

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP no.198 of 2013(O&M)

Date of Decision :06.10.2015

Madhu and another

....Petitioner(s)

Versus

State of Haryana and others

...Respondent(s)

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER

- 1)Whether reporters of local newspapers may be allowed to see the judgment?
- 2) To be referred to the Reporters or not?
- 3) Whether the judgment should be reported in the Digest?

Present : Mr.Pankaj Middha, Advocate for the petitioners

Mr. G.S.Wasu, Addl. AG, Haryana

MAHESH GROVER, J.

This is a writ petition under Article 226/227 of the Constitution of India praying for issuance of writ in the nature of mandamus directing the respondents to pay compensation on account of the death of petitioners' son namely Tushant @ Golu aged 22 years.

On 13.6.2011 the deceased alongwith his friend Bharat @ Babloo had gone on a motor cycle to watch a movie and while returning they hit an open sewerage hole where repairs had been undertaken resulting in their death. It has been stated that information was given to the police but FIR was registered after one month. The photographs of the site it seems were however taken

instantaneously as the dead body is visible on the site. It has been pleaded that

there was malba lying on the road with a manhole open and no lighting or sign boards to indicate the danger ahead.

The respondents have denied this fact to contend that the sign boards were there but in fact were removed by someone and were placed on the side of the road.

Learned counsel for the petitioners contends that it is a case of sheer negligence on the part of the Public Health Department who had left the manhole open with malba strewn on the sides with no proper lighting or sign boards/reflectors to warn the users of the road of the impending danger.

These facts have been strenuously denied by the respondents who pleads negligence on the part of the deceased as well. It has been contended that the deceased was not wearing a helmet and was on a high speed without a driving license.

This Court would wonder as to how the factum of over speeding has been ascertained by the respondents as none of them was possibly present and no other material is on record to suggest so. However, without commenting on this aspect any further, I am of the opinion that perusal of the photographs speaks volumes of the negligence of the Public Health Department. The principle of *res ipsa loquitur* would clearly suggest a gross negligence on their part. They could not have left the manhole open after inconclusive works without cordoning of the area effectively. Even presence of sign boards could have partly absolved them

of their negligence. In such like cases the only solution is to cordon of the area altogether lest somebody walks into the danger zone, unintentionally. It was also their duty to ensure sufficient lighting or atleast flash indicators to serve as a warning to the users of the road. The photographs reflect nothing of this sort.

The plea that the deceased was himself negligent as he was driving without a licence and a helmet is of no avail. The negligence of the sort attributed to the respondent could have invited maiming or death of even a pedestrian who could not be required to be equipped with a licence or a helmet. The argument is thus totally illogical.

Evidently the respondents were negligent which has resulted in the death of son of the petitioners. On account of this the petitioners would be entitled to damages and as the law in this regard now is settled enabling the writ Court to grant adequate compensation. Reliance has been placed by the learned counsel for the petitioners on cases titled as **Smt. Sarla Verma and others vs. Delhi Transport Corporation and Anr.** reported as 2009(3) RCR (Civil)77 and **Rajesh and others vs. Rajbir Singh and others** reported as 2013(9) SCC 54.

The next question that has to be determined is the extent of the compensation. The deceased was 22 years of age and was said to have been earning Rs.12,000/- per month. Since the deceased was a bachelor he would be spending 50% of the amount on himself. The dependency thus can be taken to be Rs.6,000/- per month i.e Rs.72,000/- per annum and by applying a multiplier of

18 as per the observations made in Sarla Verma's case (supra), the amount of compensation comes to Rs.12,96,000/-. For pain and loss of life and affection the petitioners are held entitled to another sum of Rs.1,00,000/- while for future prospects of the deceased he is awarded a sum of Rs.2,00,000/-. Therefore, total amount comes to Rs.15,96,000/- which is granted alongwith interest at the rate of 9% per annum from the date of death till the date of realization.

Petition stands allowed.

October 06, 2015
rekha

(Mahesh Grover)
Judge