

**HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

LPA No.622 of 2015 (O&M)
Date of Decision: 27.04.2015

State of Punjab & Ors.

... Appellants

VS.

Subhash

... Respondent

CORAM: HON'BLE MR.JUSTICE SURYA KANT
HON'BLE MR.JUSTICE P.B. BAJANTHRI

- 1. Whether Reporters of local papers 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. Amit Chaudhary, Addl. AG Punjab

SURYA KANT, J.

(1) The State of Punjab has preferred this Letters Patent Appeal against the order dated 06.02.2014 whereby learned Single Judge has awarded the compensation of ₹15,61,392/- to the respondent due to the unfortunate death of his two sons aged 18 years and 20 years who died on 11.08.2002 in a drowning incident at the Jayanti dam constructed by the Irrigation Department (Kandi area) Punjab.

(2) The facts are broadly admitted. The first respondent at the relevant time was working as Sweeper (Safai Karmchari) in the Municipal Corporation, Chandigarh. He had two children – both sons Master Sumeet and Master Amit aged 18 and 20 years, respectively. While Sumeet was studying in BA 2nd year and was

also doing Diploma in Computer Course, Amit was working as Ward Boy in Inscol Hospital with a salary of ₹1500/- per month.

(3) Eleven boys of Kumhar Colony including both the sons of the respondent went to Jayanti Majri Mandir for picnic on 11.08.2002 at about 12 noon where an earthen dam known as Jayanti Dam has been constructed by Irrigation Department (Kandi). Both sons of the respondent died due to drowning in that dam. The post mortem conducted in the General Hospital, Sector 16 Chandigarh on 12.08.2002 clearly mentioned that the cause of death was Asphyxia due to drowning and was sufficient to 'cause death in ordinary course of nature'. No external injury was found on the bodies.

(4) The incident have been highlighted by the media, the Deputy Commissioner, Ropar ordered a fact-finding enquiry on 12.08.2002. The enquiry report clearly held the authorities of the Irrigation Department at fault *"as there was no guard and no board/caution was installed by the department"*.

(5) The respondent having lost his sons in the tragic incident represented the authorities and then served them with a legal notice seeking suitable compensation. Finding no response to his claim, the respondent approached this Court by way of writ petition filed in the year 2003. That petition has been allowed by learned Single Judge vide the order under appeal granting compensation to the respondent.

(6) Learned Single Judge relied upon the decision of Hon'ble Supreme Court in *M.P. Electricity Board v. Shail Kumar (2002) 2 SCC 162* as well as some decisions of this Court to hold that compensation in such like cases can be awarded on account of negligence of the State or its authorities.

(7) The appellants contested the claim before the learned Single Judge only on the plea that the dam was not meant for swimming and such like earthen dams constructed by Irrigation Department are never guarded and that the unfortunate incident took place due to sheer negligence on the part of the boys. It was claimed that sign boards were duly installed after completion of work which was still in progress at the time when the incident took place. Learned Single Judge did not find merit in the defence plea. Hence, the claim of respondent was accepted and after assessing the gross salary of the deceased boys to ₹5500/- per month, learned Single Judge has followed the criteria laid down by Hon'ble Supreme Court for the award of compensation in motor accident claim cases.

(8) We have heard learned counsel for the appellants at considerable length and gone through the record.

(9) At the outset, it may be mentioned here that the fact-finding enquiry conducted by the authorities undoubtedly establishes that there was no guard deployed at the site of the dam and as regard to the installation of sign-boards on the dam ***“it is***

intimated that on the day of incident, these boards were not installed because balance works of dam was completed after the incident and as per instructions, concerned boards have now been installed on the dam”.

(10) It has also been established on record that due to heavy rain in the intervening night of 10/11 August, 2002, the level of Jayanti Dam reservoir suddenly rose yet there was no guard deployed nor any warning board etc. were displayed.

(11) The fact that the respondent lost his two sons in the incident is never in dispute. In the light of these admitted facts, the solitary question that arises for consideration is whether learned Single Judge has rightly exercised the discretionary jurisdiction while awarding compensation or the respondent ought to have been relegated to an alternative recourse?

(12) In **N.Nagendra Rao & Co. vs. State of AP, (1994) 6 SCC 205**, Hon'ble Supreme Court has held that the claim against the State for compensation for negligence or misfeasance on the part of its officers in discharge of public duty is maintainable. It was ruled that public policy requires the Court to exercise the power in private law to compensate the owner where the damage or loss is suffered by the negligence of officers of the State.

(13) **Jay Laxmi Salt Works (P) Ltd. vs. State of Gujarat (1994) 4 SCC 1** is a case where due to construction of dam, the level of water in the river rose causing immense damage to a

running factory. The construction of the dam was neither abandoned nor its weirs were changed despite repeated requests made by the owner of the factory before or after construction of the dam. Accepting his claim for damages, it was held that where the State undertakes common law duty its actions may give rise to common law tort and negligence in performance of duty is only a step to determine if action of Government resulting in loss or injury to common man should not go uncompensated.

(14) *Municipal Corporation of Delhi vs. Uphaar Tragedy Victims Association, (2011) 14 SCC 481*, holds that where life and personal liberty have been violated, the absence of any statutory provision for compensation in the Statute is of no consequence and right to life guaranteed under Article 21 of the Constitution being the most sacred right, violation of the same is always actionable and there is no necessity of statutory provision as such for preserving that right.

(15) Applying the principles propounded in the cited and several other decisions, we are of the firm view that the learned Single Judge has rightly compensated the respondent on account of the unfortunate and untimely death of his two sons in the accident of drowning which took place primarily due to negligence and casual approach of the authorities who failed to post a guard at the site and/or display the warning board or sign board(s).

(16) The criteria followed by learned Single Judge for assessment of the compensation is also just, fair and equitable and calls for no interference by us.

(17) For the reasons afore-stated, we do not find any merit in this appeal and the same is accordingly dismissed.

(Surya Kant)
Judge

27.04.2015
vishal shonkar

(P.B. Bajanthri)
Judge