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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) No.5917/2013
RITA UPADHYAY & ORS Petitioners
Through: Mr. Rituraj Cahudhary, Adv.

Versus

PUBLIC WORKS DEPARTMENT & ORS Respondents
Through: Ms. Priyadarshini Sreenivasa, Adv.
for R-1.
Mr. Bibhakar Misra, Adv. for NHAI.
Mr. Digvijay Rai, Adv. for SDMC.
Mr. Puneet Garg, Law Officer,
DMRC.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **08.09.2015**

1. The petition seeks compensation of Rs.50,00,000/- from, (i) the respondent No.1 Public Works Department (PWD) of the Government of NCT of Delhi (GNCTD), (ii) respondent No.2 National Highway Authority of India (NHAI), (iii) respondent No.3 Municipal Corporation of Delhi (MCD) since succeeded by South Delhi Municipal Corporation (SDMC), and (iv) respondent No.4 Delhi Metro Rail Corporation (DMRC), jointly and severally for causing death by negligence of the husband of the petitioner No.1 and the father of the petitioners No.2&3.
2. The petition was entertained and counter affidavits have been filed by

the respondent No.1 PWD, respondent No.2 NHAI and respondent No.4 DMRC. No counter affidavit has been filed by the respondent No.3 SDMC inspite of repeated opportunities. The counsel for the respondent No.3 SDMC today seeks further time for filing counter affidavit but the petition having remained pending for the last two years and counter affidavit having not been filed inspite of repeated opportunities, the said request is declined and the counsels have been heard.

3. It is the case of the petitioners, i) that the husband of the petitioner No.1 and the father of the petitioners No.2 &3 viz. Sh. Laxmi Narayan Upadhyay, on 8th March, 2010 at about 12:30 / 12:45 p.m. in the day time, was riding the pillion of motorcycle being driven by one Sh. Sanjay and going to Mehrauli via M.G. Road from Aya Nagar, New Delhi; ii) that when they reached the Metro Pillar No.177 between Aya Nagar and Ghitorni, suddenly a tree fell down on them with a great impact and both of them were crushed underneath the same; iii) that while Sh. Laxmi Narayan Upadhyay succumbed to his injuries on 10th March, 2010, Sh. Sanjay who was driving the vehicle died after about a month from the said accident.

4. It transpires that the subject stretch of road, though on the fateful day was under the management and control of respondent No.3 SDMC but prior

thereto from the year 2006 to 22nd February, 2010 was under the management and control of respondent No.4 DMRC and from 16th March, 2010 has been under the management and control of respondent No.2 NHAI. The counsel for the respondent No.2 NHAI points out that NHAI remained in control and management of the said stretch of road till September, 2013 when the control thereof has been handed over to the respondent No.1 PWD.

5. I have considered whether the present is a fit case for adjudication in writ jurisdiction and I am of the opinion that it is not for the following reasons:

- (i) The writ remedy which is an extraordinary remedy, has been permitted to be invoked for award of compensation for negligence by the statutory authorities / bodies in performance of their statutory duty / obligatory functions, where it is felt that compensation is required to be paid urgently to obviate hardship to the victim and /or to the dependents of the victim who has / have suffered on account of such negligence. The Supreme Court in *S.S. Balu Vs. State of Kerala* (2009) 2 SCC 479 held it to be well settled that delay defeats equity. On the contrary, the petitioners herein have not filed this petition

immediately after the incident on 8th March, 2010 / 10th March, 2010 and not even within a short time thereafter. The writ petition is found to have been presented to this Court for the first time on 17th August, 2013 but was found to be defective and was thereafter re-filed on 16th September, 2013 and 17th September, 2013 and came up before this Court for the first time only on 18th September, 2013. It thus cannot be said that the situation demanded immediate payment of compensation for providing relief to the victims of negligence if any of the respondents/authorities. When the petitioners can wait for such a long period of time to seek compensation, they could have availed of the ordinary civil remedies.

- (ii) As would be obvious from the above, the writ petition has been filed beyond the period of three years from the date on which the cause of action if any accrued to the petitioners. If an ordinary civil proceedings had then been filed, perhaps it may have been dismissed at the threshold as barred by limitation. Writ jurisdiction cannot be ordinarily permitted to be utilized for the purpose of pressing time barred claims. However, I

refrain from making any further observations on the aspect of limitation inasmuch as it is deemed appropriate to nevertheless give an opportunity to the petitioners to, if consider themselves so entitled, agitate their claims before the Civil Courts.

- (iii) Though an FIR is stated to have been lodged but there is no investigation report of the police as yet. From the blurred photographs placed by the petitioners on record, it appears that the entire tree was uprooted from its roots. Ordinarily such uprooting of a big tree would not be instantaneous and fall of the tree would be known. It will have to be determined whether the deceased was guilty of any contributory negligence or was taking any risk in attempting to drive under a tilting tree.
- (iv) The compensation, if any, will have to be apportioned amongst the four respondents and at least between the respondent No.3 SDMC and the respondent No.4 DMRC. In this regard, it may be noted that it is the stand of the respondent No.4 DMRC that before handing management and control of the said stretch of road, an inspection / survey of the road was carried out twice and the road was taken over by the respondent No.3 SDMC

only after all the deficiencies were removed. Per contra, it is the contention of the counsel for the respondent No.3 SDMC, though no counter affidavit has been filed, that the roots of the tree may have been weakened owing to the work done by the respondent No.4 DMRC over the land and which may not have been visible. All the said questions will have to be determined by examination and cross examination of witnesses and cannot be subject matter of adjudication in writ jurisdiction. The contention of the counsel for the petitioners that damages may jointly and severally be awarded against respondent No.3 SDMC and the respondent No.4 DMRC, cannot be accepted. Without determining the extent of liability of each of the said authorities, their responsibility and apportionment of damages if any between them cannot be affected.

- (v) The deceased was admittedly employed with the Air Force and it would also have to be determined as to what compensation package has been received by the petitioners from the Air Force or from other agencies.
- (vi) The Supreme Court, in *M.S. Grewal Vs. Deep Chand Sood*

(2001) 8 SCC 151 held that while dealing with a claim of compensation in a writ petition, justice oriented approach has to be adopted. Reference was made to *M.C. Mehta Vs. Union of India* (1987) 1 SCC 395 laying down that in writ jurisdiction compensation is awarded where, infringement is patent and incontrovertible, the violation gross and its magnitude such as to shock the conscience of the Court and it would be gravely unjust to the persons whose rights violated, to require them to go to the Civil Court for claiming compensation. In the entirety of facts and circumstances noted above and applying the said principles I do not find this to be a fit case for grant of compensation in writ jurisdiction. It cannot be lost sight of that this Court has to do justice to both the parties. Entertaining writ petitions against State and its instrumentalities in matters of compensation for negligence even where the same entail disputed questions of facts would create a mistaken impression of the same being easy targets, as observed by the Supreme Court in *Indian Medical Association Vs. V.P. Shantha* (1995) 6 SCC 651 in context of claims of medical negligence.

6. However, held the writ remedy to be not available after entertaining the petition for about two years, it is deemed expedient to grant an opportunity to the petitioners to if they so desire avail of the ordinary remedy under the civil law. It is clarified that while computing the period of limitation for availing the said remedy, the period between the dates when this writ petition was first filed as aforesaid and till 15th October, 2010 shall be excluded while computing the period of limitation for preferring the suit.

RAJIV SAHAI ENDLAW, J

SEPTEMBER 08, 2015

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