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

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Date of Decision: 04.03.2024+ **LPA 236/2020****GOVERNMENT OF NCT OF DELHI, THROUGH
COMMISSIONER, DELHI POLICE**

..... Appellant

Through: Mr Rishikesh Kumar, ASC for
GNCTD, with Ms Sheenu Priya, Mr
Atik Gill, Mr Sudhir Kumar Shukla
and Mr Sudhir, Advocates.

versus

SHRI DHEERAJ KUMAR & ORS.

..... Respondents

Through: Mr Pankaj Vivek, Mr Harshit Chopra,
Mr Himanshu Chug, Mr Randeep and
Mr Naveen Malik, Advocates.**CORAM:****HON'BLE MR. JUSTICE RAJIV SHAKDHER****HON'BLE MR. JUSTICE AMIT BANSAL****[Physical Hearing/Hybrid Hearing (as per request)]****RAJIV SHAKDHER, J. (ORAL)****Backdrop**

1. This appeal is directed against the judgment dated 18.05.2020 passed by the learned Single Judge.
2. The learned Single Judge, by the impugned judgment, awarded respondent no. 1 a compensation amounting to Rs.75 Lakhs on account of the negligence committed by the appellant/ Govt. of NCT of Delhi [hereafter referred to as "Delhi Police"].



3. In the instant appeal, two other respondents, apart from respondent no. 1, have been arrayed as parties. Respondent no.2 is the father of respondent no.1, while respondent no.3 is the Union of India.

Prefatory facts

4. Briefly, the following facts need to be taken into consideration to adjudicate the appeal:

4.1 Respondent no.1 met with an accident in the early hours of 06.12.2015 when he returned from a marriage function held on 05.12.2015 in Paschim Vihar, Village Madipur.

4.2 Respondent no.1 was riding his motorcycle when he met with the accident at a location described as "Road no.66, near Dhanwantri Ayurvedic Hospital, North Avenue Road, West Punjabi Bagh, New Delhi-26" [hereafter referred to as "the accident site"].

4.3 The record shows that the accident occurred because the Delhi Police had put up barricades, which were connected to an iron chain.

4.4 After perusing the record, the learned Single Judge awarded the compensation, as indicated hereinabove.

5. Before us, Mr Rishikesh Kumar, learned counsel, who appears on behalf of the Delhi Police, has assailed the judgment of the learned Single Judge on the following grounds:

i. First, disputed questions of fact arise in the matter, and therefore, a writ action was not an appropriate remedy. Furthermore, the finding of negligence returned against the Delhi Police is based on surmises and conjectures. If a suit action had been filed, parties would have led evidence and been subjected to cross-examination before returning a finding of negligence.



- ii. Second, respondent no.1 was guilty of contributory negligence as he was not wearing a crash helmet. In this regard, reference was made to Section 129 of the Motor Vehicles Act, 1988.
- iii. Third, the assertion made on behalf of respondent no.1 that the accident site was poorly lit was incorrect. The witnesses, whose statements were recorded, indicated to the contrary.
- iv. Fourth, the barricades with chains were placed on the internal roads of the area concerned. The Delhi Police follows the practice of positioning the Beat Constable/ Police Personnel at a particular locality's main entry and exit points. This practice enables the police to monitor ingress and egress from a specific locality while the other entry and exit points are closed by setting up barricades. Therefore, clauses 6 and 10 of the Standing Order No.329/2007 dated 06.11.2007 [hereafter referred to as "the 2007 SOP"] would have no applicability in the instant case.
- v. Fifth, the compensation awarded by the learned Single Judge is not based on evidence. The amount awarded is excessive.

Analysis and Reasons

6. Having heard learned counsel for the parties and perused the record, we are not inclined to agree with the Delhi Police. The reason why we say so is the following.

6.1 It needs to be emphasised that the material facts obtaining in the matter, to which we would make reference hereafter, are not in dispute:

- i) First, the date of the accident, which took place in the early hours of 06.12.2015.
- ii) Second, the barricades at the accident site were chained together.
- iii) Third, the police personnel did not attend the barricades.



7. Therefore, Mr Kumar's submission that there was dispute concerning questions of fact regarding the cause of the accident is completely untenable. The Delhi Police, as an instrumentality of the State, had a duty of care towards the respondent, which was breached in this case.

7.1 The immediate cause of the accident, *qua* which the learned Single Judge has returned a finding of fact, was the placement of chained barricades at the accident site. Furthermore, there is no inviolable rule enunciated by Courts that the writ court cannot examine disputed questions of fact [See *TN Electricity Board vs Sumathi*, (2000) 4 SCC 543; *ABL International Ltd. and Ors. Vs Export Credit Guarantee Corporation of India Ltd and Ors.*, (2004) 3 SCC 553; *HSEB vs Ram Nath*, (2004) 5 SCC 793; *Bank of Baroda & Anr vs Mahesh Gupta & Ors*, 2022/DHC/005457].

8. The other argument advanced by Mr Kumar that respondent no.1 has contributed to the negligent act is wholly misconceived. As indicated above, the proximate cause of the accident was the chained barricades which the Delhi Police had put in place. It is necessary to note that the learned Single Judge concluded that because the crash helmet was not found at the accident site, it would not automatically lead to the conclusion that the respondent was not wearing one. That said, the Court must draw a distinction between inoperative and contributory negligence.

8.1 The governing principle in such cases is that the claimant's failure to exercise reasonable care *qua* his own protection does not amount to contributory negligence *vis-a-vis* the damage/injury suffered by him, unless that damage/injury results from the particular risk to which his conduct has exposed him [See *Salmond & Heuston on the Law of Torts*, 12th edition, pg. 508]



9. Therefore, even though the claimant may have been negligent, unless that negligence was the operative cause of the accident, no contributory negligence can be attributed to him. It is clear that even if the respondent had worn a crash helmet, he might not have avoided colliding with the unattended chained barricades placed in a poorly lit area. The proximate cause of the injuries suffered by the respondent was the presence of chained barricades. Therefore, in our view, the argument advanced on behalf of the appellant is untenable. Hence, the defence of contributory negligence is unavailable to the Delhi Police in this case.

10. The other submission advanced on behalf of the Delhi Police (*albeit* contrary to the finding returned by the learned Single Judge that the accident site was poorly lit) is pivoted on the statements of two witnesses recorded in the course of investigations. These statements were, admittedly, recorded under Section 161 of the Code of Criminal Procedure, 1973 [in short, "CrPC"]. Concededly, no statement of the witnesses was recorded under Section 164 of the CrPC.

11. Pertinently, the statements of witnesses were recorded after the accident had occurred and not contemporaneously.

12. Even if we were to accept the veracity of the witness statements brought on record by the Delhi Police, the onus placed on it concerning whether or not the duty of care it owed to respondent no. 1 had been breached has not been discharged.

13. The respondents have instituted a tortious action, *albeit* in the realm of public law. Therefore, the 2007 SOP, which the Delhi Police have framed, is crucial in appreciating whether or not a tort was committed. In this context, clauses 6 and 10 of the 2007 SOP, being relevant, are extracted hereafter:



“6. All barricades must have necessary fluorescent paint as well as blinkers so that they are visible from a long distance. It is the responsibility of the ACP Incharge of the Sub Division and SHO to ensure that all barricades have such facilities.

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10. The barricades, under no circumstances, should be left unmanned. They should be removed from the carriageway, when not in use, so that they do not cause any traffic hindrance.”

14. First and foremost, it deserves to be emphasised that the Assistant Commissioner of Police [in short, "ACP"], in-charge of the concerned sub-division, and the Station House Officer [in short, "SHO"] of the concerned Police Station are duty bound to ensure that the barricades are erected as per the regime put in place by the 2007 SOP. Significantly, the 2007 SOP makes no exception for internal roads.

14.1 A close perusal of Clause 6 of the 2007 SOP shows that the road barricades are required to bear fluorescent paint and blinkers to be visible from a distance.

14.2 Insofar as Clause 10 of the 2007 SOP is concerned, it provides, in no uncertain terms, that no barricades should be left unattended under any circumstances. The said clause states that the barricades should be removed from the carriageway when not in use so that they do not cause any traffic hindrance.

15. The Delhi Police did not produce any material before the learned Single Judge which would establish that the barricades actually bore fluorescent paint and were mounted with blinkers.

15.1 Even if we were to assume, for the moment, that the barricades that caused the accident had fluorescent paint and blinkers mounted on them, the Delhi Police cannot ignore the fact that they were left unattended, which was



clearly contrary to clause 10 of the 2007 SOP.

16. The explanation offered on behalf of the Delhi Police, that the accident site was an internal road and the Beat Constables were usually positioned at the main entry and exit points, was not established before the learned Single Judge. First of all, it bears repetition that the 2007 SOP makes no such exception. Secondly, the Delhi Police have, in its counter-affidavit, made averments concerning the practice that it normally followed. However, whether, in this particular case, the Beat Constables/police personnel were deployed at the main entry and exit points by the Delhi Police was not established. We would have expected the Delhi Police to place the relevant material before the learned Single Judge, which would include the name of the police personnel who were deployed and the time during which they were available at the entry and exit points. Admittedly, no such material was placed by the Delhi Police before the learned Single Judge.

17. Undoubtedly, Clause 10 of the 2007 SOP obliges the Delhi Police to deploy police personnel when barricades are placed on public streets. In addition, whenever the police consider it fit, they can also position personnel at the main entry and exit points. To leave the barricades unattended at night, especially when they are chained, is an invitation to disaster, which is what happened in this case.

18. In this case, as noticed hereinabove, the accident occurred on 06.12.2015. The Court can take judicial notice of the fact that in winter, in the early hours of the morning, which is when the accident occurred, the visibility is usually very low. Iron chains, which are ordinarily painted grey, would present an impediment to a safe pass-through, and therefore, we are not impressed by the submission made in this behalf by Mr Kumar. The



2017 SOP, recognising this gap in the 2007 SOP, has made the requisite course correction.

19. This brings us to the other aspect of the matter: the compensation awarded by the learned Single Judge is not based on evidence.

19.1 In this regard, we may state that the learned Single Judge has awarded Rs.18 lakhs towards reimbursement of medical expenses. The Delhi Police, concededly, did not contest the figure put forth by respondents no. 1 and 2 regarding the funds defrayed on medical expenses.

20. Mr Kumar has not disputed that bills worth approximately Rs.14 lakhs were placed on record. One needs to take into account the fact that these bills span a period commencing from when the medical treatment was accorded to respondent no.1, which was at the beginning of December 2015, to May 2016. The writ is of 2016 vintage. By the time the writ petition was disposed of, it was May 2020.

21. Certainly, given respondent no.1's health status, he would have incurred, if not more, at least Rs.18 lakhs on his treatment.

22. To appreciate this aspect of the matter, a correct perspective concerning the injuries suffered by respondent no. 1 needs to be gathered from the discharge summary issued by the concerned hospital, i.e., Sir Ganga Ram Hospital :

"Patient was admitted in ICU on 06/12/2015. He underwent left fronto-temporo-parietal decompressive craniotomy with hematoma evacuation and free bone flap kept in left anterior abdominal wall with tracheostomy under GA on 07/12/2015. Post operatively patient was shifted back to ICU and electively ventilated. Gradually patient improved and was eventually weaned off ventilator. On 12/12/2015, Abdominal USG was done which shows small amount of ascites was seen. Patient was in altered sensorium, eye opening to pain, not opening commands, on t-piece, hemodynamically stable with fever spikes, Patient was then shifted to 4th HDU on 20/12/15. Medicine



reference was sought and antibiotics were changed and their advice was followed, CECT of the Chest and Abdomen was done on 26/12/2015, CECT Chest revealed evidence of filling defect in the pulmonary artery suggestive of embolism with partial collapse of the right lower lobe; small bilateral pleural effusion with aciectatic changes in both lungs, CECT fo the Abdomen revealed evidence of few prominent distal small bowel loops and mildly dilated sigmoid colon. Gastroenterology reference was sought and their advice was followed accordingly. Ophthalmology reference and ENT reference was also sought and their advice was followed. Currently patient is in Altered sensorium, eye opening spontaneously, moving left side spontaneously, right hemiparesis, on t-tube, not obeying commands, hemodynamically stable, Gradually patient improved and now is being discharged in a stable condition with further advice to follow up."

[Emphasis is ours]

23. A perusal of the aforementioned discharge summary dated 14.01.2016 would show that when respondent no.1 was discharged from the hospital, he had an **altered sensorium**, and although his eyes opened spontaneously, they did not respond to commands.
24. Therefore, the argument put forth by Mr Kumar that pecuniary compensation was ordered to be paid to respondent no.1 without evidence, in our opinion, is contrary to the material on record. The bills, as noticed above, were filed with the writ petition and the veracity of the same was not disputed by the Delhi Police before the learned Single Judge.
25. At this stage, it may be relevant to note that Rs.75 lakhs awarded to respondent no.1 has an element of damages awarded for loss of income. Since the learned Single Judge has not given a breakup of the awarded amount, we had asked Mr Pankaj Vivek, learned counsel, who appears on behalf of respondent no. 1 and 2, to place before us the calculation to satisfy for ourselves as to whether the amount awarded by the learned Single Judge was reasonable.



26. Mr Vivek has placed on record calculations based on two alternatives. Before examining the alternatives, the calculations must be foregrounded in the context of the following facts. At the time of the accident, respondent no.1 was 21 and pursuing his education in BSc Hons. (Electrical Engineering).

26.1 Therefore, given his prospects, the course he pursued, and his age, the calculations furnished to us have also factored in a possible increase in emoluments by 50% [See *National Insurance Company vs. Pranay Sethi & Ors.* (2017) 16 SCC 680].

26.2 The alternate calculations furnished by respondent no. 1 and 2 are founded on the following:

- (i) The first alternative is based on the minimum wage accorded to a skilled person in Delhi.
- (ii) The second alternative is based on the reasonable salary a person with respondent no.1's qualification would have earned.

27. In our view, the second alternative submitted on behalf of respondent no.1, i.e., the reasonable salary that a BSc (Electrical Engineering) graduate would have earned, which is quantified at Rs.25,000/- per month, as against minimum wages payable to a skilled person in Delhi, which is pegged at Rs.14,010/- per month, would be eminently suitable in this case. Taking Rs.25,000/- per month as a base, the calculations furnished read as follows:

Amounts (as per reasonable wage of Rs.25,000/- p.m.)
(a) Rs.25,000 x 12= Rs.3,00,000 per annum.
(b) Add Future prospects of 50% = Rs.1,50,000
Total amounts to Rs.4,50,000



(c) Deduct $1/3^{\text{rd}}$ towards personal expenses= Rs.1,50,000

Net income i.e. multiplicand: Rs. 3,00,000/- p.a.

(d) Loss of income/ dependency is

18 (multiplier) x Rs.3,00,000= Rs.54,00,000/-

28. We are of the opinion that no fault can be found with the quantification of loss of income arrived at by respondent no.1, which is Rs.54 lakhs.

28.1 To arrive at this sum, 18 is applied as the multiplier, which, according to us, is in order given the age of respondent no.1 at the time of the accident.

[See *Sarla Verma vs DTC*, (2009) 6 SCC 121; *Sidram vs The Divisional Manager, United India Insurance Co. Ltd. and Anr*, (2023) 3 SCC 439].

The addition of medical expenses amounting to Rs.18 lakhs would bring the total figure to Rs.72 lakhs.

Conclusion

29. Given the fact that more than three (03) years have passed even since the learned Single Judge delivered his judgment in the matter, according to us, no interference is called for in the compensation amounting to Rs.75 lakhs, if room is left for inflation and the depreciation in the value of money.

30. Thus, due to the aforesaid reasons, we are not inclined to interfere with the judgment of the learned Single Judge. The appeal is, accordingly, dismissed.



31. Since the Delhi Police have deposited the awarded compensation, the Registry is directed to forthwith release the same, along with the accrued interest, to respondent no.2 for the upkeep of respondent no.1.

RAJIV SHAKDHER, J

AMIT BANSAL, J

MARCH 4, 2024

tr/rt