

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 13.07.2016

Delivered on : 02.08.2016

CORAM:

THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.40800 of 2002

S.Krishnaswamy

.. Petitioner

Vs.

1.The State of Tamilnadu, rep by
The Secretary to Government,
Home Department,
Fort St.George,
Chennai-600 009.

2.The Secretary to Government,
Transport Department,
Fort St.George,
Chennai-600 009.

3.The Chairman and Managing Director,
Tamilnadu State Transport Corporation,
Chennai.

4.The Depot Manager,
Tamilnadu State Transport Corporation,
Sathyamangalam.

..

Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the respondents to pay the petitioner a sum of Rs.25,00,000/- (Rupees Twenty Five Lakhs Only), as compensation for the loss of vision, pain and suffering and permanent disability caused to the petitioner by the injury inflicted on him on 01.07.2001 and towards medical expenses incurred in connection therewith.

For Petitioner : Mr.T.M.Hariharan

For Respondents: Mr.S.Pattabiraman
Government Advocate for R1 and R2.
Mr.T.Chandrasekaran for R3 and R4.

O R D E R

The petitioner would state that he is an employee of The Vysya Bank Limited and have been working as ALPM Operator and was residing in Room No.52, Hotel Sri Vigneswara, Dhanappa Mudali Street, Madurai-625001. The petitioner would further state that his family members are living in Door No.19/27 (O), Radhika Avenue, P N Pudur, Coimbatore and he used to visit his family on Saturday nights and return to Madurai on Sunday night every week. According to the petitioner, on 30.06.2001, he came to Coimbatore to spend time with his family members and at that juncture, the former Chief Minister of Tamil Nadu Thiru.M.Karunanidhi was arrested and it was widely reported through press and visual media. The Dravida Munnetra Kazhagam [DMK] party had also called for Bandh on 02.07.2001. However, the State Government has specifically published in newspapers indicating that buses and other vehicles would ply between 6.00 a.m. and 06.00 p.m. on the said date.

2. The petitioner had to return to Madurai on 02.07.2001 and therefore, on 01.07.2001, he boarded a bus bearing Reg.No.TN 33 N 0912 belonging to the Tamil Nadu State Transport Corporation by purchasing a ticket by paying a sum of Rs.45.25p. The petitioner also enquired with the State Transport Corporation officials as to whether the bus from Coimbatore to Madurai would reach Madurai safely. The depot officials assured that there would not be any problem and the passengers would be taken safely to their destinations and so also stated by the driver and conductor of the said bus. The petitioner, on the strength of the assurance given by the depot officials, as well as driver and conductor of the bus, boarded the bus on 01.07.2001 and he sat on the first seat just behind the driver seat and the bus commenced the journey from Coimbatore at about 6.30 p.m. and was scheduled to reach Madurai between 11.30 p.m. and 12.00 midnight.

3. When the bus had crossed Paravai, which lies in the outer periphery of Madurai and falls within the jurisdiction of Samayanallur Police Station, at that juncture, a big stone pierced through the windshield of the bus and directly hit the petitioner on his left eye and as a result, his left eye ball came out with lot of pulp and caused injury around his left eye and cheek. The bones around his eye and left cheek were fractured and his left eyelid was torn and there was also profuse bleeding and as a consequence, the petitioner suffered excruciating pain and almost on the verge of collapse. On account of the said stone throwing, another passenger also sustained head injury and immediately, the bus was halted and according to the petitioner, two persons who were riding a Bajaj M-80 motorcycle bearing No.TN 65 3722 had thrown the stone on the bus, causing the said incident.

4. The petitioner was immediately taken to Jawahar hospital, R.N.Nagar Main Road, Madurai and was admitted as an

inpatient and given first aid and a C.T. Scan was also taken and he was informed that the eye surgeon would visit the hospital on the next day. The friends and relatives of the petitioner, on seeing the precarious condition of the petitioner, took him to Aravind Eye Hospital, Madurai and he was examined by a team of eye doctors/surgeons and they formed an opinion that the optic nerve was totally damaged and there is Traumatic Globa Rupture called Lid pore and other injures.

5. The petitioner was admitted as an in-patient in Aravind Eye Hospital, Madurai and surgery was done on 02.07.2001 and his left eye was removed and in that place, temporary dummy eye has been fixed and since the petitioner has suffered extensive injury on the left cheek as well as on the eyebrow, his face was also disfigured and developed persistent head ache and became tired within a short period. The petitioner continued to suffer severe pain and pressure on the backside of his head even after his discharge from Aravind Eye Hospital and he came to Coimbatore, but was unable to swallow food. The petitioner was admitted in Sankara Hospital, Tiruppur and he was examined by a Dental Surgeon, namely Dr.K.Natarajan, who opined fracture on the left eye and it was operated on 18.08.2001 and the petitioner also developed blood clots and Dr.Ravichandran, a reputed Plastic Surgeon, had also performed certain procedure.

6. The Samayanallur Police Station has registered a case on 02.07.2001 in Crime No.159/2001 against the concerned accused under Section 3(1) of the TNPPD Act and under Section 324 IPC. The petitioner, being in occupation as Computer Operator, is not in a position to carry on his normal avocation and the burden to maintain his aged widowed mother, grandmother, wife and two children also put pressure on him. The petitioner would claim that he has spent more than a lakh of rupees towards medical expenses and that his family members had also suffered mental pain and physical exertions and Aravind Eye Hospital has also assessed the petitioner's disability at 40%.

7. The petitioner would further state that he is aged only 44 years at the time of filing the writ petition and he has to educate his two sons who were studying 9th and 7th Standards respectively and the injury has given him a great blow in the form of physical disability and mental stress. The petitioner would claim that but for the assurance given by the State Transport Corporation officials, the driver and conductor of the bus, he could not have undertaken the journey and the State Government had given assurance that in spite of Bandh, law and order would be normal and adequate protection would be given; but failed to perform the public duty and responsibility cast upon them and as a consequence, the petitioner suffered the above said disabilities and would contend that the State Government is bound to compensate him

and claimed a sum of Rs.25,00,000/- towards compensation.

8. Mr.T.M.Hariharan, learned counsel appearing for the petitioner has drawn the attention of this Court to the typed set of documents which contain the medical records and would submit that as per the Discharge Summary Certificates dated 12.07.2001 and 18.10.2001 respectively issued by Aravind Eye Hospital, Madurai, he suffered globe rupture of left eye with fracture of floor and hemorrhage into the maxillary sinus and suffered from post traumatic globe rupture with lid laceration with comminuted fractures of orbital and mid-facial region, which has resulted in phthisis of left eye with no residual vision in that eye and a visual disability of 40%. Dr.Duraiswamy Eye Hospital, Chennai-17, on examining the petitioner, had issued a certificate dated 21.09.2001 stating that his left eye is totally damaged and blind due to hit by stone and he is deprived of binocular vision on account of total damage of the left eye. The learned counsel appearing for the petitioner has drawn the attention of this Court to the additional affidavit of the petitioner dated 14.04.2012 as well as the typed set of papers dated 18.04.2012 which contains the details of treatment undergone by the petitioner and would submit that as per the Discharge Summary Certificate issued by the Sankara Hospital, Thirupur dated 02.03.2002, a surgery was performed on the petitioner on 18.08.2001 by Dr.P.Ravichandran, Plastic Surgeon and Dr.K.Natarajan-Dental Surgeon and was discharged on 08.09.2001. The petitioner was admitted as an in-patient in Aravind Eye Hospital, Madurai from 02.07.2001 to 12.07.2001, followed by several other visits and short spells of treatment and was also admitted as an in-patient in Sankara Hospital, Thirupur from 15.07.2001 to 26.07.2001 and was re-admitted on 29.07.2001 and was discharged on 12.08.2001 and was again re-admitted on 18.8.2001 and was discharged on 08.09.2001 and had so far spent Rs.5,00,000/- for his treatment and surgeries and in that process, suffered serious hardship, pain and continues to suffer mental agony and the compensation claimed by him, in the facts and circumstances of the case, is very low and prays for appropriate orders.

9. The learned counsel appearing for the petitioner, in support of his submissions, placed reliance upon the following judgments:

- (i) Smt.Bhajan Kaur v. Delhi Admn. Through the Lt.Governor [ILR 1996 Delhi 754]
- (ii) Communist Party of India (M) v. Bharat Kumar and Others [(1998) 1 SCC 201]
- (iii) R.Gandhi and Others v. The Union of India [1988-2-LW 399]

(iv) Manjit Singh Sawhney v. Union of India and Others [ILR (2005) II Delhi 225]

(v) Venkateswara, I.T.I. v. The Government of Tamil Nadu [2008 (6) CTC 798]

10. In Smt. Bhajan Kaur v. Delhi Admn. Through the Lt. Governor [ILR 1996 Delhi 754], the husband of the petitioner was killed by a mob, which surrounded a train at Tughlakabad Station, forced out about 25-26 Sikh passengers and lynched them and in the writ petition filed for compensation, the widow was paid with compensation. It is relevant to extract the following portion of the said judgment:

"1. It is the State's obligation to create conditions where rights of individuals or group of persons under Article 21 are not and cannot be violated. It is for the State and its functionaries to evolve methods and strategies to ensure protection of life and liberty of a person or persons which is guaranteed by Article 21. It is obvious that there will be no use of the rights conferred by Article 21 if the State does not exact compliance of the same from its officials and functionaries and private persons. Violaries of violence may strike for difference reasons but each time it results in negation of Article 21.

2. It is the duty and responsibility of the State to secure and safeguard life and liberty of an individual from mob violence. It is not open to the State to say that the violations are being committed by private persons for which it cannot be held accountable. Riots more often than not take place due to weakness, laxity and indifference of the administration in enforcing law and order. If the authorities act in time and act effectively and efficiently, riots can surely be prevented. Message must go to the mischief mongers that the administration means business and their nefarious designs would be thwarted with an iron hand.

3. The sweep of Article 21 is wide and far reaching. Article 21 is not to be restricted to the violation of right to life and liberty committed by the State alone. That right is also to be protected and safeguarded by the State from being violated or interested with by private individuals.

5. The judicial trend is to award substantial compensation for illegal extinction or deprivation of life and liberty. The loss of life in jail at the

hands of inmates or jail authorities and loss of life outside the jail at the hands of functionaries of the State or rioters bring the same tragic results for the families of the victims. No distinction can be made for the purpose of grant of compensation in the aforesaid situations. The principles for grant of compensation or financial aid to the families of the victims whose lives are taken away without due process of law should be the same."

11. In *Bharat Kumar K.Patlicha and another v. State of Kerala and Others* [(1998) 1 SCC 202], a Full Bench of the Kerala High Court held that calling for a Bandh by a political party held to be violative of fundamental rights of the citizen of India and declared as unconstitutional and challenge was made by Communist Party of India (M) before the Hon'ble Supreme Court of India and the said Court, in the decision in (1998) 1 SCC 201, confirmed the judgment rendered by the Kerala High Court.

12. In *R.Gandhi and Others v. The Union of India and another* [1998-2-L.W.399], people belonging to Sikh community in and around Coimbatore were affected in a riot on the eve of assassination of Srimathi Indira Gandhi, Prime Minister of India and the properties possessed by them were also damaged. A Single Bench of this Court, taking note of the facts and circumstances, observed as follows:

"The maintenance of law and order is the primary duty on the State and under our Constitution it is a State subject and tops the State list. No Government worth the name can abdicate this function and put the life and liberty, the hearth and home of the citizens in jeopardy. Article 38 of the Constitution enjoins on the State to strive to promote the welfare of the people by securing and protecting, as effectively as it may, a social order in which justice, social, economic and political, shall inform all the institutions of the national life. Under Article 19(a) and (g) of the Constitution any citizen of this Country is entitled to reside and settle in any part of the territory of India and to practise any profession or to carry on any occupation, trade or business.

It is obvious that the police have come to the scene very later and their efforts to quell the riots were half-hearted. The action of the Police was lethargic and inefficient. Even according to the affidavit filed by the Deputy Secretary, the situation has been brought under control only on 4-

11-1984. There has been a virtual breakdown of law and order on 31-10-1984 and subsequent days resulting in huge losses to the members of the Sikh community and to few others in the vicinity. It seems that no policeman was present at the scene and this has emboldened the hooligans to indulge freely in these acts of depredation."

In the said decision, this Court held that the members of the Sikh community in Coimbatore, who have been the target of attack for no fault of theirs, form a microscopic minority and are in a socially disadvantageous position and taking note of the observations of the Hon'ble Supreme Court, awarded the compensation.

13. In *Manjit Singh Sawhney v. Union of India and Others* [ILR (2005) II Delhi 225] the attack was inflicted on the Sikh Community on the eve of assassination of late Prime Minister Srimathi Indira Gandhi and therefore, by filing a writ petition, compensation was prayed for and a Single Bench of the Delhi High Court has taken note of the various judgments and on the facts of the case, found that there was a complete breakdown of the State machinery and further noted that despite the judgment in *Bhajan Kaur v. Delhi Administration* (cited supra) there is nothing forthcoming with regard to the fixation and location of responsibility for the riots or for confiscation of property so as to secure payment of compensation and it is relevant to para 15 of the said judgment:

"15. I find that the issue of compensation on account of contravention of human rights and fundamental freedoms has fallen for consideration before the Apex Court in several judgments. The legal principles which are applicable in such cases are well settled. It has been held that the protection which is guaranteed in the Constitution is an acknowledged remedy for enforcement and protection of such rights. It is settled law that such a claim based on strict liability made by resorting to a Constitutional remedy provided for enforcement of the fundamental rights, is distinct from and in addition to the remedy in private law for damages for the attack resulting from the contravention of fundamental rights. The defense of sovereign immunity being inapplicable and alien to the concept of guarantee of fundamental rights, there can be no question of such a defense being available to such 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 power and enforcement of the fundamental right is claimed by resorting to the remedy in public law under the Constitution by recourse to Articles 32 and 226 of the Constitution. This view was taken by the Apex Court in the judgment reported at AIR 1993 SC 1960 entitled *Smt. Nilabati Behara alies Lalita Behura v. State of Orissa and Ors.*; *Khatri (II) v. State of Bihar* 1981 (1) SCC 627 (also AIR 1981 SC 928) and *Khatri (IV) v. State of Bihar* (1981) 2 SCC 493 (AIR 1981 SC 1068).

The Apex Court had observed that the court is not helpless to grant relief in the case of violation of the rights to life and personal liberty, and it should be prepared to forge new tools and devices for the purpose of vindicating these precious fundamental rights. It was also indicated that the procedure suitable in the facts of the case must be adopted for conducting the inquiry needed to ascertain the necessary facts, for granting the relief as the available mode of redress, for enforcement of the guaranteed fundamental rights."

Insofar as ascertainment of quantum of compensation is concerned, in para 20 of the said judgment, it is observed as follows:

"20. The award of monetary relief to the victim for deprivation of fundamental right is to be guided by the afore-stated principle requiring the state to make monetary amends under public law for the wrong done due to breach of the public duty of not protecting the fundamental rights of the citizens. This computation is not guided by any strict arithmetical formula and it has to be borne in mind that money cannot remove the trauma and the battering suffered by a victim."

Ultimately, compensation was awarded to the victims in that case.

14. In *Venkateswara I.I.T. v. The Government of Tamil Nadu* [2008 (6) CTC 798], the petitioner therein was owning an Ashok Leyland bus and it was burnt which resulted in estimated loss of Rs.2,00,000/- and it was found that it was burnt by a violent mob and the petitioner has filed the writ petition claiming compensation and the learned Judge, after taking note of the Full Bench Judgment of this Court in *P.P.M. Thangaiah Nadar Firm, Tuticorin v. Government of Tamil Nadu* [2006 (5) CTC 97 (FB)] as well as *Coimbatore Bar Association v. State of T.N.* [2008 W.L.R. 662] and other decisions, has awarded compensation of Rs.2,00,000/- to the petitioner therein.

15. Per contra, Mr.S.Pattabiraman, learned Government Advocate appearing for the respondents 1 and 2 has invited the attention of this Court to the counter affidavit of the third respondent which was adopted by the second respondent and would contend that the passengers travelling in the bus bearing Reg.No.TN33-N 0912, which was going to Coimbatore, were informed that in case of any problems and any untoward incidents occurred enroute, they had to bear the consequences and the passengers having aware of the reasons, had took the unsafe travel, which include the petitioner and therefore, the third respondent cannot be mulcted with the liability to pay compensation for the injuries/disabilities suffered by the petitioner. The case registered by the jurisdictional police also ended in acquittal. The third respondent also took a stand that it operated the vehicle only at the request of the travelling public to fulfill their needs and the incident occurred is unexpected and unforeseen and since the occurrence took place in a public agitation, the responsibility cannot be fixed on the officials of the transport Corporation and it was also not in a position to reasonably expect that such incident would occur and prays for dismissal of the writ petition.

16. The second respondent did not take any independent stand but merely adopted the counter affidavit of the third respondent.

17. In sum and substance, it is the submission of the learned Government Advocate as well as the learned Standing Counsel appearing for the respondents 2 and 3 that since the petitioner was very well aware of the consequences in undertaking the journey during Bandh, the throwing of stone is an accidental one, for which the officials are not all responsible and the petitioner cannot claim compensation against the respondents and prays for dismissal of the writ petition.

18. This Court paid its best attention and anxious consideration to the rival submissions and also perused the materials placed before it.

19. A perusal of the additional affidavit and typed set of papers would disclose that the State Government through public announcement had indicated that it had taken all necessary steps to maintain law and order problem and also ensured that general public will not be put to any inconvenience on account of the Bandh called for by DMK Party due to the arrest of their leader Thiru.M.Karunanidhi and also indicated that normal bus facilities in time would be in place. The said stand of the State Government has not been disputed by the second respondent while adopting the counter affidavit of the third respondent.

20. It is an admitted fact that a stone was thrown on the bus belonging to the third respondent Corporation in which the petitioner was one of the passengers and it pierced the windshield and landed on the petitioner's left eye and as a consequence, he has suffered injuries and his left eye was removed and suffered disability of 40% and also developed blood clots as well as broken jaw, for which also, he underwent surgery and the said fact is also not in dispute. No doubt, Samayanallur Police Station has registered a case in Crime No.159 of 2001 under Section 3(1) of TNPPD Act and under Section 324 IPC against two persons travelling in Bajaj M 80 motorcycle bearing No.TN 65 3722 and as per the counter affidavit of the third respondent, the case after trial, has ended in acquittal. The State, who was the prosecuting agency, for the reasons best known to them, did not challenge the order of acquittal by filing an appeal and it has become final.

21. The Discharge Summaries and the medical reports of Aravind Eye Hospital, Madurai, Dr.Duraiswamy Eye Hospital, Chennai, Sankar Hosptital, Tiruppur would clearly reveal that the petitioner has suffered disability of loss of left eye and the percentage of disability is 40% and that apart, the petitioner suffered broken jaws and blood clots, for which surgeries were performed and was admitted as an in-patient for very many days and continues to suffer pain and other difficulties on account of the said disability. The petitioner has also enclosed medical bills in the typed set of documents and incurred a sum of Rs.55,000/- towards medical expenses and accordingly, he continues to take treatment. It is also pertinent to point out at this juncture that the petitioner, at the time of accident, was in private employment and unlike Government servants, he cannot have the privilege of applying for medical leave and other leave and remained in rest till the illness/disability is completely cured. It is also the stand of the petitioner that he has to maintain his family consisting of aged widowed mother, wife and two children and on account of the disability suffered by him, he finds it extremely difficult to make both ends meet.

22. In The Registrar General, High Court of Meghalaya v. The State of Meghalaya and Others [AIR 2015 Meghalaya 23 (FB)], a Bandh was called and the Registrar General of Meghalaya High Court has put an office note, on the basis of press clippings and information regarding the impact of Bandh on the presence of Court staff and also on essential services like hospitals and medical shops etc. and it was taken cognizance and numbered as WP(C)No.127 of 2015. The Meghalaya High Court had taken note of the Full Bench decision of the Kerala High Court in Bharat Kumar K.Palicha and another v. State of Kerala [AIR 1997 Kerala 291] as well as challenge

made to the said decision in Communist Party of India (M) v. Bharat Kumar and Others [(1998) 1 SCC 201] (cited supra) as well as various other decisions rendered by Calcutta and Bombay High Courts and summarized the legal position. It is relevant to extract para 12 of the said judgment:

"12. The legal position that emerges from the aforesaid discussion can thus be summarized as: (i) since calls of bandh infringe the fundamental rights of the citizens, inter alia, under Articles 19 and 21 of the Constitution, the organizers and sponsors calling bandh shall be held liable under the law to recoup and make good the loss and damages; (ii) Even the State Government can be asked to pay damages to citizens, if it fails to stop bandh, strike and hartal etc; (iii) The essential services shall always remain available in all eventualities, and (iv) In case of necessity, the District Administration can be authorized to call Para-military force to deal with the situation."

23. The respective learned counsel appearing for the official respondents made a faint attempt by submitting that the incident was unexpected and unforeseen and the third respondent Corporation, which operated its bus services armed with the clearance given by the police, was not in a position to reasonably expect that such an accident would occur and therefore, the petitioner is not entitled to claim compensation from them.

24. In Nilabati Behera (Smt) alias Lalita Behera (through the Supreme Court Legal Aid Committee) v. State of Orissa and Others [(1993) 2 SCC 746], it is observed as follows:

"17. It follows that '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 [pic]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. This is what was indicated in Rudul Sah v. State of Bihar [(1983) 4 SCC 141] and is the basis of the subsequent decisions in which compensation was awarded under Articles 32 and 226 of the Constitution, for contravention of fundamental rights."

25. In Union Carbide Corporation v. Union of India [(1991) 4 SCC 584], the scope of grant of relief of monetary compensation under Article 32 by the Hon'ble Supreme Court and under Article 226 by the High Court came up for consideration and it is relevant to extract the following portion of the said judgment:

"34. 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 this Court or under Article 226 by the High Courts, for established infringement of the indefeasible right guaranteed under Article 21 of the Constitution is a remedy available in public law and is based on the strict liability for contravention of the guaranteed basic and indefeasible 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 of the Constitution seeking enforcement or protection of fundamental rights, 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 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' [pic] 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."

26. In *Sube Singh v. State of Haryana and Others* [(2006) 3 SCC 178], while dealing with grant of compensation in a public law remedy, the Hon'ble Supreme Court of India held as follows:

"It is thus now well settled that the award of compensation against the State is an appropriate and effective remedy for redress of an established infringement of a fundamental right under Article 21, by a public servant. The quantum of compensation will, however, depend upon the facts and circumstances of each case. Award of such compensation (by way of public [pic] law remedy) will not come in the way of the aggrieved person claiming additional compensation in a civil court, in the enforcement of the private law remedy in tort, nor come in the way of the criminal court ordering compensation under Section 357 of the Code of Criminal Procedure."

Thus, it is the duty of the State to maintain law and order and it is also under obligation to protect the life and property of the citizens and when life and property is taken away under the guise of Hartal/Bandh by any individual/organization, the State is under mandate to compensate the victim by granting adequate and reasonable compensation. A presumption arise on the leader of the State to protect the life and property of the citizens as and when it is taken away.

27. In the case on hand, the materials placed before this Court would clearly reveal that the State has given assurance that on the eve of Bandh, normal life will not be paralyzed and essential services will be properly maintained, based on which only the petitioner undertook the journey and on account of stone throwing by two persons on the eve of Bandh, he suffered grievous injuries which led to loss of vision on his left eye, broken jaws and blood clots for which he has undergone surgeries and incurred medical expenses and was also put to grave hardship, mental agony, pain and suffering. The prosecution launched against two persons by the State has ended in acquittal and the State did not evince any interest to challenge the said order of acquittal passed by the trial Court and it has become final and therefore, this Court is of the considered opinion that the State is bound to compensate the petitioner for the agonies being undergone by him.

28. In T.Sekaran v. State of Tamil Nadu [2010 (1) CWC 455], a Division Bench of this Court has considered the quantum of compensation to the persons who suffered injuries and it is relevant to extract the para 51 of the said judgment:

"51. Once it is found that the family members of the victim are entitled to compensation, the next question to be considered is as to the quantum. There is no codified law, for arriving at the quantum of compensation in cases of this nature. Though special enactments such as the Motor Vehicles Act, 1988 and the Workmen's Compensation Act, 1948, provide lot of indications for arriving at the quantum of compensation, in cases to which they apply, there is no enactment to cover cases of this nature. Even the Fatal Accidents Act, 1855, does not provide adequate indications. The State of Kerala has a special enactment known as "The Kerala Torts (Miscellaneous Provisions) Act, 1976. But even the said Act, is primarily aimed at codifying the law relating to survival of causes of action, liability of joint tortfeasors and the liability in cases of contributory negligence in respect of torts."

29. The petitioner, at the time of accident, was aged about 44 years and as per the certificates issued by Aravind Eye Hospital, Madurai, he lost the eye sight of his left eye and is having a disability of 40%. Series of medical bills enclosed in the typed set of documents would disclose that the petitioner had incurred a sum of Rs.55,000/- by way of medical expenses and as per his additional affidavit, he was admitted as an inpatient in Aravind Eye Hospital, Madurai from 02.07.2001 to 12.07.2001, followed by several other visits and short spells of treatment and also admitted as an in-patient in Sankara Hospital, Tiruppur from 15.07.2001 to 26.07.2001, 29.07.2001 to 12.08.2001 and 18.08.2001 to 08.09.2001 and therefore, he was admitted as an in-patient nearly for 55 days.

30. According to the petitioner, he was working as ALPM Operator in a private concern and on account of the injuries sustained by him and trauma undergone by him, he was unable to perform his duties and he also require continuous further treatment and as a consequence, he has to incur more medical and other related expenses. Though the petitioner claimed compensation of Rs.25,00,000/-, in the considered opinion of the Court, he is entitled to a lump sum compensation of Rs.10,00,000/- (Rupees Ten Lakhs Only) with interest @ 7.5 % per annum from the date of filing the writ petition viz.,

28.10.2002, till the date of full and final settlement and the said order is also without prejudice to the rights of the petitioner to approach the civil forum for getting more compensation. The compensation amount determined by this Court shall be payable by the first respondent within a period of two months from the date of receipt of a copy of this order.

31. This Writ Petition is disposed of accordingly. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

jvm

To

- 1.The Secretary to Government,
State of Tamilnadu, Home Department,
Fort St.George,
Chennai-600 009.
- 2.The Secretary to Government,
Transport Department,
Fort St.George,
Chennai-600 009.
- 3.The Chairman and Managing Director,
Tamilnadu State Transport Corporation, Chennai.
- 4.The Depot Manager,
Tamilnadu State Transport Corporation,
Sathyamangalam.

1 cc to Mr.T.M.Hariharan, Advocate, sr.43519
1 cc to Mr.T.Chandrasekaran, Advocate, sr.43641

in W.P.No.40800 of 2002

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kra 23.08.2016