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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved on: 25.05.2016

Judgment Pronounced on: 13.07.2016

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+ W.P.(C) 7223/2014

FATIMA & ORS

..... Petitioners

Through Mohd.Faisal, Advocate

Versus

NATIONAL ZOOLOGICAL PARK & ORS

..... Respondents

Through Mr.Jasmeet Singh, CGSC for UOI.

Mr.Gautam Narayan, ASC with
Mr.R.A.Iyer, Advocate for the
GNCTD.

SI Ashok Kumar, PS- Hazarat
Nijamuddin.

Dr.Saif Mahmood, Mr.Sumant De &
Mr.Vivek Agarwal, Advocates for
R-6.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.

1. The present writ petition is filed by the petitioners, the legal representatives of the deceased Maqsood who died in an unfortunate incident on 23.09.2014 in the National Zoological Park, Mathura Road, New Delhi. Petitioner No.1 is the wife of the deceased, petitioner No.2 is the mother and petitioner No.3 is the younger brother aged 18 years of the deceased.

2. On 23.09.2014, deceased Maqsood visited the Zoo. At around 1.00 PM, he suddenly fell into the dry moat, i.e. the white tiger's enclosure. It is stated that on account of the fall, his leg got fractured and he was unable to

move. On seeing the white tiger which was roaming nearby, Maqsood called for help. The tiger sniffed him and kept sniffing him for about 15 minutes. Thereafter, it attacked Maqsood and dragged him away to the other end of the enclosure and mauled him to death. His lifeless body was dragged around for some time. FIR No. 543/14 of the said incident was registered under Section 304A of IPC against un-named persons. It is the contention of the petitioners that the Zoo Authorities committed gross negligence and did not follow the guidelines, rules and norms under the Wild Life (Protection) Act, 1972. It is urged that for 15 minutes Maqsood was alive in the cage of the tiger yet the Zoo Authorities failed to rescue him. Timely intervention could have saved his life.

3. The following submissions are made to support the contention about the negligence on the part of the Zoo Authorities:

- (a) Only one untrained guard was on duty for controlling the large crowd of daily visitors for such a large area like the white tiger's enclosure. Considering the number of visitors, more guards were required to control the crowd.
- (b) The moat which acts as a barrier had not been filled with water. Had there been water, it would have prevented the tiger to come close to the deceased.
- (c) The guard on duty must have been trained to use tranquilizer guns but there was no arrangement for immediate use of the tranquilizer gun.
- (d) For an emergency situation, ladders, water supply, tranquilizer guns, alarms, etc. should have been kept handy. Had there been a

collapsible ladder near the spot, the guard could have saved Maqsood's life by pulling him out of the enclosure.

(e) The tiger's enclosure is guarded by a three-tier fencing comprising a 2.5 feet high metal fence, a shrub area and finally a cemented wall. The fencing is hardly 2.5 feet high. Even a child can cross such barricading. It is urged that anybody could fall into the enclosure, if he looks down and loses his balance. The Zoo authorities were obliged to take better precautions to avert such a happening.

(f) As per the guidelines of the Central Zoo Authority for keeping an effective watch on the animals and visitors, at least one watch tower of 5 meter height has to be provided. There was none.

(g) The Zoo Authorities had no emergency plan and the only option, they had when Maqsood fell in the moat was to try to call the animal back inside his cage by making noises.

4. Hence, based on the above it is urged that the life of Maqsood was lost because the Zoo Authorities who had the responsibility to protect and take care of the visitors to the Zoo had failed to discharge their duties.

5. Based on the above allegations, the petitioners have prayed for suitable compensation and damages with special costs and penalties to the petitioners i.e. estimated at Rs.50 lacs for the negligent acts of respondents No.1 to 4.

6. Delhi Police have filed their counter affidavit. They have not mentioned the exact cause of the incident in the counter affidavit. It is however stated that as per the post-mortem report, the cause of the death was neurogenic shock consequent to multiple injuries over the neck leading

to crushing and severance of cervical spine and cord. It is further stated that as per the post-mortem report, no fracture in the leg of the deceased was found. It is stated that no eye witness has come forward to join in investigation of the case.

7. Delhi Zoo which is under the control of respondent No.3 has also filed their counter affidavit. It is their contention that the deceased was suffering from schizophrenia and undergoing treatment in the hospital. It is stated that the deceased climbed and crossed the fencing and climbed on the wall of the moat on his own and slipped. He hence fell 25 feet deep into the moat. Therefore, it is stated that the Delhi Zoo cannot be blamed for the incident. It is further stated that the attack by the tiger took place within four minutes and 27 seconds of the deceased slipping into the cage. The period of 15 minutes mentioned by the petitioners has been denied. It is further stated that the animal keeper who was on duty on seeing Maqsood, tried to call the animal to close the tiger into a cell. However, some of the visitors reacted and started pelting the animal with stones. A big stone hit the tiger on the neck because of which the animal got irritated and attacked Maqsood. It is urged that the answering respondent has put lot of sign boards containing warnings. The victim was not in a good mental state and was getting treatment from hospital. The victim was said to be crazy about tigers and often used to question his family about a tiger incident that occurred in Kolkata Zoo. The security staff warned Maqsood twice when he tried to cross the barricade and climb the wall. When the security staff was engaged with other visitors, Maqsood jumped in the cage. Hence, it is urged that the unfortunate incident took place due to the own acts of negligence of the deceased and the respondents cannot be held liable for any amount. The

allegations being made about negligence of the zoo authorities have been denied claiming that all adequate precautions have been taken by the Zoo. As a goodwill gesture, it is stated, a payment of Rs.1 lac has been made to the victim's family i.e. petitioners.

8. In the rejoinder, the petitioners have denied that the deceased was suffering from any poor mental condition or schizophrenia. The allegations, it is stated, are false and highly defamatory.

9. We have heard the learned counsel for the parties and gone through the records. The petitioners have also filed written submissions relying upon various judgments.

10. The issue which first seeks answer from this court is as to whether in these facts this court could grant compensation to the petitioners in the present writ petition. The legal position in this regard may be looked at. The Supreme Court in the case of *Nilabati Behera Alias Lalita Behera vs. State of Orissa & Ors., 1993 (2) SCC 746/(MANU/SC/0307/1993)* was dealing with the issue of award of compensation in proceedings under Article 32/226 of the Constitution. The court noted that the remedy is available in public law based on strict liability for contravention of fundamental rights. The court further held that this right is distinct from and in addition to the remedy in private law for damages for the tort resulting from contravention of the fundamental rights. The court also held that the Supreme Court and the High Courts have wide powers under Article 32 and Article 226 respectively to forge new tools that may be necessary for doing complete justice and enforcing the fundamental rights guaranteed in the Constitution. The relevant portion of the judgment reads as follows:-

“22. We respectfully concur with the view that the court is not helpless and the wide powers given to this Court by Article 32, which itself is a fundamental right, imposes a constitutional obligation on this Court to forge such new tools, which may be necessary for doing complete justice and enforcing the fundamental rights guaranteed in the Constitution, which enable the award of monetary compensation in appropriate cases, where that is the only mode of redress available. The power available to this Court under Article 142 is also an enabling provision in this behalf. The contrary view would not merely render the court powerless and the constitutional guarantee a mirage, but may, in certain situations, be an incentive to extinguish life, if for the extreme contravention the court is powerless to grant any relief against the State, except by punishment of the wrongdoer for the resulting offence, and recovery of damages under private law, by the ordinary process. If the guarantee that deprivation of life and personal liberty cannot be made except in accordance with law, is to be real, the enforcement of the right in case of every contravention must also be possible in the constitutional scheme, the mode of redress being that which is appropriate in the facts of each case. This remedy in public law has to be more readily available when invoked by the have nots, who are not possessed of the wherewithal for enforcement of their rights in private law, even though its exercise is to be tempered by judicial restraint to avoid circumvention of private law remedies, where more appropriate.

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24. The above discussion indicates the principles on which the Court's power under Articles 32 and 226 of the Constitution is exercised to award monetary compensation for contravention of a fundamental right.....”

11. In *Air India Statutory Corporation & Ors. vs. United Labour Union & Ors.*, (1997) 9 SCC 377 the Supreme Court held that there is no limitation or fetters on the powers of the High Court under Article 226 of the

Constitution except self-imposed limitations. The Supreme Court held as follows:-

“59. The founding fathers placed no limitation or fetters on the power of the High Court under Article 226 of the Constitution except self-imposed limitations. The arm of the Court is long enough to reach injustice wherever it is found. The Court as sentinel in the *qui vive* is to mete out justice in given facts. On finding that either the workmen were engaged in violation of the provisions of the Act or were continued as contract labour, despite prohibition of the contract labour under Section 10(1), the High Court has, by judicial review as the basic structure, constitutional duty to enforce the law by appropriate directions. The right to judicial review is now a basic structure of the Constitution by catena of decisions of this Court starting from *Indira Gandhi v. Raj Narayan* to *Bommai's case*. It would, therefore, be necessary that instead of leaving the workmen in the lurch, the Court would properly mould the relief and grant the same in accordance with law.”

12. The judgment of the Supreme Court in the case of ***Municipal Corporation of Delhi, Delhi v. Association of Victims of Uphaar Tragedy & Ors, (2011) 14 SCC 481/(MANU/SC/1255/2011)***, dealt with a case relating to a fire tragedy at Uphaar Cinema Theatre. 59 patrons died while the movie was on due to a fire in the transformer installed by Delhi Vidyut Board (DVB). The Supreme Court noted that damages can be awarded for direct negligence on the part of a statutory authority in cases involving doctrine of strict liability. In the case of DVB, it was held that direct negligence was established as a proximate cause for the injuries to and death of victims. Hence, all the victims were entitled to damages under public law liability. Further the court held that compensation under public law remedy need not only be a nominal amount but something more. It can be by way of making monetary amounts for the wrong done or by way of exemplary

damages, exclusive of any amount recoverable in a civil action based on tortious liability.

13. We may now have a look at the position of visitors to the zoo i.e. in case any visitor suffers an injury or dies due to acts connected with a visit to the zoo. The rule of strict liability was propounded by English Law as laid down in the noted case of *Rylands vs. Fletcher, (1868) LR 3 HL 330*. That English case was a case in which 'B' a mill owner employed contractors to construct a reservoir on his land to provide water for his mill. In the course of the work, the contractor of the mill owner found some old shafts and pathways while digging the reservoir. The shafts appeared to be filled with earth and were not blocked. They were connected to the mines of the neighbor. When the reservoir was filled with water it passed through the old shafts and flooded the mines of the neighbors. It was found that 'B' was not negligent. The mine owners sued the mill owner B and B was held liable. The judgment is the classical exposition of doctrine of absolute liability, namely, that the person who for his own purposes brings on his lands and collects there, anything likely to do mischief if it escapes, must keep it in at his peril, and if he does not do so, is prima facie answerable for all the damages. However, the rule provided some exceptions, i.e. he could escape liability if he showed that the escape was due to the plaintiff's default or as a consequence of vis major or the act of God etc.

14. In *M.C. Mehta & Anr. vs. Union of India & Ors., (1987) 1 SCC 395/(MANU/SC/0092/1986)*, the Supreme Court commenting on the rule of *Rylands v. Fletcher* held that the rule was evolved in the 19th century when development of science and technology had not taken place. There was no need to feel inhibited by this rule which was evolved in a totally different

kind of economy. The said rule would not be applicable with the stated exceptions. The Supreme Court held as follows:

“31. We must also deal with one other question which was seriously debated before us and that question is as to what is the measure of liability of an enterprise which is engaged in an hazardous or inherently dangerous industry, if by reason of an accident occurring in such industry, persons die or are injured. Does the rule in *Rylands v. Fletcher* apply or is there any other principle on which the liability can be determined?We would therefore hold that where an enterprise is engaged in a hazardous or inherently dangerous activity and harm results to anyone on account of an accident in the operation of such hazardous or inherently dangerous activity resulting, for example, in escape of toxic gas the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident and such liability is not subject to any of the exceptions which operate vis-a-vis the tortious principle of strict liability under the rule in *Rylands v. Fletcher* (supra).

32. We would also like to point out that the measure of compensation in the kind of cases referred to in the preceding paragraph must be co-related to the magnitude and capacity of the enterprise because such compensation must have a deterrent effect. The larger and more prosperous the enterprise, the greater must be the amount of compensation payable by it for the harm caused on account of an accident in the carrying on of the hazardous or inherently dangerous activity by the enterprise.

15. The above legal position was reiterated by the Supreme Court in the case of *Indian Council for Enviro-Legal Action, etc. vs. Union of India & Ors.*, **AIR 1996 SC 1446/(MANU/SC/1112/1996)** wherein para 65 the Supreme Court held as follows:-

“65. On a consideration of the two lines of thought [one adopted by the English Courts and the other by the Australian High Court], we are of the opinion that any principle evolved in

this behalf should be simple, practical and suited to the conditions obtaining in this country. We are convinced that the law stated by this Court in Oleum Gas Leak Case [M.C.Mehta v. UOI (supra)] is by far the more appropriate one - apart from the fact that it is binding upon us. [We have disagreed with the view that the law stated in the said decision is obiter.] According to this rule, once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity irrespective of the fact whether he took reasonable care while carrying on his activity. The rule is premised upon the very nature of the activity carried on. In the words of the Constitution Bench, such an activity "can be tolerated only on the condition that the enterprise engaged in such hazardous or inherently dangerous activity indemnifies all those who suffer on account of the carrying on of such hazardous or inherently dangerous activity regardless of whether it is carried on carefully or not." The Constitution Bench has also assigned the reason for stating the law in the said terms. It is that the enterprise [carrying on the hazardous or inherently dangerous activity] alone has the resource to discover and guard against hazards or dangers - and not the person affected and the practical difficulty [on the part of the affected person] in establishing the absence of reasonable care or that the damage to him was foreseeable by the enterprise."

16. Reference may also be had to the judgment of the Division Bench of this court in the case of *Nitin Walia Minor vs. Union of India and Ors.*, **AIR 2001 Delhi 140/(MANU/DE/1257/2000)**. That was a case where a young child of three years visited the Delhi Zoo. When he reached the enclosure of the white tigress, the boy was exhilarated. He reached near the railing without realizing as to what was in store for him. The tigress all of a sudden grabbed his hand through the railing and pulled it in. By the time the child could be rescued, irreversible harm and damage had been done and the tigress had bitten the right arm of the appellant. The petitioner was rendered

permanently disabled to the extent to 100%. In those facts a suit was filed. In appeal, this court held that the liability of the respondent could be the basis of an action in torts which can be compartmentalized under three different heads, i.e. i) duty to take care and negligence on the part of the respondent; ii) liability as keeper of dangerous animals; and iii) liability as occupier of the premises. The court noted that the concept of legal duty was enlarged by means of case law in certain circumstances by the doctrine of “strict liability”. The court noted as follows:-

“7. The question to be decided is as to whether it was the negligence of three years old boy in reaching up to the railing and exposing himself to the risk of being attacked by the tigress or it was the negligence of Zoo authorities in not taking proper care to ensure that such incidents do not take place. We have no hesitation in holding that the brunt has to be faced by the Zoo authorities. It is their bounden duty to ensure that wild animals in the Zoo are kept and confined in such a manner that they are incapable of causing damage or injury to the visitors to the Zoo. Zoological Park is a place where animals and birds, which may be brought from all parts of the world, are kept. The purpose of visiting Zoo and see these animals is not only entertainment but education to the visitors. They are able to see, amuse themselves and learn about these animals without having the trouble of going to different places where these animals are the natural habitants. Animals are of various species. They include wild and ferocious animals as well. Zoo authorities are well aware of the fact that people of all ages would visit the Zoo. They are well aware about the habits of various animals. They are also well aware of the danger in letting loose wild animals i.e. the reason that wild and ferocious animals are kept behind iron bars and in cages. The Zoo authorities have to keep these animals in such a manner that under no circumstances these animals are able to cause any damage or injury to any visitors. The respondents and their employees were aware of the mischievous propensity of the white tigress kept in the Zoo. It

was, Therefore, their responsibility to keep it in such a manner that no such untoward incident takes place. After this incident respondents have fenced the area by putting wire mesh on iron bars. This itself shows that type of caution which was required was not taken earlier. Resultantly a child of three years of age which could not have thought of the impending danger and may have treated the white tigress as a toy to play with, fell prey to the horrific incident.

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13. The question can be formulated and answered in yet another manner. Whether it was the duty of the respondents to take care i.e. to protect the visitors from any such mishap and, if so, whether the respondents observed the standard of care required in the circumstances of the case. It cannot be denied nor was it denied by the respondents that it was and is their duty to ensure that the animals kept in the Zoo, particularly, dangerous animals, are confined behind the bars in such a manner that they do not cause any injury, or harm to the persons who visits the Zoo. The principle propounded by Lord Atkin in *Donoghue v. Stevenson*, (1932) AC 562 has been expanded from time to time by adding new duty to the existing list of admitted duties. The neighbour principle formulated in the aforesaid Judgment was extended to the cases where persons who suffer injury while on another's premises were held entitled to claim damages from the occupier of the premises, particularly, in the case of dangerous premises because the duty of occupier of dangerous premises is to take care is more in contra- distinction to the case where plaintiff who is injured on the highway and adjoining land. The occupier of the premises is expected to reasonably foresee the danger to which the premises are exposed to the visitors and therefore, he is expected to take proper care to ensure that the visitors to this premises do not suffer injury. We have no hesitation in extending this principle to the case in hand. As stated above, as a reasonable person respondents were required to keep in mind that there are dangerous animals kept in the Zoo and that visitors may include small and very young children as well who may not be in a position to understand as to what is right or what is wrong. The

appellant, in this case, was only three years of age. The tigress inside the cage was attractive and tempting to such a child and it was in fact an invitation to him to respond to its move. "In the case of an infant there are moral as well as physical traps. There may, accordingly, be a duty towards infants not merely not to die pitfalls for them, but not to lead them into temptation" (Latham v. Johnson, (1913) KB 398. There is nothing upon which a toddler cannot hurt itself. The danger may be obvious to its eyes but concealed from its understanding. Therefore, the respondents ought to have foreseen a danger in not putting the barbed wire. The standard of duty required in the circumstances was much more and respondent clearly failed in their duty. Only after the incident respondents realized their failure and made amends to ensure that no such incident recurs."

An SLP was filed against the above judgment being SLP(Civil) No.4161/2001 which was dismissed on 10.08.2001.

17. The legal position that follows is that doctrine of strict liability would apply in the case of an injury or death of a visitor to the zoo due to acts of a wild or dangerous animal in the zoo. As dangerous animals are kept in the zoo, it would be the absolute responsibility of the zoo to ensure that the dangerous and ferocious animals do not cause damage or injury to any visitors. It is the responsibility of the zoo and its staff to ensure and upkeep the place in a manner that no untoward incident takes place and all necessary precautions and steps have to be taken to ensure that the visitors remain safe. The zoo cannot escape responsibility on the plea that the visitor did not adhere to relevant safety precautions, which he was obliged to or would have normally followed.

18. Regarding the responsibility of the Zoo, we may also look at some of the statutory regulations. In exercise of powers under Section 63(1)(f) and (g) of the Wild Life (Protection) Act, 1972, the Central Govt. has framed the

Recognition of Zoo Rules 2009. Rule 4 (3) and Rule 4 (9) of the Rules read as follows:-

“4. Animal housing, display of animals and animal enclosures.-

...

(3) The zoo shall ensure that the enclosure is safe and secure for the animals, animal keepers and the visitors and has requisite space for free movement, exercise and expression of natural behavior by the animals.

...

(9) Every zoo shall provide appropriately designed and effective standoff barriers at every animal display enclosure to regulate the movement of visitors in the zoo in a manner that facilitates the visitors in getting unobstructed view of wild animals, without reaching in the vicinity or proximity of the animals and getting the opportunity to physically touch or provoke the animals and shall also display adequate sign boards so as to give warning to the visitors to keep a safe distance from the animals.”

19. The above rules recognize that the Zoo has to ensure that the enclosures of animals are safe for the visitors and that the stand off barriers are constructed in a manner that the viewers are unable to reach in the vicinity or the proximity of the animals.

20. Similarly, respondent No.2 has for the purpose of providing technical guidance and procedural details issued “Guidelines of the Central Zoo Authority for Facilitating Effective and Scientific Management of zoos in India”. One of the guideline stipulates that a master plan for the Zoo has to be prepared which would be a comprehensive document giving a detailed road map for 20 years with a provision for review every 10 years regarding development, improvement and upgradation of the facilities. Annexure-I to the Guidelines provides the format on the basis of which the comprehensive

master plan map may be prepared. Clause 5 Chapter II of the Format provides for the following contingency plan:

“5. Contingency plan

- (1) ...
- (2) ...
- (3) ...
- (4) ...
- (5) ...
- (6) Visitors getting injured/visitors falling inside enclosure.”

21. There can be no doubt that the statutory provisions/rules provide that the respondent Zoo was obliged to ensure safety of visitors who would be visiting the Zoo.

22. We may now see whether the facts as stated by the parties on record would show in any manner a breach of the obligations by the Zoo authorities. No conclusion can possibly be drawn from the pleadings. The only facts that clearly emerge from the pleadings are that the deceased had fallen into the moat of the tiger after having possibly climbed the standoff barrier which has on the visitors side a height of only 2.5 feet or so. The deceased fell into the moat which was from the top of the barrier has a depth of approximately 25 feet below. Thereafter no rescue could be organized by the Zoo till the point when the tiger mauled and killed the deceased.

23. The Central Zoo authority, Ministry of Environment, Forests and Climate Change, Government of India respondent No.2 appointed an Enquiry Committee to investigate the incident. The Committee comprised of Sh.S.C.Sharma, retired Additional Director General (Forest), Ministry of Environment and Forest, Former Member Secretary Central Zoo Authority and Dr. Himanshu Malhotra, Member, Committee on Zoo Design. The said

Committee gave its enquiry report about the death of the visitor in the white tiger enclosure on 23.09.2014. The report was filed in W.P.(C) 6677/2014 which was heard with this petition and disposed off on 25.05.2016. The conclusions of the Committee are revealing and read as follows:-

“The zoo staff did their best in the given circumstances. They were seriously handicapped in the absence of clear and self-contained and self-explanatory protocol on dealing with the situation and availability of equipment. They did their best in the prevailing circumstances and cannot be faulted for not being able to save the life of Late Shri Maqsood. However, once such an accident has taken place, concrete plans to prevent any such happening have to be prepared and implemented. In preparing these plans, help of experts on such matters i.e. Delhi Fire Service and National Disaster Management Authority be taken. In the interim period, zoo should establish:

- a) A command line to handle such situations so that people can approach the right person in shortest possible time.
- b) Mock drills to reach the emergency site in shortest possible time and handling the situation, should be conducted periodically.
- c) Providing the zoo hospital a dedicated vehicle for dealing with contingencies both regarding to the animal escape and human safety. There should be an earmarked room for the rescue team where all material and equipment for rescue operation is available under the charge of the head of the rescue team, who should be a veterinarian. One such rescue centre is doing very nice work at Sasan, Gir Forests, Gujarat. Arignar Anna Zoological Park, Vandalur also has a similar arrangement in place.
- d) Alarm system from every enclosure and from the gate to the emergency room created for the purpose.

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Point (d) Preparedness on contingency/emergency and action thereof.

- The preparedness of zoo for handling contingencies/emergencies. As already stated, in para 2, lot of effort is needed to bring the preparedness of the staff up to desired level.
- Services of Firefighting wing of Delhi Government or National Disaster Management Authority should be availed and a mechanism for regular communication and up-gradation needs to be in place.
- Available equipment also needs to be upgraded. Installation of public address system and emergency siren should be done on priority basis.
- Post of Joint Director and Veterinary Assistant to be filled on priority basis.
- Security staff strength need to be augmented. One mobile patrolling party should always be on round.

Conclusion

The Zoo is yet not in a stage of preparedness to deal with such emergencies in a professional manner. Lots of technical expertise and implementation of well-developed plans are required to reach the desired level of preparedness. However, zoo authorities cannot be blamed for this as the process of evolving such strategies has started only recently.”

(emphasis provided)

24. It is also noteworthy that subsequent to the incident, the respondents themselves have taken a policy decision to carry out changes and improvements to respond to such situations. These changes and steps were listed by respondent No.1 in an affidavit dated 1.12.2015 and have been noted by this court in a public interest litigation being W.P.(C) 6677/2014 titled as '*Avadh Kaushik. vs. National Zoological Park*' which was heard alongwith this petition. This court in that public interest litigation (W.P.(C) 6677/2016) passed the following order on 25.05.2016:-

“1. The issues relating to ensuring safety and security for the people who visit the National Zoological Park, Delhi is sought

to be espoused in this petition filed by way of public interest litigation following the unfortunate incident happened on 23.09.2014 resulting in the death of a visitor inside the enclosure of a white tiger.

2. It is brought to our notice that during the pendency of this writ petition a Quick Response Team (QRT) has been constituted by the National Zoological Park, Delhi vide order dated 09.09.2015 to deal with any emergency situation in the Zoo and an emergency protocol has been developed, apart from providing in-house training to staff at the National Institute of Disaster Management. The said order shows that in case of any emergency the QRT will rush to the spot and deal with the emergency situation in accordance with the emergency protocol. 16 number of emergency situations have also been identified and listed therein. In the affidavit dated 01.12.2015 filed on behalf of the National Zoological Park, it has further been explained as under:-

“3. It is further submitted that the QRT is always battle ready and all the equipments are in best working conditions. In addition, constituting the Quick Response Team and developing an emergency protocol the following steps have also been taken to enhance the security of the visitors in the National Zoological Park:

- i. All the exhibits housing Tigers, Lions, Bears, Hyena and other animals with deep moats are provided with a folded rope ladder for emergency use. At each point, a private security guard has been posted during visiting hours of the zoo.
- ii. At the entry gate for the visitors who are visiting the National Zoological Park announcement are being done more frequently for 'dos and don'ts' though it exists before the incident.
- iii. Number of warning signages is increased and installed in front of all dangerous animal

enclosures alongwith dos and don'ts in the zoo.

iv. On 19.12.2014 all the zoo staff attended a one day workshop on National Disaster Management Plan at National Institute of Disaster Management, New Delhi. In this workshop the zoo staff got valuable information about the safety of visitors, staff and zoo animals.

v. A mock drill was conducted on 11.11.2014. During this an escaped Jaguar male got captured quickly by the QRT.

vi. A centralised Hooter System installed at range office (approximately central part of the zoo) for any emergency use.

vii. Number of security guards increased during visiting hours of the zoo.

viii. First Aid facility enhanced and provided at two more places in the zoo, earlier it was at three places.

ix. One tranquilization equipment kept in ready in Veterinary Hospital with zoo ambulance for use for tranquilization of animal on urgent necessity.

x. To increase awareness among zoo visitors more zoo volunteers got deployed in front of animal enclosures particularly during weekends when the number of visitors is more. Through these volunteers mass awareness programme is being conducted alongwith an animal keeper as a keeper's talk.

xi. Dos and don'ts got printed on the back of the zoo entry ticket and these tickets got started from 01.04.2015.

xii. To enhance the functioning of QRT the team got reorganized on 09.09.2015."

3. Having regard to the above-mentioned steps taken by the respondents, the petitioner- Sh.Avadh Kaushik appearing in

person states that the matter needs no further adjudication.

4. The writ petition is accordingly disposed of.”

25. The above inquiry report of the committee appointed by respondent No.2 and the affidavit dated 01.12.2015 of respondent No.1 filed in W.P.(C) 6677/2014 titled as '*Avadh Kaushik. vs. National Zoological Park*' clearly show serious gaps/lack of precautions on the part of respondent No.1 to ensure full protection of the visitors visiting the zoo especially in relation to the enclosure of dangerous animals like tigers, lions, bears etc. Adequate precautions were not taken to prevent a visitor falling in the moat. More guards needed to be deployed near such an enclosure to avert any untoward incident. It is also clear that there was no procedure in place to handle any emergent situation. No protocol was in place to ensure quick response to an emergent situation like a Quick Response Team trained to act and rescue. Necessary rescue equipment in the form of collapsible ladders/rope ladders, emergency siren/centralized hooter system were not in place.

26. In our opinion, there were inadequate precautions taken by respondent No.1 to guard against any visitor climbing the stand off barrier which is not very high. Further, there was enough time, which as per the zoo authority was five minutes during which the zoo authority could have reacted to rescue and to save the life of Maqsood after he fell in the moat. In fact when Maqsood fell the only option available with the zoo authorities was for the keeper of the animal to try to entice the animal to go back to his cage so that rescue could be planned. This was not possible on account of the commotion created by other visitors who reacted and started pelting the tiger with stones. The animal got irritated and attacked Maqsood. A collapsible rope ladder could have been dropped to help Maqsood climb up the moat wall.

There was none available. A trained rescue if available could have taken other steps to rescue the victim.

27. There is a clear breach of the statutory duties by respondent No.1 as provided by the Wild Life (Protection) Act, 1972 and other regulations enacted thereunder as stated above.

28. It is also a fit case to hold respondent No.1 liable under the principles of “Absolute liability”. The zoo was aware that a tiger is a dangerous animal capable of causing injuries or death to a visitor. The zoo would be liable for any injury or death caused to a visitor by the tiger under the principles of Strict Liability. Respondent No.1 is, in these facts, liable to compensate the petitioner for the unfortunate death of Maqsood and the monetary loss as a consequence thereof.

29. Unfortunately, for the purpose of computing compensation the facts placed on record by the petitioners are very sketchy. As per the petition, the deceased was 22 years old. Petitioner No.1 his wife was 19 years old and who at that stage was 7 months pregnant. She has subsequently given birth to a baby girl on 11.01.2015. Petitioner No.2, the mother of the deceased is said to be a 43 year old lady. Petitioner No.3 is said to be an 18 year old younger brother of the deceased. It was averred that all the three petitioners were residing together and were dependent on the deceased Maqsood. Father of the deceased had been separated from his mother for the last 15 years and was not living with the family. Other than this, there is no other information provided about the manner in which the Maqsood was earning his livelihood or the income that he was earning. No details are given of his educational qualification or any special skills that he may have acquired to enable him to earn.

30. Respondent No.1 the zoo would not normally be a profitable organization, being an institution to spread awareness and education about the wild animals. In the light of the facts placed on record by the petitioner and the stated facts, we award a sum of Rs. 6 lacs to the petitioners against respondent Nos.1 and 3. Respondent Nos.1 and 3 would be entitled to deduct a sum of Rs.1 lac already paid to the petitioners from the awarded sum. The balance amount will be deposited in court with the Registrar General. He will release the funds as stated herein. A sum of Rs.2 lacs would be paid to petitioner No.1 while a sum of Rs.1 lac would be paid to petitioner No.2. A balance sum of Rs. 2 lacs would be kept in a fixed deposit in a nationalized bank in the name of the newly born daughter of the deceased. The money should be kept in a fixed deposit of a Nationalized bank till the daughter attains the age of 18 years. However, petitioner No.1 shall be entitled to receive interest on the said fixed deposit periodically. The necessary payment shall be deposited by respondent No.1 within a period six weeks from today. In case of delay in depositing the payment, the petitioners shall be entitled to interest @ 10% per annum from the date of default till deposit of payment. The petition is disposed of.

(JAYANT NATH)
JUDGE

CHIEF JUSTICE

July 13, 2016
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