

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.11.2016

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND

THE HON'BLE MR.JUSTICE N.AUTHINATHAN
Writ Appeal No.1199 of 2012

The Commissioner,
Corporation of Chennai
Rippon Buildings
Chennai - 600 003

..... Appellant/Respondent 2

vs.

1.The State of Tamil Nadu
Rep.by its Secretary to Government
Municipal Administration and Water
Supply Department
Fort St. George
Chennai - 600 009

2.K.Karthik
No.153, E.B.Engineers Colony-1
Alagapuram
Kattur
Salem - 636 016

..... Respondents/Respondent No. 1 &
Petitioner

Writ Appeal under clause 15 of the Letters Patent against the order passed in W.P.No.20081 of 2007 dated 04.06.2012. This writ petition is filed under Article 226 of the constitution of India praying this Court to issued a writ of mandamus directing the second respondent to pay a sum of Rs. 15 00 -000/- as compension for the dather of the father of the petitioner Mr. c krishnamurthy adn a sum of rs7 00 000/- as compensation fr the dather of the mother of the petitioner Mr.z k. chita to he petitioner and to pass further suitable orders on the file and circumstances of the case.

For Petitioner : Ms.Karthikaa Ashok
For Respondents : Mr.K.V.Dhanapalan
Special Government Pleader for R1
Mr.M.Devaraj for R2

JUDGMENT
(delivered by S.MANIKUMAR, J)

In W.P.No.20081 of 2007, the second respondent has prayed for a writ of mandamus directing the appellant herein, to pay a sum of Rs.15,00,000/- as compensation for the death of the father of the petitioner, Mr.C.Krishnamurthy and a sum of Rs.7,00,000/- as compensation for the death of the mother of the petitioner, Mrs.K.Chitra.

2. Challenge in this writ appeal is to an order dated 04.06.2012 made in W.P.No.20081 of 2007, by which, the writ court, directed the appellant to pay a sum of Rs.29.26 Lakhs (Rs.22 lakhs compensation and Rs.7.26 lakhs towards interest), to the second respondent, for the death of his parents, who met with a fatal accident on 12.10.2005.

3. Facts leading to the appeal are that the second respondent/petitioner, a minor, aged about 14 years, lost his parents on 12.10.2005, due to sudden fall of a tree on the Maruti Car, in which they were travelling, near Dr.Alagappa Road, Purasawalkam, Chennai. In the said accident, the car was crushed, which resulted in instant killing of his parents. The fatal accident and the consequential death of his parents would not have taken place, had the officials of the appellant Corporation exercised proper care and caution and taken precautionary measures, to cut and remove, old and dangerous trees standing, on both sides of the road.

4. Before the Writ Court, it is the contention of the second respondent/petitioner that at the time of accident, his father was a Masters Degree holder in Urban Engineering, with distinction, and was pursuing Ph.D in Anna University. He was working as Assistant Director, in the office of the Director, Highways Research Station, Chennai-32, and drawing a salary of Rs.18,526/- per month. His mother with M.A., B.Ed. and M.Phil degree, was a teacher in P.M.R.Higher Secondary School, Mugappair, Chennai, and earned a sum of Rs.2,500/- per month.

5. The Second respondent/petitioner submitted that, on 12.10.2005, when they were returning to home, after purchase, from Madharsha Textile Show Room, the car was driven slowly and cautiously, his mother was seated, in the front seat, the second respondent/writ petitioner was seated in the back seat of the car. About 6.30 p.m. when the car approached, Mutt Street, Dr.Alagappa road, a big tree standing on the left side of the road, fell on the car, crushed the car and caused the death of his parents. As the second respondent/petitioner was sitting in the back seat, he escaped with grievous injuries.

6. It is the further contention of the second respondent that for the above said accident Inspector of Police, G3 Kilpauk Police, Chennai-10, registered an FIR, in Cr.No.969 of 2005, under section 174 Cr.P.C. According to the second respondent/petitioner, at the time of accident, his mother was wearing 15 sovereigns of gold ornaments and that the same were taken away by unknown miscreants. It is his further case that the tree, which fell on the car was very old and leaning towards the road and could not withstand, rain and wind and was uprooted from earth. Many residents of the locality including one Poongavanam, Son of Renganathan, a resident of Purasawalkam had already made complaints, and even thereafter, no action was taken to remove the said tree. According to the second respondent, the said fatal accident occurred solely due to the negligence and careless attitude of the officials of the Corporation, the appellant herein.

7. It is also his case that after the said fatal accident, was reported in almost all the newspapers and TV channels on 12.10.2005, officials of the Corporation of Chennai during the last week of October, 2005, found that there were 877 trees, which stood in such dangerous condition, which might fall, at any time, and decided to cut and remove them. The said decision of the appellant Corporation taken in the last week of October, 2005, was also reported in newspapers. Before the writ court, the second respondent has submitted that had the appellant Corporation taken the said decision earlier, lives of the parents of the writ petitioner could have been saved. Thus, he has contended that the officials of the Corporation, appellant herein were responsible for the death of his parents, as they had failed to discharge their statutory duty.

8. It is also the case of the second respondent/petitioner that Dr.Alagappa Road in Purasawalkam, is a busy arterial road, where movement of vehicles is heavy, and no other alternate route is available. The uninterrupted flow of vehicles and the constant use of the road by the pedestrians make it always congested. Therefore, the officials of the appellant Corporation ought to have been, all the more careful to cut and remove the worn out trees, which the Corporation failed to do so, and due to the untimely death of his parents, he could not pursue his studies for one year, and thereafter, could not continue to study in the reputed D.A.V. School in Chennai, and was forced to settle with his grand-father, at Salem. The second respondent has also submitted that his grand-parents were very old. When the second respondent lost his parents, at the age of 13, his maternal grand-father was appointed as guardian in G.O.P.No.28 of 2006 by the First Additional District Court, Salem.

9. The second respondent, has contended that at the time of accident, his father was aged 42 years, and mother was 38 years, respectively. Financial prospects of the second respondent's parents, highly qualified was affected, due to their untimely death, which resulted in loss of income, love and affection, natural care, guidance, etc., to the second respondent, the only son of his parents. The Hon'ble Chief Minister of Tamil Nadu sanctioned a sum of Rs.50,000/- each, to the second respondent, for the death of his father and mother, from the Chief Minister's Relief Fund. On 14.10.2006, guardian of the second respondent, and grandfather sent a representation by RPAD to the appellant Corporation and prayed for compensation of Rs.15 lakhs and Rs.7 lakhs respectively, for the untimely death of second respondent's parents. As no action was taken for seven months, the second respondent has filed writ petition No.20081/2007, through his guardian, for a writ of mandamus directing the appellant Corporation to pay a sum of Rs.15,00,000/- as compensation, for the death of father of the second respondent Mr.C.Krishnamurthy, and a sum of Rs.7,00,000/- as compensation, for the death of the mother of the second respondent, Mrs.K.Chitra, to him.

10. The second respondent has contended that one A.Poongavanam, son of R.Ranganathan residing at Door No.29, Saravana Perumal Street, Kilpauk, Chennai-600 084, has filed a supporting affidavit, stating that the old tree, which fell on the car, was standing on the side of Dr.Alagappa Road, Purasawalkam for several years and that the said tree was leaning towards the road and it was a threat to the road-users. The second respondent has also contended that representations were submitted to the Corporation authorities, by the residents, including the said Poongavanam and no action was taken by the Corporation officials, to cut and remove the tree, and on 12.10.2005, there was rain in the said area and about 6.30 p.m the old tree fell on the Maruti Car, resulting in death of two persons, in the car. C.Krishnamurthy and K.Chithra, parents died due to the fall of tree and minor Karthik aged 14 years was injured, and he was removed from the car and he luckily escaped from the accident with injuries.

11. Before the writ court, the appellant has filed counter affidavit stating that the writ petition is not maintainable, as the issues raised have to be proved, after full trial before the Civil Court, after examination of witnesses, and without examining any witness, to prove negligence, qualification, expectancy of life, income, claimed, writ court cannot decide the question of compensation, if any payable. In the counter affidavit, it was also stated in the counter affidavit that Corporation is not responsible for any accidental death, due to

occurrence of natural calamity, and therefore the writ petitioner cannot claim compensation from the Corporation. Corporation of Chennai has submitted that fall of tree on the fateful day, was an 'Act of God' and that Corporation cannot be ordered to pay compensation to the writ petitioner, for the death of his parents.

12. Before the writ court, it was the contention of the learned counsel for the writ petitioner that death of writ petitioner's parents, due to the fall of tree on 12.10.2005 at 6.30 p.m, was not disputed. A criminal complaint was registered under Section 174 Cr.P.C. in crime No.969/2005 on the file of G3 Kilpauk Police Station, Chennai, wherein, it was clearly stated that the writ petitioner's parents died only due to the fall of tree, on the Maruti car on 12.10.2005, at 18.30 hours, while they were travelling, on Dr.Alagappa Road, Purasawalkam, Chennai. Learned counsel for the second respondent also submitted that having noticed the untimely death of petitioner's parents, the Government sanctioned, a sum of Rs.50,000/- each, on 3.12.2005 from the Hon'ble Chief Minister's Relief Fund and the petitioner has also produced a copy of the condolence letter of the Hon'ble Chief Minister, addressed to the second respondent. Learned counsel for the second respondent has pointed out that one A.Poongavanam, resident of Purasawalkam, has filed a supporting affidavit stating that the accident could have been averted, if the old tree was cut and removed, and only due to the negligence of the Corporation Authorities, in not removing the old tree, which was leaning on the road side, in Dr.Alagappa Road, the accident occurred, and in spite of representations to remove the trees, no action was taken by the officials of the Corporation of Chennai.

13. Before the writ court, learned counsel for the second respondent has submitted that after the said accident and during the last week of October, 2005, officials of the Corporation ordered enumeration of dangerous trees, standing on the road side, in Chennai city and 877 old/worn out trees, in ten divisions were ordered to be cut and removed. He has also submitted that the officials have noted that from 10.10.2005 to 27.10.2005, 85 trees have fallen down and in Kilpauk area alone, 14 trees have fallen. Action was taken to cut and remove old trees/worn out trees, details of which, taken note of by the writ court, are as follows:

Saidapet Division	..	393 trees
Kodambakkam Division	..	85 trees
Mylapore Division	..	147 trees
Kilpauk Division	..	138 trees

Contentions have been made that the said fact was reported in "Dinamalar Daily" on 28.10.2005. Learned counsel for the second respondent has further submitted that the above facts,

clearly revealed that no enumeration of dangerous trees, standing on the road side, was taken, by the Corporation officials, before the commencement of monsoon and therefore, there was negligence on the part of the officials, which resulted in the fall of a tree on the Maruti Car, due to which, the writ petitioner's parents died, and therefore, the Corporation is bound to pay, just compensation, for the loss of his parents.

14. Adverting to the rival contention of both parties, while allowing the writ petition, vide order dated 04.06.2012, the writ court at paragraph Nos.16 to 23, held that, there was negligence on the part of the appellant Corporation, in terms of the statutory provisions in the City Municipal Corporation Act, 1919, and consequently, fixed vicarious liability, and awarded compensation, following the principles of law, applicable to payment of compensation:

"16. It is the specific case of the petitioner that at the age of 14 years petitioner has lost his father and mother, their affection and all comforts. Petitioner's father, on the date of death, was earning a sum of Rs.18,526/- per month as he was employed as Assistant Director at the Office of the Director, Highways Research Station, Chennai-32. He has passed master's degree in Urban Engineering and was doing Ph.D in Anna University. Petitioner's mother also passed M.A., B.Ed and M.Phil degrees, who served as a teacher in a Matriculation Higher Secondary School and was earning monthly salary of Rs.2,500/- per month. Both of them were having better prospects as they were aged 42 and 38 years respectively at the time of their death. The petitioner has claimed a sum of Rs.15 lakhs for the loss of his father and Rs.7 lakhs for the loss of his mother. Petitioner is already paid a total sum of Rs.1 lakh from the Chief Minister's Relief Fund on 3.12.2005.

17. Now the issue to be decided is what amount the petitioner is entitled to get as compensation for the loss of his father and mother.

18. There is no codified law for arriving at the quantum of compensation in cases of this type. The enactments like Motor Vehicles Act, 1988; Workmen Compensation Act, 1948; and Fatal Accidents Act, 1855 may be applied for arriving at the just compensation. In the decision reported in (1969) 3 SCC 64 (C.K.Subramania Iyer v. T.Kunhikuttan Nair) the Supreme Court held that there is no exact uniform rule for measuring the value of human life and the measure of damages cannot be arrived at precisely.

In the decision reported in (2001) 8 SCC 151 (M.S.Grewal v. Deep Chand Sood) the Supreme Court held that multiplier method may be adopted to arrive at the just compensation. The age of the deceased can also be taken for arriving at a correct multiplier as per the judgment of the Supreme Court reported in 2011 (5) LW 408 (P.S.Somanathan & Others v. District Insurance Officer & Another).

19. How the Court should decide the cases of this nature is emphasised by the Supreme Court in the decision reported in (2011) 10 SCC 634 (Ibrahim v. Raju). In para 9 it is held thus,

"9. This Court has time and again emphasised that the officers, who preside over the Tribunals adopt a proactive approach and ensure that the claims filed under the Act are disposed of with required urgency and compensation is awarded to the victims of the accident and/or their legal representatives in adequate measure keeping in view the relevant factors. Unfortunately, despite repeated pronouncements of this Court in which guiding principles have been laid down for determination of the compensation payable to the victims of road accidents and/or their families, the Tribunals and even the High Courts do not pay serious attention to the imperative of awarding just compensation to the claimants."

In (2009) 13 SCC 422 (Reshma Kumari v. Madan Mohan) the Supreme Court pointed out the need of giving just compensation to the victim. In paragraphs 26 and 27 it is held thus,

"26. The compensation which is required to be determined must be just. While the claimants are required to be compensated for the loss of their dependency, the same should not be considered to be a windfall. Unjust enrichment should be discouraged. This Court cannot also lose sight of the fact that in given cases, as for example death of the only son to a mother, she can never be compensated in monetary terms.

27. The question as to the methodology required to be applied for determination of compensation as regards prospective loss of future earnings, however, as far as possible should be based on certain principles. A person may have a bright future prospect; he might have become eligible to promotion immediately; there might have been chances of an immediate pay revision, whereas in another (sic situation) the nature of employment was such that he might not have continued in service; his chance of

promotion, having regard to the nature of employment may be distant or remote. It is, therefore, difficult for any court to lay down rigid tests which should be applied in all situations. There are divergent views. In some cases it has been suggested that some sort of hypotheses or guess work may be inevitable. That may be so."

This Court is bound to bear-in-mind the above stated principles for arriving at just compensation.

20. Petitioner's father was aged 42 years and was earning Rs.18,526/- per month prior to pay revision to the Government Servants made in the year 2006. Thus, leaving one third to his personal expenses, a sum of at least Rs.12,000/- per month should have been contributed to the petitioner and his mother. He might have spent Rs.2,000/- per month towards his wife i.e., to the petitioner's mother. Thus, a minimum of Rs.10,000/- per month could have been available as earnings. Petitioner's father's age of retirement being 58 years, minimum 15 multiplier must be applied as he was aged 42 at the time of death. Thus, Rs.10,000/- per month to 15 years comes to Rs.18 lakhs ($\text{Rs.10,000} \times (12 \times 15)$).

21. Petitioner's mother was earning Rs.2,500/- per month as a teacher with better prospects. Even as a home maker, she is entitled to earn Rs.3,000/- per month. She was aged 38 years and considering her educational qualifications, she should have earned minimum of Rs.4,500/- per month in future and after deducting one third for her personal expenses, she might have contributed Rs.3,000/- to her family. As she was aged 38 years, 16 multiplier is to be adopted. Thus, the compensation can be arrived at Rs.5,76,000/- ($\text{Rs.3,000} \times (16 \times 12)$). In toto, the petitioner is entitled to claim total compensation of Rs.23,76,000/- ($\text{Rs.18,00,000} + \text{Rs.5,76,000}$), apart from claiming compensation in other heads such as loss of love and affection, funeral expenses, etc.

22. The petitioner has already received a sum of Rs.1 lakh from the Chief Minister's Relief Fund in the year 2005. After deducting the said amount, petitioner is entitled to get more than the amount claimed in this writ petition. The petitioner has claimed Rs.22 lakhs from the second respondent on 16.10.2006 by sending representation through RPAD and no reply was given by the second respondent. Hence the petitioner is eligible to get interest, at least from the date of demand i.e., from 16.10.2006 and the appropriate interest would be 6% per annum. By such

calculation, the interest for Rs.22 lakhs for five years and six months comes to Rs.7.26 lakhs.

23. In fine, the writ petition is allowed. The second respondent is directed to pay a sum of Rs.29.26 lakhs (Rupees Twenty Nine Lakhs and Twenty Six Thousands) (i.e, Rs.22 lakhs compensation and Rs.7.26 lakhs as interest), within a period of four weeks from the date of receipt of copy of this order. No costs.

15. Assailing the correctness of the order of the writ court dated 04.06.2012, Corporation of Chennai, has filed this appeal. Ms.Karthikaa Ashok, learned counsel for the appellant Corporation submitted that since the issue relates to a question of fact, and subject matter has to be decided, after a full trial, before the court of civil jurisdiction, after examination of witnesses, and without examining any evidence, the vital aspects of negligence and liability or even a no fault liability cannot be arrived at, in writ jurisdiction. Appellant has also raised a question, as to whether the driver of the vehicle i.e. writ petitioner's father had a valid driving licence at the time of the fatal accident. She submitted that the employment of the parents of the writ petitioner, their qualification, expectation of livelihood and income, were all matters to be proved before the Civil Court, before arriving at a quantified sum.

16. Learned counsel for the appellant further contended that insofar as the alleged negligence on the part of the appellant is concerned, the same can be decided only after examination of the witnesses, where facts, can be established. According to her, even assuming that when the deceased father of the 2nd respondent/writ petitioner was driving the vehicle, on that fatal day, and that the tree on the road margin fell down, due to heavy rain, storm and winds, a natural calamity, totally unforeseen that caused the tree to uproot from its position, she submitted that it is an "Act of God", for which, the appellant is liable to pay compensation.

17. It is the further contention of Ms.Karthikaa Ashok, learned counsel for the appellant that the writ court ought to have seen that trees on road margins, streets, public areas and within the limits of Chennai Corporation are inspected, in a routine manner and there was no proof that the fallen tree was withering or in a worn out condition. It is also her contention that the writ court ought to have taken note that there were no previous complaints with regard to the alleged poor maintenance of trees or any information that the alleged tree was about to fall. It is also the contention of the learned counsel for the appellant that the writ court, ought to have considered that the affidavit filed by one Poongavanam, on the complaint given, for

felling of trees, required to be attended by the appellant by the Corporation. She also submitted that the writ court should have appreciated the fact that every year, the appellant Corporation identifies the trees that pose imminent danger to the general public, and remove the same, with diligence.

18. Ms.Karthikaa Ashok, learned counsel for the appellant Corporation further submitted that the writ court has erred in holding that enumeration of dangerous trees was done only in the month of October 2005, after the incident, and out of 877 trees, and one of them was the tree, which fell on the car. She further submitted that the appellant's defence on Act of God has been neglected by the writ court, without valid reasons. She has further submitted that the writ court has failed to consider that there was a factual dispute, with regard to negligence, strength of the tree and danger.

19. Placing reliance on the cases (Chairman, Railway Board v. Chandima Das reported in (2000) 2 SCC 465, M.S.Grewal v. Deep Chand Sood reported in (2001) 8 SCC 151, MCD v. Association of Victims of Uphaar Tragedy reported in (2005) 9 SCC 586, Delhi Jal Board v. National Campaign for Dignity and Rights of Sewerage and Allied Workers reported in 2011 AIR SCW 4916), she submitted that it is not an act of negligence. According to her, the question of fact whether the tree fell on that particular fatal day was a worn out tree or not? - had not been dealt with.

20. She also submitted that the award of compensation to the tune of Rs.23 lakhs, is arbitrary, without any evidence or supporting evidence regarding the earning capacity or loss of income to the family. She further submitted if the writ petitioner had approached the Motor Accident Claims Tribunal, it would not have awarded Rs.25.00 Lakhs, as done in this case. The writ court erred in holding that the solatium given to the loss of the petitioner proves negligence on the part of the appellant. According to her, solatium is not a compensation, but it is an exgratia. The writ court ought to have seen that the death of the parents of the writ petitioner was not caused due to negligence or indifferent act of the officials of the appellant corporation. The appellant corporation is not responsible for any accidental death due to occurrence of natural calamities and as such the claim of the 2nd respondent ought to have been entertained and the appellant coproation is not liable to pay any compensation to the writ petitioner.

21. Learned counsel for the appellant further submitted that the writ court ought to have appreciated and considered the judgments of the Hon'ble Supreme Court relied on by the appellant supporting the defence taken.

Heard the learned counsel for the appellant and perused the materials available on record.

22. Perusal of the order impugned, makes it clear that on 12.10.2005, when the second respondent/writ petitioner, along with his parents, was travelling in a Maruti car on Dr.Alagappa Road, Purasawalkam, Chennai, a tree, leaning towards the road, fell on the car resulting in the death of his parents and causing injuries to the second respondent, who was aged 14 years, at the time of accident. A case in Crime No.969/2005 under Section 174 of the Code of Criminal Procedure, 1863, has been registered in G3, Kilpauk Police, Chennai -10. A sum of Rs.50,000/- each, for the death of father and mother of the second respondent has been sanctioned on 03.12.2005 from the Chief Minister's Relief Fund.

23. The accident has occurred on 12.10.2005. From the material on record, it could be deduced that after the accident which occurred, officials of the Corporation, ordered to enumerate all the old/worn out trees in Chennai city and 877 old/worn out trees in 10 divisions were ordered to be cut and removed. It is also to be noted that from 10.10.2005 to 27.10.2005, 85 trees have fallen down, and in Kilpauk area alone, 14 trees have fallen down. Details of trees cut and removed, are as follows:

Saidapet Division	...	393 trees
Kodambakkam Division	..	85 trees
Mylapore Division	..	147 trees
Kilpauk Division	..	138 trees

24. After considering the above facts, writ court, has arrived at a finding that no enumeration of dangerous trees on the roadside was done by Corporation officials before the commencement of monsoon and that there was negligence on their part, which resulted in falling of a tree on the Maruti car, causing the death of the parents of the writ petitioner. On the contention that the accident occurred due to natural calamity, Act of God and that no liability can be fastened on the Corporation to pay compensation, the writ court, has considered the statutory duty enjoined on the Corporation of Chennai in terms of Section 259 of the Chennai City Municipal Corporation Act, 1919, which mandates the Corporation to remove dangerous trees even if the trees were standing in a private place. Section 259 reads as follows:

"Section 259. Precautions in case of dangerous trees. - (1) If any tree or any branch of a tree of the fruit of any tree be deemed by the commissioner to be likely to fall and thereby to endanger any person or any structure, the commissioner may, by notice, require the owner of the said tree to secure, lop or cut down the said tree so as to prevent any danger therefrom.

(2) If immediate action is necessary, the commissioner may himself, before giving such notice or before the period of notice expires, lop or cut down the said tree or remove the fruit thereof or fence off a part of any street or take such temporary measures, as he thinks fit to prevent danger, and the cost of so doing shall be recoverable from the owner of the tree in the manner provided in section 387."

25. The writ court has also taken note of the fact that trees standing on public streets shall vest with the Corporation as per Section 203 of the Act. Writ court has also considered that as per Section 204 of the Act, it is the duty of the Corporation to maintain, repair and make all improvements, which are necessary or expedient for public safety and convenience. From the above referred statutory provisions, it is manifestly clear that the Corporation is responsible for removing the dangerous trees for public safety. Thus the writ court held that the said statutory duty was not performed by the appellant Corporation, due to which, the petitioner's parents died on 12.10.2005.

26. On the contention of Act of God, at paragraph No.13 of the order in W.P.No.20081 of 2007 dated 04.06.2012, the writ court, has further observed that enumeration of dangerous trees standing on the road sides was taken up by the officials of the Corporation only during the last week of October, 2005, i.e., after the incident which took place on 12.10.2005. During enumeration it was found that 877 trees were to be cut and removed and 85 trees had fallen already, including the one on the Maruthi Car driven by petitioner's father on 12.10.2005. Writ court has further observed that had the enumeration been taken prior to the accident and dangerous trees were cut and removed prior to 12.10.2005, the officials of the appellant Corporation could possibly plead that they have taken all precautions/care to remove dangerous trees and the particular tree fell down due to heavy rain/storm, may be treated as Act of God. Writ court held that the officials of the appellant having failed to take enumeration and to cut and remove the dangerous trees, are not expected to plead that the death of the second respondent's parents is by Act of God. Thus, the writ court held that there was negligence on the part of the officials of the appellant in not cutting and removing the dangerous trees and two precious lives were lost, and therefore held that appellant is liable to pay compensation for the loss sustained by the second respondent for the death of his parents on the principle of "vicarious liability".

27. On the aspect as to whether the State or its

instrumentality is bound to protect the person and property of every citizen and if it fails to discharge its duty, whether the State is liable to pay damages to the victims, the writ court has considered the principles of law decided by the Hon'ble Supreme Court in the decision reported in 2010 (3) LW 421 (SC) (Eureka Forbes Limited v. Allahabad Bank & Others) (para 44 & 45).

28. On the aspect as to whether payment of compensation can be ordered by the writ court in appropriate cases under Article 226 of the Constitution of India, particularly, when there was no factual disputes, writ court has considered the following decisions.

(i) In AIR 2000 SC 988 : (2000) 2 SCC 465 (Chairman, Railway Board v. Chandima Das), a sum of Rs.10 lakhs was awarded as compensation to a Bangladeshi National, who was sexually assaulted by Eastern Railway Employee. Order of the High Court awarding the said compensation was upheld by the Supreme Court.

(ii) In AIR 2001 SC 3668 : (2001) 8 SCC 151 (M.S.Grewal v. Deep Chand Sood), Rs.4.10 lakhs each was awarded for the unfortunate death of 14 young children, who died due to drowning in a river, when they were on picnic organised by the School authorities.

(iii) In (2005) 9 SCC 586 (MCD v. Association of Victims of Uphaar Tragedy) the Supreme Court ordered payment of compensation to the families of those, who died in Uphaar Tragedy and directed the MCD to deposit Rs.3,01,40,000/- (Rupees Three Crores One lakh and Forty thousand) and 50% of the said amount was directed to be distributed to the Claimants.

(iv) In 2011 AIR SCW 4916 (Delhi Jal Board v. National Campaign for Dignity and Rights of Sewerage and Allied Workers), the Supreme Court enhanced the compensation awarded by the High Court of Delhi to sewerage workers' family to Rs.3.29 lakhs, over and above Rs.1.71 lakhs already paid by the Government.

29. The writ court has also considered the decisions of this court:

(a) 2001 WLR 174 (C.Chinnathambi v. State of Tamil Nadu) - Rs.1.50 lakhs with 12% interest was ordered to be paid to each school students, who died while water tank broke and fell on them.

(b) 2004 WLR 346 (Smt.R.Dhanalakshmi v. Government of Tamil Nadu) - Rs.9.00 lakhs was ordered to be paid to the family of a prisoner, who was killed while in custody.

(c) 2004 WLR 611 (DB) (The Chief Secretary to the Government of Tamil Nadu v. Mrs.R.Selvam) - Rs.5.00 lakhs was ordered to be paid by the State due to the killing of a medical student inside the Government Medical College Hostel.

(d) 2006 WLR 13 (DB) (C.Thekkamalai v. State of Tamil Nadu) - The Division Bench enhanced the compensation from Rs.75,000/- to Rs.5.00 lakhs for the rape victim, who was illegally arrested and raped.

(e) 2006 WLR 608 (Lakshmana Naidu (decd) v. State of Tamil Nadu & Another) - A sum of Rs.5.00 lakhs was ordered as compensation to the family of the deceased.

(f) 2008 (6) CTC 144 (P.N.Kanagaraj v. Chief Secretary, State of Tamil Nadu) - Rs.4.10 lakhs with 9% interest was ordered for the death of a school boy.

(g) 2009 (1) CTC 434 (Subramaniam v. State of Tamil Nadu) - A sum of Rs.3.50 lakhs was directed to be paid for the death of a student in the school due to negligence of the Government School Teacher.

(h) 2010 WLR 851 (DB) : 2010 (1) CWC 455 (T.Sekaran v. State of Tamil Nadu & Others) - A sum of Rs.9,07,000/- was directed to be paid to the family of a person, who was shot dead by the Security Warden of Madurai Central Prison.

(i) 2011 (1) CWC 786 (The Registrar Administration, Madurai Bench of Madras High Court v. Secretary to Government, Home Department) - A sum of Rs.10 lakhs was ordered to the family of an advocate, who died due to not providing immediate medical treatment, in the High Court premises.

(j) 2011 (6) CTC 636 (P.Ravichandran v. The Government of Tamil Nadu) - A sum of Rs.18.00 lakhs was ordered as compensation to the victim, who suffered 100% disability while doing drainage work.

(k) 2012 (2) CTC 848 (Ganesan v. The State of Tamil Nadu) - A sum of Rs.10.00 lakhs was ordered to be paid by the State to the family of a victim, who died due to bomb attack while travelling in a Transport Corporation Bus.

(l) In (2011) 1 MLJ 1409 (V.Ramar v. Director of Medical and Rural Health Services) this Court directed the State to pay a sum of Rs.5.00 lakhs to the family of a woman, who died during delivery due to the negligence of the Government Hospital authorities.

(m) In (2011) 1 MLJ 1329 (Thangapandi v. Director of Primary Health Services) A sum of Rs.5

lakhs was ordered to the family of a woman, who died after delivery, due to not giving proper treatment by Government Hospital Doctors.

(n) In W.P.No.23003 of 2011 dated 24.11.2011 this Court awarded a sum of Rs.10.00 lakhs to the family of a deceased student as he was killed while staying in Government Hostel.

30. On the above aspect, it is worthwhile to consider few cases on public law remedy, under Article 226 of the Constitution of India:

(i) In State of Rajasthan v. Vidhyawati reported in 1962 Supp (2) SCR 989, it has been held that:

"Viewing the case from the point of view of first principles, there should be no difficulty in holding that the State should be as much liable for tort in respect of a tortious act committed by its servant within the scope of his employment and functioning as such as any other employer. The immunity of the Crown in the United Kingdom, was based on the old feudalistic notions of justice, namely, that the King was incapable of doing a wrong, and, therefore, of authorising or instigating one, and that he could not be sued in his own courts. In India, ever since the time of the East India Company, the sovereign has been held liable to be sued in tort or in contract, and the Common Law immunity never operated in India."

(ii) In Joginder Kaur v. Punjab State reported in 1969 ACJ 28 (P & H) wherein it has been observed that:

"In the matter of liability of the State for the torts committed by its employees, it is now the settled law that the State is liable for tortious acts committed by its employees in the course of their employment."

(iii) In Nilabati Behera v. State of Orissa [1993 (2) SCC 746], the Hon'ble Apex Court held thus,

"Award of compensation in a proceeding under Article 32 by this Court or by the High Court under Article 226 of the Constitution is a remedy available in public law, based on strict liability for contravention of fundamental rights to which the principle of sovereign immunity does not apply, even though it may be available as a defence in private law in

an action based on tort.

Enforcement of the constitutional right and grant of redress embraces award of compensation as part of the legal consequences of its contravention.

A claim in public law for compensation for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution, is an acknowledged remedy for enforcement and protection of such rights, and such a claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right is 'distinct from, and in addition to, the remedy in private law for damages for the tort' resulting from the contravention of the fundamental right. The defence of sovereign immunity being inapplicable, and alien to the concept of guarantee of fundamental rights, there can be no question of such a defence being available in the constitutional remedy. It is this principle which justifies award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution, when that is the only practicable mode of redress available for the contravention made by the State or its servants in the purported exercise of their powers, and enforcement of the fundamental right is claimed by resort to the remedy in public law under the Constitution by recourse to Articles 32 and 226 of the Constitution." [Emphasis supplied]

Dr. A.S. Anand J., (as he then was) in his concurring judgment elaborated the principle thus :-

" The public law proceedings serve a different purpose than the private law proceedings. The relief of monetary compensation, as exemplary damages, in proceedings under Article 32 by the Supreme Court or under Article 226 by the High Courts, for established infringement of the indefeasible right guaranteed under Article 21 is a remedy available in public law and is based on the strict liability for

contravention of the guaranteed basic and infeasible rights of the citizen. The purpose of public law is not only to civilize public power but also to assure the citizen that they live under a legal system which aims to protect their interests and preserve their rights. Therefore, when the court moulds the relief by granting 'compensation' in proceedings under Article 32 or 226 seeking enforcement or protection of fundamental rights, it does so under the public law by way of penalizing 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 wrongdoer 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. "

(iv) In *Chairman, Grid Corporation of Orissa Ltd., Vs. Sukamani Das*, reported in 1997 (7) SCC 298, the Hon'ble Supreme Court held that the fact relating to the proper maintenance of transmission lines and snapping of wire where it is beyond the control of the Grid Corporation or due to unauthorised intervention of third parties or as to whether the deceased had not died in the manner stated in the Writ Petition requires factual appreciation and that cannot be settled under Article 226 of the Constitution of India on the basis of affidavits only. In that case the Grid Corporation of Orissa against which the claim of compensation for the death caused to the deceased due to its negligence had been raised. The Grid Corporation has denied the accident and also contended that it was due to the intervention of the third parties, the electric wire got snapped

resulting in electrocution. While the High Court has granted compensation on the basis that it was the duty of Grid Corporation of Orissa to maintain electric lines in a proper manner and the non-maintenance would amount to negligence, the Supreme Court, while reversing the said judgment held that it was the specific case of the Grid Corporation of Orissa in their counter affidavit that because of the thunderbolt and lightning one of the conductors of the 12 W LT line had snapped even though proper guarding was provided. It was also the specific case of the Grid Corporation of Orissa that the deceased died due to the lightning and not because of his contact with snapped live wire. It was only on the basis of the factual situation, the Hon'ble Apex Court has held that the High Court ought not to have granted compensation while exercising jurisdiction under Article 226 of the Constitution of India. At paragraph 6, the Supreme Court has held as under:-

6. In our opinion, the High Court committed an error in entertaining the writ petitions even though they were not fit cases for exercising power under Article 226 of the Constitution. The High Court went wrong in proceeding on the basis that the deaths had taken place because of electrocution as a result of the deceased coming into contact with snapped live wires of the electric transmission lines of the appellants, that "admittedly/prima facie amounted to negligence on the part of the appellants." The High Court failed to appreciate that all these cases were actions in tort and negligence was required to be established firstly by the claimants. The mere fact that the wire of the electric transmission line belonging to Appellant 1 had snapped and the deceased had come in contact with it and had died was not by itself sufficient for awarding compensation. It also required to be examined whether the wire had snapped as a result of any negligence of the appellants and under which circumstances the deceased had come in contact with the wire. In view of the specific defences raised by the appellants in each of these cases they deserved an opportunity to prove that proper care and precautions were taken in maintaining the transmission lines and yet the wires had snapped because of circumstances beyond their control or unauthorised intervention of third parties or that the deceased had not died in the manner stated by the petitioners. These questions could not have been decided properly on the basis of affidavits only. It is the settled legal position that where disputed questions of facts are involved a petition under Article 226 of the Constitution is not a proper remedy. The High Court has not and could not have held

that the disputes in these cases were raised for the sake of raising them and that there was no substance therein. The High Court should have directed the writ petitioners to approach the civil court as it was done in OJC No.5229 of 1995.

(v) Though Ms.Karthikaa Ashok, learned counsel for the appellant placed reliance on the above judgment to contend that a writ petition is not maintainable, when facts are disputed, this Court is not inclined to accept the same, for the reason that in the reported case, it is the conclusion of the electricity department that the deceased therein got electrocuted, due to intervention of the third parties and that proper guarding was done. Whereas, in the case on hand, the mere fact that enumeration, cutting and removal of trees, done after the incident, amply proves that proper care and precautionary measures have not been done earlier. The accident was not due to any third party intervention.

(vi) In *Nirmala Thirunavukkarasu Vs. Tamil Nadu Electricity Board*, reported in 1997 L.W. 42, after considering the maxim 'res ipsa loquitur' High court held that the usual plea of 'Act of God' or mechanical failure cannot be considered as a defence while deciding a case for compensation arising out of electrocution. In cases of negligence, relating to electrocution, it was held that in order to render justice to the parties, the general rules as to damages to be construed liberally and not with rigidity. It was also held that the Courts should take into consideration not allowing a calamity to turn into a windfall and the amount of compensation should be decided only with reference to pecuniary loss.

Issue No.4: As the deceased has died as a result of the negligence of the defendants, they are bound to pay compensation to the plaintiffs for the loss suffered by them. Now to the quantum of compensation. The amount of money as reparation for the results of tortious conduct for which the law holds the wrong doer responsible is determined by applying as far as possible the general principle of restitution integrum. In many cases, however, a perfect compensation is hardly possible and would even be unjust. The court in doing justice between the parties considers the general rules as to damages with some liberality and does not apply them rigidly, and, thus, the damages are in difficult case normally limited to a sum which can in the circumstances be considered as a reasonable amount of compensation. Courts should not also in such cases allow a calamity to turn into a windfall. In ascertaining the pecuniary loss caused to the dependants, it must be borne in mind that these damages are not to be given as solatium for the loss

of a son or daughter, wife or husband, father or mother, not on sympathetic or sentimental consideration, but only with reference to pecuniary loss.

(vii) S.Paramasivam Achari Vs. The Head Master Govt.High School, Amur, Musiri Taluk, Trichy District and others reported in 1999 Writ L.R.525, the petitioner son had gone to the urinal attached to the school within the campus. The boy died due to the sudden collapse of the wall. It was held that the accident could have been averted, if the school had taken proper care. Therefore, a compensation of Rupees Two Lakhs was directed to be paid by the Government.

(viii) In D.Matsa Gandhi Vs. Tamil Nadu Slum Clearance Board, reported in 2000 (III) CTC 24, this Court held that in cases where there is denial of tortious liability writ petitions cannot be maintained. However, when negligence per se is visible the same has to be construed as violation of right to life and liberty guaranteed under Article 21 of the Constitution of India and the High Court has jurisdiction to grant compensation under Article 226 of the Constitution of India. At paragraph 10, this Court held as follows:-

10.In the course of argument it is brought to my notice the recent decision of the Hon'ble Supreme Court reported in Nath Bros., Exaim International Ltd., v. Best Roadways Ltd., 2000 (4) S.C.C. 553 and power of this Court under Article 226. No doubt, the Hon'ble Supreme Court has not accepted the action of the High Court in granting compensation to the family of the victim who died by electrocution in a writ petition filed under Article 226. It is equally true that when disputed questions of fact arises and if there is clear denial of tortious liability remedy under Article 226 of the Constitution may not be proper. However, in the very same judgment their Lordships after saying so, in paragraph 10 have observed.

".... However it cannot be understood as laying a law that in every case of tortious liability recourse must be had to a suit. When there is negligence on the face of it and infringement of Article 21 is there it cannot be said that there will be any bar to proceed under Article 226 of the Constitution."(Italics Supplied)

In such circumstance and in view of the factual conclusion as referred to above, I am of the view that the petitioner is entitled reasonable compensation from the respondent for the death of her daughter and in the interest of justice this Court would be

justified in considering the relief prayed by the petitioner.

After considering the above decision and also of the objections raised by the Tamil Nadu Electricity Board as regards the maintainability of the writ petition and also of the fact as to whether the petitioner therein should be driven to a Civil Court, on the facts and circumstances of the case, a learned single Judge of this Court in an unreported decision in R.Saroja Vs. The Chairman, Tamil Nadu Electricity Board, Chennai, and two others (W.P.No.6437 of 1998 dated 16.04.2008) ,

"The factum of electrocution and the death of the petitioner's husband is not denied either by the 1st respondent or by the 2nd respondent, I am of the considered view that it is not proper at this point of time, especially, when the accident took place in the year 1997 and the writ petition was filed in the year 1998 and the same has been pending for the past 10 years to drive the parties to Civil Court. Such course will only cause further injury to the family of the deceased."

So saying, this Court has awarded compensation.

(ix) C.Chinnathambi and others V. The state of Tamil Nadu rep.by its Secretary to Government Education, Science and Technology Department, Fort St.George Madras - 600 009 and others reported in 2001 Writ L.R.174, a water tank constructed by the School during 1983-1984, due to faulty construction collapsed on 12.10.1992. In that accident two school children were died. Because of the lack of care by the School management, the School was directed to pay compensation. In that case, V.S.SIRPURKAR.J. (as he then was) in para nos 5 and 6, observed as follows:-

"5.Right of life enunciated in Article 21 has time and again been recognised by the Supreme Court and in its various ramifications. This was a case where the two innocent children had gone to the school and the accident actually took place during school hours. Even if it is considered that the said tank was constructed by the Parent Teachers Association it was undoubtedly the responsibility of the School authorities to see that the tank was properly constructed and erected and that it should not have been hazardous to the lives of the children. There can be no dispute that in this case school authorities have not been careful enough to see that the construction was proper and in keeping with the rules. It beats one's understanding as to how a tank which was constructed early in 1983-84 would collapse all of

a sudden within eight years of its construction. i.e.12.10.1992. The things do speak for themselves. There can be least doubt that the school authorities were not vigilant in their duties and that this being the Government School the Government would have a liability. There is no dispute that two young lives have perished predominantly because of the lack of care on the part of the school authorities. In my opinion compensation of Rs.5,000/- by way of ex gratia payment would be a cruel joke. The petitioners have claimed the compensation of Rs.1,50,000/- each in their writ petitions.

6.Considering the age of the children, the social background that they come from the fact that these children were bona fide students and could have had a bright future, the compensation of Rs.1,50,000/- shall be on the lower side. I, therefore, allow both the writ petitions and direct the Government to make a payment of Rs.1,50,000/- to each of the petitioners within two months from today. If the payment is not so made, it shall carry interest at the rate of 12% p.a. till the actual payment is made.'

(x) In M.S.Grewal Vs. Deep Chand Sood, reported in AIR 2001 SC 3660 = 2001 (8) SCC 151, the issue before the Hon'ble Supreme Court was regarding the direction given by the High Court to pay a sum of Rs. Five lakhs as compensation to the parents of each of the children who died on account of drowning while they were in the custody of the school authorities. While considering the maintainability of the Writ Petition for payment of compensation, the Hon'ble Supreme Court indicated the march of law on the subject of public law remedy thus:

"28. Currently judicial attitude has taken a shift from the old draconian concept and the traditional jurisprudential system - affectation of the people has been taken note of rather seriously and the judicial 'concern thus, stands on a footing to provide expeditious relief to an individual when needed rather than taking recourse to the old conservative doctrine of the civil Court's obligation to award damages. As a matter of fact the decision in D.K. Basu has not only dealt with the issue in a manner apposite to the social need of the country but the learned Judge with his usual felicity of expression firmly established the current trend of "justice-oriented approach." Law Courts will lose their efficacy if they cannot possibly respond to the need of the society -

technicalities there might be many but the justice-oriented approach ought not to be thwarted on the basis of such technicality since technicality cannot and ought not to outweigh the course of justice."

(xi) In *Rabindra Nath Ghosal Vs. University of Calcutta*, reported in AIR 2002 SC 3560 = 2002 (7) SCC 478, the Hon'ble Apex Court indicated the obligation of Courts to meet the social aspiration of people, :

"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 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 225 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."

(xii) In *Susanta Samanta and others Vs. WBSEB and others*, reported in AIR 2004 Calcutta 200, death was due to electrocution. A writ petition was filed for compensation. Public law remedy was opposed. Negligence was also attributed against the deceased. On the objections to the maintainability of the writ petition, it was contended as follows:-

"8. Mr. Sumit Panja learned Lawyer appearing for the respondents contends that there is no dispute that the Court has ample power under Article 226 in the public law field to award compensation on the established and admitted case of negligence on the

part of the respondent No. 1. In this case it is totally incorrect to allege that the said deceased died owing to negligence of the respondent No. 1. The Criminal case was dropped and this shows there was no fault not to speak of negligence, and it was mere an accident which might have occurred due to his own fault. In view of this serious disputed question of fact this Court cannot award any compensation unlike Apex Court under Article 142. What the Apex Court can do under Article 142 cannot be done by the High Court even overstretching power under Article 226 of the Constitution of India. He submits that the decision cited by the learned Lawyer for the petitioner of the Supreme Court is not a binding precedent and it was rendered on taking special facts and circumstances into consideration and the Apex Court had explained expressly not to treat this judgment as a precedent. He submits the Supreme Court explained in fairly recent decision under what circumstances the High Court can grant compensation in the public law field under Article 226 of the Constitution of India. In support of his submission he has relied on the decision of the Supreme Court reported in 2000 (4) SCC 543 = AIR 2000 SC 1603, AIR 1996 Kerala 337, 1994 (2) SCC 630 = AIR 1994 SC 1808 and 1999 (9) SCC 40 = AIR 2000 SC 3638.

After considering Tamil Nadu Electricity Board Vs. Sumathi, reported in 2000 (4) SCC 543, a learned single Judge of the Calcutta High Court in Susanta Samanta's case at paragraph 10 held as follows:-

10. Therefore, it is clear from the aforesaid decision of the Supreme Court that it is not a bar to grant relief in the public law field in exercise of jurisdiction under Article 226 in case of the deprivation of life due to negligence on the part of the State, which includes statutory authority. The only decision cited by the learned Lawyer for the petitioners cannot be accepted to be precedent in view of the expressed pronouncement of the Supreme Court itself in the penultimate sentence of the last paragraph.

(xiii) In Chairman, Tamil Nadu Electricity Board, Madras and the Superintending Engineer, Tamil Nadu Electricity Board, Thiruvannamalai Vs. Mrs.Lalitha and two others, (A.S.No.20 of 1996, dated 23.11.2007), Legal Representatives of one V.Shanmugam, who died on 27.09.1989, claimed compensation. According to them, while he set his foot on a severed live

electric wire that had fallen on an agricultural field, belonging to one Munuswamy Naidu in S.U.Vanam, Arni Taluk, he died of electrocution. It was reported to the police, FIR was registered and postmortem was conducted. A suit was filed for compensation. It was defended that there was heavy rain and wind, which started in midnight on 26.09.1989 and continued till next day morning. As there was sudden rain and speedy wind, without any prior symptom, the department could not take steps to switch off power supply. Service connection in S.C.No.33 was not under use and the concerned consumer had not intimated to disconnect the electric line, otherwise, the appellants could have taken immediate steps to disconnect the line and restore its original position. After considering Rule 91 of the Electricity Rules, and on the facts and evidence, this Court at paragraphs 14 to 16 held as follows:-

14. It is clear that Rule 91 of the Indian Electricity Rules, 1956 stipulates that every overhead electric line erected over any part of a street or other public place or any factory or mine or any consumer's premises shall be protected with a device approved by the Inspector for rendering the line electrically harmless in case it breaks. It is seen that the electrocution had occurred only in the open place of the village and a poor man and his dependents were made victims.

15. Considering the heavy rain and storm and also the non usage of the electric service for a long time by the consumer, as admitted by the appellants in the written statement the same should have been disconnected or at least the particular service connection could have been switched off, on account of the heavy rain and storm. On the facts and circumstances of the case and also the evidence available on record, I am of the view that the principle of "res ipsa loquitur" is applicable to infer that the electrocution and the instantaneous death of V.Shanmugam, husband of the first respondent and the father of the minor respondents 2 and 3 had occurred only due to the negligence of the Electricity Board.

16. It is seen that the mandatory safety measures stipulated under Rule 91 of the Indian Electricity Rules, 1956 were not complied with by the concerned officials of the appellants, which had caused the death of the husband of the first respondent. The plea of the appellants that it was an act of God or nature cannot be taken as any legal defence."

(xiv) In Lilly Stanislaus Vs. The Chairman, Tamil Nadu Electricity Board, Chennai and three others, reported in 2008 WLR 278, the petitioner's husband went out to procure milk from the nearby Aavin Milk Booth. It is the case of the petitioner therein that earlier, there was heavy rain and when her husband was passing near a tea shop, he had to step on a live wire, snapped from the electrical post No.146 and was thrown out due to electrocution. A boy who tried to pull him out, also was electrocuted. Two hours later, electric supply was disconnected. In the meantime, the petitioner's husband died. A complaint was lodged to the Sub Inspector of Police, G-1, Madhavaram Police Station. FIR was registered in Crime No.559/96. In the postmortem conducted on 17.06.1996 it was found that there was blackening and charring of skin. The cause of death was due to electrocution. The petitioner therein contended that due to negligence, carelessness and failure to perform duty on the part of the board officials in maintaining electric posts properly, the accident occurred resulting in the death of her husband. It was also contended that there was negligence in not maintaining the electric poles with automatic fuse. The board disputed the contentions and inter alia contended that the poles, wires were in good condition. It was also contended that the accident took place due to heavy rain and that it is an Act of God, beyond the control of the electricity board and that therefore there was no negligence on the part of the respondent board. Placing reliance on M.P. Electricity Board Vs. Shail Kumari and others, reported in 2002 (2) SCC 162, Smt.Kumari Vs. State of Tamil Nadu and others, reported in AIR 1992 SC 2069, M.C.Mehta Vs. Union of India, reported in AIR 1987 SC 1086, Tamil Nadu Electricity Board Vs. Sumathi and others, reported in 2000 (4) SCC 543 and an unreported decision in P.Kumaraesan Vs. Tamil Nadu Electricity Board and others, (W.P.No.10310 of 1999 dated 31.07.2006) and Parezade Mama Vs. State of Tamil Nadu, rep. by Secretary to Government, Electricity Department and others (W.P.No.5217 of 1999 dated 05.01.2007, it was contended that the High Court or the Supreme Court in exercising the powers under Articles 226 and 32 of the Constitution, can award compensation in the case of infringement of right. Though the Electricity Board contended that tortious liability cannot be fixed on the electricity board and that writ petition cannot be entertained, as there was dispute regarding negligence on the part of the board and that the accident was an Act of God, beyond the control of Electricity Board, upon consideration of the medical evidence, which proved that the death was due to electrocution, at paragraphs 11 to 14, Hon'ble Mr.Justice Jyothimani, held as follows:-

11. It is also not in much dispute that the petitioner's husband was the only bread-winner of the

family and the petitioner has three children out of whom one daughter got married and there is one unmarried daughter and an un-married son. It was held by the Hon'ble Supreme Court in M.P.Electricity Board vs. Shail Kumari and others [2002 (2) SCC 162] that the liability of the Electricity Board under Law of Torts to compensate for the injuries suffered cannot be denied on the basis that the Electricity Board has taken all safety measures since the liability of the Department is strict liability, relying upon the renowned and celebrated case on the issue, viz., Rylands vs,. Fletcher (1868 (3) HL 330 : 1861-73 All ER Rep.1). The Supreme Court has held as follows:

"8. Even assuming that all such measures have been adopted, a person undertaking an activity involving hazardous or risky exposure to human life, is liable under law of torts to compensate for the injury suffered by any other person, irrespective of any negligence or carelessness on the part of the managers of such undertakings. The basis of such liability is the foreseeable risk inherent in the very nature of such activity. The liability cast on such person is known, in law, as "strict liability". It differs from the liability which arises on account of the negligence or fault in this way i.e. the concept of negligence comprehends that the foreseeable harm could be avoided by taking reasonable precautions. If the defendant did all that which could be done for avoiding the harm he cannot be held liable when the action is based on any negligence attributed. But such consideration is not relevant in cases of strict liability where the defendant is held liable irrespective of whether he could have avoided the particular harm by taking precautions.

9. The doctrine of strict liability has its origin in English common law when it was propounded in the celebrated case of Rylands v. Fletcher (1868 (3) HL 330 : 1861-73 All ER Rep.1). Blackburn, J., the author of the said rule had observed thus in the said decision: (All ER p. 7E-F)

"[The true rule of law is that the person who, for his own purposes, brings on his land, and collects and keeps there anything likely to do mischief if it escapes, must keep it at his peril, and, if he does not do so, he is prima facie answerable for all the damage which is the natural consequence of its escape." Therefore, it is too late for the respondent Board to raise the plea as if the respondent Board is not negligent and they are not liable.

12. In Tamil Nadu Electricity Board vs. Sumathi and others (2000 (4) SCC 543), even though the Hon'ble Supreme Court has held that in cases of disputed questions of fact in existence, on the face of unequivocal denial of tortious liability, seeking remedy under Article 226 may not be proper, it was held that the same cannot be understood that in every case of tortious liability the affected party should be directed to resort to filing of suit, holding that when there is negligence on the face of it, the same to be treated under Article 21 of the Constitution of India and in such circumstances, to enforce the basic human rights, Article 226 can be pressed into service. On the facts of the said case, the Supreme court has come to the conclusion that a disputed questions of fact was involved, but held in the circumstances of the case that the appellant Electricity Board shall not recover the amount which has been paid to the respondents/victims. In that context, the Supreme Court has held as under:

"10 . In view of the clear proposition of law laid by this Court in Sukamani Das case (1999 (7) SCC 298) when a disputed question of fact arises and there is clear denial of any tortious liability remedy under Article 226 of the Constitution may not be proper. However, it cannot be understood as laying a law that in every case of tortious liability recourse must be had to a suit. When there is negligence on the face of it and infringement of Article 21 is there it cannot be said that there will be any bar to proceed under Article 226 of the Constitution. Right of life is one of the basic human rights guaranteed under Article 21 of the Constitution. In U.P. State Coop. Land Development Bank Ltd. v. Chandra Bhan Dubey (1999 (1) SCC 741 : 1999 SCC (L&S) 389) where one of us (Wadhwa, J.) was a party, this Court after examining various decisions of the courts on the power of the High Court under Article 226 of the Constitution observed that the language of Article 226 of the Constitution does not admit of any limitation on the powers of the High Court for the exercise of jurisdiction thereunder though by various decisions of this Court with varying and divergent views, it has been held that jurisdiction under Article 226 can be exercised only when a body or authority, the decision of which is complained, was exercising its power in the discharge of public duty and that writ is a public law remedy. This Court then observed: (SCC pp. 758-59, para 27)

"[It may not be necessary to examine any further the question if Article 226 makes a divide between

public law and private law. Prima facie from the language of Article 226, there does not appear to exist such a divide. To understand the explicit language of the article, it is not necessary for us to rely on the decision of English courts as rightly cautioned by the earlier Benches of this Court. It does appear to us that Article 226 while empowering the High Court for issue of orders or directions to any authority or person, does not make any such difference between public functions and private functions. It is not necessary for us in this case to go into this question as to what is the nature, scope and amplitude of the writs of habeas corpus, mandamus, prohibition, quo warranto and certiorari. They are certainly founded on the English system of jurisprudence. Article 226 of the Constitution also speaks of directions and orders which can be issued to any person or authority including, in appropriate cases, any Government. Under clause (1) of Article 367, unless the context otherwise requires, the General Clauses Act, 1897, shall, subject to any adaptations and modifications that may be made therein under Article 372, apply for the interpretation of the Constitution as it applies for the interpretation of an Act of the legislature of the Dominion of India. "Person" under Section 2(42) of the General Clauses Act shall include any company, or association or body of individuals, whether incorporated or not. The Constitution is not a statute. It is a fountainhead of all the statutes. When the language of Article 226 is clear, we cannot put shackles on the High Courts to limit their jurisdiction by putting an interpretation on the words which would limit their jurisdiction. When any citizen or person is wronged, the High Court will step in to protect him, be that wrong be done by the State, an instrumentality of the State, a company or a cooperative society or association or body of individuals, whether incorporated or not, or even an individual. Right that is infringed may be under Part III of the Constitution or any other right which the law validly made might confer upon him. But then the power conferred upon the High Courts under Article 226 of the Constitution is so vast, this Court has laid down certain guidelines and self-imposed limitations have been put there subject to which the High Courts would exercise jurisdiction, but those guidelines cannot be mandatory in all circumstances. The High Court does not interfere when an equally efficacious alternative remedy is available or when there is an established procedure to remedy a wrong or enforce a

right. A party may not be allowed to bypass the normal channel of civil and criminal litigation. The High Court does not act like a proverbial "bull in a china shop" in the exercise of its jurisdiction under Article 226."

13. In yet another case in Smt.Kumari vs. State of Tamil Nadu and others (AIR 1992 SC 2069), when a six year old boy of the appellant died falling in a 10 feet deep uncovered sewerage tank in the City of Madras and the writ petition filed by the appellant was dismissed by the High Court, while setting aside the said judgement, the Supreme Court has directed the State Government to pay compensation of Rs.50,000/- with interest to the appellant, however with a direction that the State Government can recover the said amount from appropriate authority, since the authority who is liable for negligence was not able to be determined. The operative portion of the above cited judgement is as follows:

"3. In the facts and circumstances of this case we set aside the High Court judgement and direct that respondent 1, the State of Tamil Nadu shall pay to the appellant a sum of Rs.50,000 (Rupees fifty thousand) with interest at 12 per cent per annum from January 1, 1990 till the date of payment. The amount shall be paid within six weeks from today. It will be open to the State of Tamil Nadu to take appropriate proceedings to claim the said amount or any part thereof from any of the respondents or any other authority which might be responsible for keeping the sewerage tank open. The claim, if made, will be decided in accordance with law. The appeal is allowed in the above terms. There will be no order as to costs.

14. A Division Bench of this Court (P.K.Misra and S.Rajeswaran,JJ) in W.P.No.5217 of 1999 (Parezade Mama vs. State of Tamil Nadu rep. By Secretary to Government, Electricity Department and others), while dealing with the case of death of the mother and father of the children, who died when the children playing in a lodge were to touch the running over head high tension line approximately 3 feet from the balcony of the lodge and the parents while attempted to rescue the children, by relying upon the judgement of the Supreme Court in Nath Bros. Exim International Ltd., vs. Best Roadways Limited (2000 (4) SCC 553) held that on the face of the conduct of the public authority, there is infringement of Article 21, and there is no bar for the High Court to proceed under

Article 226 of the Constitution of India by granting necessary damages, as follows:

"17. It is true that writ petitions for claiming damages cannot be resorted to when there is a clear denial of tortious liability. At the same time when the negligence is per se visible and it infringes Article 21, relief claiming damages could be granted under Article 226 of the Constitution of India.

18. In 2000 (4) SCC 553 (Nath Bros. Exim International Ltd. vs. Best Roadways Ltd.), the Hon'ble Supreme Court no doubt held that the writ petition filed under Article 226 of the Constitution of India, High Court cannot grant compensation to the family of victim who died by electrocution. However, in the very same judgement the Hon'ble Supreme Court held that when there is negligence on the face of it and infringement of Article 21 is there, it cannot be said there will be any bar to proceed under Article 226 of the Constitution of India."

Ultimately, leaving it to the appropriate forum to decide the final compensation, an interim compensation of Rs.2 lakhs was awarded in the following terms.

"22. Therefore, in our opinion negligence on the part of the Electricity Board, municipality and the lodge is per se visible and this negligence definitely infringes Article 21 of the Constitution of India and therefore we are of the considered opinion that interim compensation can be awarded in this writ proceedings, leaving the final quantum to be decided by an appropriate forum.

23. Considering the nature of the extensive injuries suffered by the minor children, the loss of their parents and the exorbitant medical expenses, to rehabilitate the children we award a sum of Rs.6 lakhs in total to be paid equally by the municipality-4th respondent, Tamil Nadu Electricity Board (second respondent) and the lodge-6th respondent. As such, each of them shall pay a sum of Rs.2 lakhs as interim compensation to respondents 9 and 10 within a period of three months from the date of receipt of a copy of this order."

(xv) In Smt.S.K.Shangring Lamkang and another Vs. State of Manipur, reported in AIR 2008 Gauhati 46, a writ petition was filed by the widows for the death of their respective husbands, who died, due to falling of a high tension electric line from its pole while they were proceeding in a Scooter. According to the petitioners therein, the electric line was broken and detached from its pole as it was very old and also not repaired, despite request made by one R.D. Kowar Anal, Chairman, Chief

Area Association of Sulam Chandel on 18-4-2002 to respondent No.3 therein, for repairing the electric post, as well as the weakness of the electric wire between Khongjon village and Bongku village. The case of the petitioners was that, had the respondents taken appropriate steps in respect of the electric post and wire, falling of the wire would not have taken place leading to electrocution, resulting in death of two persons. The respondents contended that the fall of the electric wire was due to the lightning stroke resulting breaking of a tension disc Insulator and not due to the negligence of the respondents. According to the respondents, no one complained to respondent No.3, for repairing the electric post and the weakness of electric wiring at or near the place of occurrence. It was the case of the respondents that since there are disputed questions in respect of negligence, it will not be proper on the part of the writ Court to award any compensation in exercise of its power under Article 226 of the Constitution of India. Reliance was placed on Chairman, Grid Corporation of Orissa Ltd., Vs. Sukamani Das. After considering the subsequent decision of the Supreme Court in Tamil Nadu Electricity Board Vs. Sumathi, reported in 2000 (4) 543, Parvati Devi Vs. Commissioner of Police, Delhi, reported in 2000 (3) SCC 754, M.P. Electricity Board Vs. Shail Kumari, reported in 2002 (2) SCC 162, a Hon'ble Division Bench of the Gauhati High Court, at paragraphs 8 to 10, held as follows:-

8. After noting about following the rule of strict liability in India in many earlier decisions the Hon'ble Supreme Court applied the said rule of strict liability and dismissed the appeal. The Board made an attempt to rely on the exception to the said rule of strict liability being "an act of stranger", the Hon'ble Supreme Court held that the said exception was not available to the Board. The Hon'ble Supreme Court referred to the decision of Privy Council in Quebec Rly. Light, Heat, Power Co. Ltd. v. Vandry 1920 SC 662 wherein the Privy Council held that the Co. supplying electricity is liable for the damages without proof that they had been negligent. Even the defence that the cables were disrupted on account of violent wind and high tension current found its way through the low tension cable into the premises of the respondent was held to be not a justifiable defence. In the opinion of the Hon'ble Supreme Court, merely because the illegal act could be attributed to a stranger is not enough to absolved the liability of the Board regarding the live wire lying on the road. Though the above said case before the Hon'ble Supreme Court arose out of a civil suit, the law laid down therein regarding strict liability of the State Electricity Board in case of live wire getting snapped and falling

on the public road is relevant in a writ proceeding also. I do not find any appreciable reason as to why the said law should not be applicable in the writ proceeding.

9. In my considered opinion, the possibility of falling of high tension electric line from its pole as a result of storm or lightning should have been reasonably anticipated by the respondents and as such appropriate steps should have been taken by them so that no harm was caused when someone touched the fallen electric line. The risk involved in the management of supply of electricity was very great and a high degree care was expected of the respondents. Inasmuch as they ought to have appreciated the possibility of falling of the electric line from its pole as a result of storm or lightning. Apart from the said consideration, since the management of supply of electricity is a hazardous or inherently dangerous activity, when harm is caused to any one on account of any cause in the operation of the activity, the respondent, who are responsible in respect of the said activity, shall be strictly and absolutely liable to compensate to those who are harmed in the course of, operation of the said activity. Such liability is not to be subject to any exception to the principle of strict liability under the rule in Ryland v. Fletcher. Accordingly, the respondents are liable to pay compensation in respect of the death of the said two persons resulting from electrocution.

10. It is to be noted that the question of strict liability was never considered in Chairman, Grid Corporation of Orissa Ltd. (supra) and S.D.O. Grid Corporation of Orissa Ltd. (supra).

(xvi) In Mr.E.Joseph Vs. Tamil Nadu Electricity Board, Rep. by its Chairman, Mount Road, Chennai, (W.P.No.4992 of 2001 dated 30.10.2008), the petitioner's father died due to electrocution, when he came in contact with a live wire, which was lying on the road. The request of the petitioner for compensation was refused. Hence the writ petition. The Board denied negligence and contended that death was due to an accident which happened due to heavy rain and wind and not due to the negligence of the Board. Objection was also raised regarding the maintainability of the writ petition. After considering the objections, and decision of this Court in Lilly Stanislaus Vs. The Chairman, Tamil Nadu Electricity Board, Chennai and three others, reported in 2008 WLR 278, at paragraphs 15 and 16, this Court held as follows:-

15. Once it is accepted by the respondent electricity Board that the death was caused as a consequence of the snapped electricity line belonging to the respondent Electricity Board, there would be an obligation cast on the respondent Board to pay atleast a reasonable compensation to the legal heirs of the deceased person. Raising of technical pleas to avoid payment of such compensation is not to be appreciated. Only when there are seriously disputed facts, the party making the claim for compensation may be asked to go before the Civil Courts to seek his remedies. Such a situation does not prevail in the present case, as the basic facts are not in dispute.

16. In such circumstances, in view of the averments made on behalf of the petitioner, as well as on behalf of the respondent Board and in view of the decision cited above, this Court is of the view that the respondent Electricity Board, is liable to compensate the petitioner and the other legal heirs of the deceased person. Since it has been stated that both the sisters of the petitioner had submitted a consent letter to the respondent Board stating that they have no objection for the compensation amount to be paid to the petitioner, the respondent Electricity Board is directed to pay an amount of Rs.75,000/- to the petitioner as compensation, within a period of twelve weeks from the date of receipt of a copy of this order. Accordingly, the proceedings of the second respondent is set aside and the respondent Electricity Board is directed to pay the compensation to the petitioner within the specified period.

(xvii) In K.Sundari Vs. State of Tamil Nadu, rep.by its Secretary to Government, Department of Electricity, Chennai, (W.P.No.19668 of 1999, dated 15.04.2009), the case of the petitioner therein was that her husband was working as a civil contractor. While he was returning to home, on the way, he came in contact with a live snapped wire hanging from above fell on the street, and died on the spot, due to electrocution. The further case of the petitioner was that the second respondent department gave a police complaint and that the body of her husband was also subjected to postmortem. Opinion of the Doctor as per the postmortem certificate was that the deceased died due to electrocution. It was submitted that the live wire which fell on the street, wherein the occurrence was said to have taken place was under the care and maintenance of the department. She claimed compensation. No reply was given. Hence the writ petition. Reliance was placed on the Rule 91 of the Indian Electricity Rules, 1956 (hereinafter referred to as "the Rules")

to the effect that it is the duty of the Electricity Board Officials to protect the every overhead line erected over any part of a street or other public place with a device approved by the Inspector for rendering the electricity line harmless in case it breaks. It was also pointed out that there was absolutely no factual dispute in respect of the manner of occurrence, in which the husband of the petitioner died due to electrocution. This court awarded compensation.

(xviii) In Rani Vs. The State of Tamil Nadu, represented by its Secretary, Department of Electricity, Chennai, and seven others, (W.P(MD)No.7415 of 2007, dated 03.08.2010), the petitioner therein claimed compensation of Rs.5,00,000/- with interest @ 12% per annum for the period between 21.08.2001 to till the date of payment for the accidental death of the 1st petitioner's husband who died due to electrocution. A criminal case was registered. Opposing the relief sought for in the writ petition, respondents 2 to 4 therein, contended that on 21.08.2001, a lorry with a heavy load and abnormal height had dragged the service connection of D.26 Palukal fed from Manoorkonam SS about 600 meters from the spot of accident and due to the abovesaid incident, service was damaged and cut. In view of the same, the electric wire fell on the telephone wire at one end and got energised. It was the case of the claimants therein, that the deceased came in contact with a telephone wire which was in air, muchless than a man's height from the ground, got electrocuted and died. Though the Board objected to the relief sought for in the writ petition on the ground that Board is not negligent and hence not liable to pay compensation, after considering Nilabati Behera Vs State of Orissa, reported in AIR 1993 SC 1960, C.Thekkamalai Vs. State of Tamil Nadu, reported in 2006 WLR 13, Lakshmana Naidu Vs. State of Tamil Nadu, reported in 2006 WLR 608, CSDO Grid Corporation of Orissa Ltd., TNEB Vs. Sumathi, reported in 2000 (4) SCC 543, this court rejected the objections of the board, as regards the maintainability of the writ petition and awarded compensation by applying multiplier method.

(xix) In Karuppaye Ammal and Mrs.Guruvammal Vs. The Chairman, Tamil Nadu Electricity Board, Anna Salai, Chennai, and two others, (W.P.(MD).Nos.9555 and 9557 of 2007, dated 29.06.2011), widows filed separate writ petitions for the death of their husbands due to electrocution. One Krishnasamy was the husband of the petitioner in W.P.(MD).No.9555 of 2007 and Velusamy was the husband of the petitioner in W.P.(MD).No.9557 of 2007. Krishnasamy owned lands in S.Nos.152/1B and 1A and grown lemon trees and cotton. To irrigate those lands using motor pumps, he went to the agricultural field along with his neighbour Velusamy. While they were proceeding towards the aforesaid lands, Krishnasamy came in contact with a live wire in

S.No.152/3. The land in S.No.152/3 belonged to one Pandia Naicker, whose land was very near to Krishnasamy's land. He died due to electrocution, as he came in contact with the snapped live wire. When, Velusamy attempted to rescue Krishnasamy, he was also got electrocuted. Both of them died. First Information Report on 01.06.1998 was lodged on the file of Vasudevanallur Police Station and that the same was registered in Cr.No.233 of 1998 under Section 174 Cr.P.C. Each of the petitioners was paid a sum of Rs.25,000/- towards ex gratia by the TNEB. Thereafter, representations were made for compensation. They filed writ petitions. Preliminary objection was raised regarding maintainability. Limitation was also a ground for opposing the prayer for compensation. It was also pleaded that there was no negligence on the part of the electricity board and therefore, the petitioners therein were not entitled to claim compensation for the death of their husbands. On the aspect of maintainability, at paragraph 7, this Court held as follows:-

"7.....There is no limitation as such provided for invoking Article 226 of the Constitution of India and the parties should be vigilant to approach the Court claiming relief under Article 226 of the Constitution of India. But, the Court cannot shut eyes and reject the applications at the threshold without taking notice of the facts of each case. When the records of the respondents itself disclose that the snapping of live wire was due to the ageing of conductors, the claim for compensation could not be rejected without examining the same on merits. Furthermore, the respondent being State, under Article 12 of the Constitution of India, is duty bound to answer the claim on merits and they could not take the technical plea more particularly in these type of cases. It is not the case where the respondent board is fighting against the persons who have indulged in theft of electrical energy. On the other hand, victims are the persons who came in contact with the live wire and lost their precious life....."

On the basis of the evidence on record and arriving at a categorical finding that the death had occurred due to the negligence of the Board, this Court computed the compensation.

31. Act of God, is the defence taken in this case. On that aspect, it is worthwhile to consider few decisions:

(i) In General Traders Ltd. and Anr. vs. Pierce Leslie (India) Ltd. and others reported in AIR 1987 Ker 62, Hon'ble Mr.Justice K.T.Thomas, has dealt with the plea of "Act of God", as follows:

11. In the text book on Tort by Winfield and

Jolowics page 444 (12th Edn. By W. V. H. Rogers) the doctrine of "act of God" is discussed. That defence applies "in circumstances which no human foresight can provide against and of which human prudence is not bound to recognise the possibility". This defence was first recognised by Blackburn, J. in the celebrated case, Fletcher v. Rylands, (1866) LR 1 Exch 265-280. The House of Lords in Greenock Corpn. v. Calidonian Railway, 1917 AC 556 considered the scope and ambit of damnum fatale (act of God) in a case where a concrete paddling pond was constructed by the Corporation in the bed of a stream, altering the course of the stream, and owing to a "rainfall of extraordinary violence", the stream overflowed at the pond and consequently water poured into the town damaging the properties of two railway companies. Their Lordships held that:

"The dam must be made perfect against all extraordinary falls of rain -- else the protection is not afforded against the operation which the party must accomplish. An extraordinary fall of rain is a matter which, in our climate, cannot be called a damnum fatale-"

(ii) In A.Krishna Patra vs Orissa State Electricity Board reported in 1998 ACJ 155, High Court of Orissa dealt with Law of Torts, and quoted the following from the 22nd Edition, by Justice G. P. Singh, which reads thus :

"All causes of inevitable accidents may be divided into two classes : (1) those which are occasioned by the elementary forces of nature unconnected with the agency of man or other cause; and (2) those which have their origin either in the whole or in part in the agency of man, whether in acts of commission or omission, non-feasance or misfeasance, or in any other causes independent of the agency of natural forces. The terms 'act of God' is applicable to the former class."

"An inevitable accident is an event which happens not only without the concurrence of the will of the man, but in spite of all efforts on his part to prevent it. It means, an accident physically unavoidable something which cannot be prevented by human skill or foresight. "

On the facts and circumstances of the case, at paragraph No.10, the Orissa High court, held that,

"An 'act of God' is an inevitable or unavoidable accident without the intervention of the

man; some casualty which the human foresight could not discern and from the consequence of which no human protection could be provided. This is not a case where the incident was due to unexpected operation of natural forces free from human intervention which no reasonable human foresight could be presumed to anticipate its occurrence or to prevent it."

(iii) In *Rushi Pursti vs Orissa State Electricity Board* reported in 1999 ACJ 440, High Court of Orissa has observed that

"It is explained in a very illustrative passage in Clerk & Lindsell on Torts, 16th Edn., pp. 568-569, which reads as follows:

Doctrine of *res ipsa loquitur*. The onus of proof, which lies on a party alleging negligence is, as pointed out, that he should establish his case by a preponderance of probabilities. This he will normally have to do by proving that the other party acted carelessly. Such evidence is not always forthcoming. It is possible, however, in certain cases for him to rely on the mere fact that something had happened as affording prima facie evidence of want of due care on the other's part: '*res ipsa loquitur* is a principle which helps him to do so'. In effect, therefore, reliance on it is a confession by the plaintiff that he has so affirmative evidence of negligence. The classic statement of the circumstances in which he is able to do so is by Erle, C.J.:

There must be reasonable evidence of negligence. But where the thing is shown to be under the management of the defendant or his servants, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of explanation by the defendants, that the accident arose from want of care.

10. The expression of 'act of God' signifies the operation of natural forces free from human intervention, such as lightning. It may be thought to include such unexpected occurrences of nature as severe gale, snowstorms, hurricanes, cyclones and tidal bores and the like. But every unexpected wind and storm does not operate as an excuse from liability, if there is a reasonable possibility of anticipating their happening. An act of God provides no excuse, unless it is so unexpected that no

reasonable human foresight could be presumed to anticipate the occurrence, having regard to the conditions of time and place known to be prevailing at. For instance, where by experience of a number of years, the railway administration knows that in a particular area during a particular season there have been heavy down-pours of rain and consequently extraordinary floods causing damage to their track, they cannot take the plea, that they were due to act of God because it is within their competence to take such steps as would prevent damage. Lord Westbury defined 'act of God' (damnum fatale in Scotch Law) as an occurrence which no human foresight can provide against and of which human prudence is not bound to recognise the possibility. This appears to be the nearest approach to the true meaning of 'act of God'. Lord Westbury's definition was approved by Lord Demdin and Lord Shaw in the House of Lords in Brenock Corporation v. Caledonian Ry. Similarly, Lord Blandaburgh spoke of it as "an irresistible and unsearchable providence nullifying all human effort." That principle has no application to the case at hand.

(iv) In *Taj Singh @ Tejpal Singh vs M.P.State Road Transport* reported in 2000 ACJ 214, High Court of Madhya Pradesh explained Act of God, as follows:

".....the person defending the claim has to show that his conduct was utterly without fault i.e. without negligence. In the legal sense the act of God (vis major) may be defined as an extraordinary occurrence or circumstance which could not have been foreseen and could not have been guarded against, or more accurately as an accident due to natural causes, directly and exclusively without human intervention. It is a direct violent, sudden and irresistible act of nature as could not, by any amount of ability, have been foreseen, or if foreseen, could not by any amount of human care and skill have been resisted. Some of the well-known circumstances of acts of God are : a violent storm at sea, an extraordinarily high tide, an unprecedented rainfall, an extraordinary flood, an earthquake, fire caused by lightning, an extraordinary frost, an extraordinary snowfall and like. They are in a sense inevitable accidents beyond the control of man. Vis major, must be the proximate cause, the causa causans and not merely a causa sine qua non of the damage complained of. The

mere fact that vis major co-existed with or followed on the negligence is no adequate defence. Before an act of God may be admitted as an excuse, the party taking the plea must have done all that he is bound to do. See - Halsbury's Laws of England Vol. 9, Fourth Edition, page 323, para 458 and Ratanlal & Dhirajlal's 'The Law of Torts', 23rd Edition by Justice G. P. Singh, page 443, 444.

5. Accidents may happen by reason of the play of natural forces or by intervention of human agency or by both. It may be that in either of these cases accidents may be inevitable. But it is only those acts which can be traced to natural forces and which have nothing to do with the intervention of human agency that could be said to be acts of God. If the act in its origin either in the whole or in part is due to in the agency of man, whether in acts of commission or omission, of nonfeasance or of misfeasance, or in any other cause independent of the agency of natural forces, it will not be a case of act of God."

In the reported case, mechanical defect was pleaded as 'Act of God, and dealing with the same, the court observed thus

"6. The law is well settled that every mechanical defect or failure which cause or results in an accident cannot be attributed to an 'act of God' or be termed as 'inevitable accident'. In order to succeed in a defence that the accident was due to a mechanical defect, the owners have to prove that they had taken all necessary precautions and kept the vehicle in a road-worthy condition and that the defect occurred in spite of the reasonable care and caution taken by the owner of the vehicle. In order to sustain a plea that the accident was due to the mechanical defect the owners must raise a plea that the defect was latent and not discoverable by the use of reasonable care. If it is established that in spite of reasonable care, the defect remained hidden the owner would not be liable. See - Minu B. Mehta v. Balkrishna Ramchandra Nayan, AIR 1977 SC 1248."

(v) In Seema Ganesh Uikey v. State of Maharashtra and Ors. reported in 2007 ACJ 1090, the Bombay High Court held as follows:

"It is submitted that merely by contending that there was no complaint in respect of the tree under which the petitioner's husband got crushed and

suffered the fatal accident and died cannot entitle them to raise a plea of vis Major (act of God) and, therefore, in absence of any defence, there can be no hesitation on the part of the respondents to arrive at a conclusion that the falling of the tree was due to the negligence on the part of the respondents in discharging their duty of care and, therefore, they are under strict liability to compensate the petitioner and the family of the deceased as heal in the case of Smt. Vandana Chitnavis.

11. Another submission made by Mr. Manohar is that this Court in the earlier petition has considered the principle of "strict liability" in reference to the negligence on the part of authorities regarding their duty of care and has held them liable to pay compensation which was challenged by preferring a S.L.P. in the Supreme Court which came to be dismissed and there would be no justification in denying compensation to the petitioner whose husband died in similar circumstances which is not disputed.

(vi) In Om Prakash vs Govt. of Nct of Delhi & Ors decided on 04.12.2013 in W.P.(C) 313/2012, Delhi High Court, observed that:

"Where the thing is to shown to be under the management of the defendant or his servants, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper case, it affords reasonable evidence, in the absence of explanation by the defendants, that the accident arose from want of care."

(vii) The Hon'ble Supreme Court in Municipal Corporation of Delhi v. Smt.Sushila Devi & Ors. reported in AIR 1999 SC 1929, reiterated as follows:

"The law is stated in Winfield and Jolowicz on Tort (13th, 1989 ed., p.415) in these words :

"If damage is done owing to the collapse of the projection on the highway or by some other mischief traceable to it, the occupier of the premises on which it stood is liable if he knew of the defect or ought, on investigation, to have known of it. At any rate this is the rule with respect to a thing that is naturally on the premises e.g. a tree."

In Clerk and Lindsell on Torts (16th, 1989 ed., at pages 546-547 para 10.122) the law on trees is summarised as follows :

"The fall of trees, branches and other forms of natural growth is governed by the rules of negligence. When trees on land adjoining a public highway fall upon it, the owner is liable if he knew or ought to have known that the falling tree was dangerous. He is not bound to call in an expert to examine the trees, but he is bound to keep a look out and to take notice of such signs as would indicate to a prudent landowner that there was a danger of a tree falling.....the land-owner was held liable when the tree which fell had been dying for some years before and had become a danger which should have been apparent to an ordinary landowner."

In Charlesworth & Percy on Negligence (8th, 1990 ed., at page 668) the law is stated in these terms :

".....when a tree, which had been dying for some years and should have been known to be dangerous by an ordinary landowner, fell and caused damage, the owner was held liable. (Brown V. Harrison (1947) W.N.191).

In Hale vs. Hants 1947 (2) All England Reports 628, which is a case of branches of a tree having struck the windows of an omnibus and a piece of glass having struck the plaintiff in the eye, it was held that in the absence of any reason to suspect danger from an overhanging tree or some similar obstruction a driver who is driving close to the kerb when his vehicle is struck by the branch of the tree is not making an unreasonable use of the highway. It was further held that the county council should have known that trees grow and throw out their branches and therefore it was their obligation to see that the tree in its natural growth was curbed in such a way as not to hinder the reasonable use of the highway .

By a catena of decisions, the law is well settled that if there is a tree standing on the defendant's land which is dried or dead and for that reason may fall and the defect is one which is either known or should have been known to the defendant, then the defendant is liable for any injury caused by the fall of the tree (see Brown Vs. Harrison (1947) 63 Law Times Reports 484; Quinn Vs. Scott (1965) 1 W.L.R. 1004, Mackie Vs. Dumbartonshire County Council, (1927) W.N. 247. The duty of the owner/occupier of the premises by the side of the road whereon persons lawfully pass by, extends to guarding against what may happen just by the side of the premises on account of anything dangerous on the

premises. The premises must be maintained in a safe state of repair. The owner/occupier cannot escape the liability for injury caused by any dangerous thing existing on the premises by pleading that he had employed a competent person to keep the premises in safe repairs. In *Municipal Corporation of Delhi Vs. Subhagwanti and Ors.* AIR 1966 SC 1750 a clock tower which was 80 years old collapsed in Chandni Chowk Delhi causing the death of a number of persons. Their Lordships held that the owner could not be permitted to take a defence that he neither knew nor ought to have known the danger. "The owner is legally responsible irrespective of whether the damage is caused by a patent or a latent defect," - said their Lordships. In our opinion the same principle is applicable to the owner of a tree standing by the side of a road. If the tree is dangerous in the sense that on account of any disease or being dead the tree or its branch is likely to fall and thereby injure any passer-by then such tree or branch must be removed so as to avert the danger to life. It is pertinent to note that it is not the defence of the Municipal Corporation that vis major or an act of God such as storm, tempest, lightning or extraordinary heavy rain had occurred causing the fall of the branch of the tree and hence the Corporation was not liable.

32. The appellant herein has contended that there was no negligence on their part, which warrants us to consider, few cases on what negligence means.

33. 'Negligence' explained in *Jacob Mathew vs. State of Punjab & Anr.* decided in Appeal (Crl.) 144 - 145 of 2004 on 05.08.2005, held as follows:

"Negligence as a tort The jurisprudential concept of negligence defies any precise definition. Eminent jurists and leading judgments have assigned various meanings to negligence. The concept as has been acceptable to Indian jurisprudential thought is well-stated in the *Law of Torts*, Ratanlal & Dhirajlal (Twenty-fourth Edition 2002, edited by Justice G.P. Singh). It is stated (at p.441-442) ____ "Negligence is the breach of a duty caused by the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would

not do. Actionable negligence consists in the neglect of the use of ordinary care or skill towards a person to whom the defendant owes the duty of observing ordinary care and skill, by which neglect the plaintiff has suffered injury to his person or property. The definition involves three constituents of negligence: (1) A legal duty to exercise due care on the part of the party complained of towards the party complaining the former's conduct within the scope of the duty; (2) breach of the said duty; and (3) consequential damage. Cause of action for negligence arises only when damage occurs; for, damage is a necessary ingredient of this tort."

According to Charlesworth & Percy on Negligence (Tenth Edition, 2001), in current forensic speech, negligence has three meanings. They are: (i) a state of mind, in which it is opposed to intention; (ii) careless conduct; and (iii) the breach of duty to take care that is imposed by either common or statute law. All three meanings are applicable in different circumstances but any one of them does not necessarily exclude the other meanings. (Para 1.01) The essential components of negligence, as recognized, are three: "duty", "breach" and "resulting damage", that is to say:-

1. the existence of a duty to take care, which is owed by the defendant to the complainant;

2. the failure to attain that standard of care, prescribed by the law, thereby committing a breach of such duty; and

3. damage, which is both causally connected with such breach and recognized by the law, has been suffered by the complainant. (Para 1.23) If the claimant satisfies the court on the evidence that these three ingredients are made out, the defendant should be held liable in negligence. (Para 1.24). Negligence — as a tort and as a crime The term 'negligence' is used for the purpose of fastening the defendant with liability under the Civil Law and, at times, under the Criminal Law. It is contended on behalf of the respondents that in both the jurisdictions, negligence is negligence, and jurisprudentially no distinction can be drawn between negligence under civil law and negligence under criminal law. The submission so made cannot be countenanced inasmuch as it is based upon a total departure from the

established terrain of thought running ever since the beginning of the emergence of the concept of negligence upto the modern times. Generally speaking, it is the amount of damages incurred which is determinative of the extent of liability in tort; but in criminal law it is not the amount of damages but the amount and degree of negligence that is determinative of liability. To fasten liability in Criminal Law, the degree of negligence has to be higher than that of negligence enough to fasten liability for damages in Civil Law. The essential ingredient of mens rea cannot be excluded from consideration when the charge in a criminal court consists of criminal negligence. In R. v. Lawrence, [1981] 1 All ER 974 (HL), Lord Diplock spoke in a Bench of five and the other Law Lords agreed with him. He reiterated his opinion in R. v. Caldwell 1981(1) All ER 961 (HL) and dealt with the concept of recklessness as constituting mens rea in criminal law. His Lordship warned against adopting the simplistic approach of treating all problems of criminal liability as soluble by classifying the test of liability as being "subjective" or "objective", and said "Recklessness on the part of the doer of an act does presuppose that there is something in the circumstances that would have drawn the attention of an ordinary prudent individual to the possibility that his act was capable of causing the kind of serious harmful consequences that the section which creates the offence was intended to prevent, and that the risk of those harmful consequences occurring was not so slight that an ordinary prudent individual would feel justified in treating them as negligible. It is only when this is so that the doer of the act is acting 'recklessly' if, before doing the act, he either fails to give any thought to the possibility of there being any such risk or, having recognized that there was such risk, he nevertheless goes on to do it."

34. The Hon'ble Apex Court in The Municipal Corporation of Greater Bombay vs. Shri Laxman Iyer and Anr. decided in Appeal (Civil) No.8424 of 2003 dated 27.10.2003, held as follows:

"...Though there is no statutory definition, in common parlance 'negligence' is categorized as either composite or contributory. It is first necessary to find out what is a negligent act. Negligence is omission of duty caused either by an

omission to do something which a reasonable man guided upon those considerations who ordinarily by reason of conduct of human affairs would do or obligated to, or by doing something which a prudent or reasonable man would not do. Negligence does not always mean absolute carelessness, but want of such a degree of care as is required in particular circumstances. Negligence is failure to observe, for the protection of the interests of another person, the degree of care, precaution and vigilance which the circumstances justly demand, whereby such other person suffers injury. The idea of negligence and duty are strictly correlative. Negligence means either subjectively a careless state of mind, or objectively careless conduct. Negligence is not an absolute term, but is a relative one; it is rather a comparative term. No absolute standard can be fixed and no mathematically exact formula can be laid down by which negligence or lack of it can be infallibly measured in a given case. What constitutes negligence varies under different conditions and in determining whether negligence exists in a particular case, or whether a mere act or course of conduct amounts to negligence, all the attending and surrounding facts and circumstances have to be taken into account. It is absence of care according to circumstances. To determine whether an act would be or would not be negligent, it is relevant to determine if any reasonable man would foresee that the act would cause damage or not. The omission to do what the law obligates or even the failure to do anything in a manner, mode or method envisaged by law would equally and per se constitute negligence on the part of such person. If the answer is in the affirmative, it is a negligent act."

35. Sir Percy Winfield in his book "Province of the Law of Tort", has explained tort as follows:

"Tortious liability arises from the breach of a duty primarily fixed by law; this duty is towards person generally and its breach is redressable by an action for un-liquidated damages."

36. On the aspect of breach of duty, Salmond in his Treatise on Torts, 11th Edition, at Page 604, summarises the law as follows:

"The breach of a duty created by statute, if it results in damage to an individual, is prima facie a

tort, for which an action for damages will lie at his suit. The question, however, is in every case one as to the intention of the legislature in creating the duty, and no action for damages will lie if, on the true construction of the statute, the intention is that some other remedy, civil or criminal, shall be the only one available. If the statutory duty involves the notion of taking care not to injure, the tort is now spoken of as 'statutory negligence'.

At page 608, Salmond further observed as follows:

"Indeed, it is impossible to lay down any definite principle. The general rule is that 'where an Act creates an obligation and enforces the performance in a specific manner performance cannot be enforced in any other manner.' But in the words of Lord Macnaghten 'whether the general rule is to prevail, or an exception to the general rule is to be admitted, must depend on the scope and language of the Act which creates the obligation and on consideration of policy and convenience'. The result is that the law depends on the interpretation which the courts (with or without the aid of the principles of construction which are now falling into some disfavour) may place on any particular statute. To a person unversed in the science, or art, of legislation it may well seem strange that Parliament has not by now made it a rule to state explicitly what its intention is in a matter which is often of no little importance instead of leaving it to the courts to discover, by a careful examination and analysis of what is expressly said, what that intention may be supposed probably to be."

37. Summarising from the judgments, extracted supra and texts, 'Act of God' means, an unexpected occurrence of nature, such as severe gale, snowstorms, hurricanes, cyclones and the like. But every unexpected wind and storm does not operate as an excuse from liability, if there is a reasonable possibility of anticipating their happening. 'Act of God' provides no excuse, unless so it is unexpected that no reasonable human foresight would be presumed to anticipate the occurrence having regard to the conditions of time and place known to be prevailing at. An 'Act of God' is an occurrence, which no human foresight can provide against and of which human prudence is bound to recognise the possibility. 'Act of God' is an inevitable accident, which happens not only without the concurrence of the will of the man, but in spite of all efforts, on his part to prevent it. It means, an accident physically unavoidable something which cannot be prevented by human skill or foresight.

An 'Act of God' is an inevitable or unavoidable accident without the intervention of man; some casualty which the human foresight could not discern and from the consequence of which no human protection could be provided. It should be an incident, due to an unexpected operation of natural forces free from human intervention, which no reasonable human foresight could be presumed to anticipate its occurrence or to prevent it. It should be a direct violent, sudden and irresistible act of nature as could not, by any amount of ability, have been foreseen, or if foreseen, could not by any amount of human care and skill have been resisted. If the act in its origin either in the whole or in part is due to the agency of man, whether in acts of commission or omission, of nonfeasance or of misfeasance, or in any other cause independent of the agency of natural forces, it will not be a case for 'Act of God'.

38. In the light of the above discussion, when the officials of the appellant Corporation have failed to discharge their duties enjoined on them, by Chennai City Municipal Corporation Act, 1919, in Section 259 of the Act, which mandates the Corporation to cut and remove dangerous trees, even if they were standing in a private place and when one of them fell on a car, resulting in loss of the precious life, prima facie, it is a tort, for which, an action for damages would lie. Act of God is not a defence to breach of duty or failure to perform statutory duties. As rightly observed by writ court, had the officials of the appellant Corporation, cut and removed the old, worn out and dangerous trees and performed their statutory duties, the accident would not have occurred.

39. When there is a failure on the part of the Corporation to discharge its statutory duties, it is not open to them to contend that the second respondent, who lost his parents at the young age, on account of such failure, to move the civil court, when courts have already held that the victim is entitled to public law remedy.

40. On the contention that the compensation awarded to the second respondent, is a windfall, and that, even the Motor Accident Claims Tribunal would not have awarded such quantum of compensation as done by the writ court, perusal of the order impugned shows that while estimating the loss of income, love and affection and such other factors to be taken into consideration, the writ court has held as follows:

"18. There is no codified law for arriving at the quantum of compensation in cases of this type. The enactments like Motor Vehicles Act, 1988; Workmen Compensation Act, 1948; and Fatal Accidents Act, 1855

may be applied for arriving at the just compensation. In the decision reported in (1969) 3 SCC 64 (C.K.Subramania Iyer v. T.Kunhikuttan Nair) the Supreme Court held that there is no exact uniform rule for measuring the value of human life and the measure of damages cannot be arrived at precisely. In the decision reported in (2001) 8 SCC 151 (M.S.Grewal v. Deep Chand Sood) the Supreme Court held that multiplier method may be adopted to arrive at the just compensation. The age of the deceased can also be taken for arriving at a correct multiplier as per the judgment of the Supreme Court reported in 2011 (5) LW 408 (P.S.Somanathan & Others v. District Insurance Officer & Another).

19. How the Court should decide the cases of this nature is emphasised by the Supreme Court in the decision reported in (2011) 10 SCC 634 (Ibrahim v. Raju). In para 9 it is held thus,

"9. This Court has time and again emphasised that the officers, who preside over the Tribunals adopt a proactive approach and ensure that the claims filed under the Act are disposed of with required urgency and compensation is awarded to the victims of the accident and/or their legal representatives in adequate measure keeping in view the relevant factors. Unfortunately, despite repeated pronouncements of this Court in which guiding principles have been laid down for determination of the compensation payable to the victims of road accidents and/or their families, the Tribunals and even the High Courts do not pay serious attention to the imperative of awarding just compensation to the claimants."

In (2009) 13 SCC 422 (Reshma Kumari v. Madan Mohan) the Supreme Court pointed out the need of giving just compensation to the victim. In paragraphs 26 and 27 it is held thus,

"26. The compensation which is required to be determined must be just. While the claimants are required to be compensated for the loss of their dependency, the same should not be considered to be a windfall. Unjust enrichment should be discouraged. This Court cannot also lose sight of the fact that in given cases, as for example death of the only son to a mother, she can never be compensated in monetary terms."

41. At the time of accident, father of the second respondent, was aged 42 years and as an Assistant Director, he earned Rs.18,526/- per month. Mother was aged 38 years and with

her qualifications, she earned Rs.2,500/- per month. Both were aged less than 50 years. Both had future prospects in their own career. Though in Reshma Kumari & Ors vs. Madan Mohan and Another reported in (2009) 13 SCC 422, the Hon'ble Apex Court held that in matters pertaining to accident claims, future prospects have to be considered and accordingly, just compensation has to be awarded, in the case on hand, there is no award under the above said head.

42. In the light of the decisions considered the writ court, quantum of compensation cannot be said to be a windfall or bonanza to the second respondent, who has lost his parents in the accident. On the other hand, we are of the view that it is a just compensation.

43. In the light of the above discussion and decisions, this court is of the view that when there is prima facie negligence, on account of failure to discharge statutory duties, resulting in tort, mandamus can be issued to compel the competent authorities, to pay compensation to the victims.

44. There is no merit in the writ appeal warranting interference and reversal of the impugned order. Accordingly, writ appeal is dismissed. However there shall be no order as to cost.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Asr
To

1 The Secretary to Govt., State of Tamil Nadu
Municipal Administration and Water
Supply Department
Fort St. George
Chennai - 600 009

2 The Commissioner
Inspector of Chennai
Rippon Buildings
Chennai 600 003

+lcc to Mr.Karthikaa Ashok, Advocate, S.R.No.66834

nri(CO)
md(03/01/2017)

W.A.No.1199 of 2012



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