensation awarded within eight weeks as directed by the Ld. Single Judge, we direct that same be paid within three weeks from today, failing which, the aforesaid amount will carry interest @ 10% from the date of judgment by the Ld. Single Judge on 01.08.2023.

24. Appeal is disposed of as dismissal.

(M. A. CHOWDHARY)
JUDGE

(N. KOTISWAR SINGH)
CHIEF JUSTICE

SRINAGAR
26.12.2023
Aadil

Whether the order is reportable Yes/No.