

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CWP No. 3084 of 2014
Date of decision : 21.08.2018**

Kajal

...Petitioner

versus

Chd Administration and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Sandeep Verma, Advocate
for the petitioner.

Mr. R.S. Bains, Advocate, Amicus Curiae

Mr. Suvir Sehgal, Sr. Advocate with
Mr. Daman Dhir, Advocate
for U.T. Chandigarh

Ms. Deepali Puri, Advocate
for Municipal Corporation, Chandigarh

RITU BAHRI, J.

The petitioner was an unmarried girl of about 20 years of age on September 15, 2013, when she suffered injuries in Sector – 17, Chandigarh, pursuant to a dead tree having fallen on her leg. On account of gangrenous development in her leg, her leg had to be amputated.

Through instant petition, she has approached this Court for grant of adequate compensation for the amputation of her leg, on account of negligence on the part of Chandigarh Administration, Municipal Corporation, Chandigarh, and the Horticulture division of Municipal Corporation, Chandigarh.

Petitioner is a 20 years old girl. On September 15, 2013 at about

7.00 P.M. she visited sector 17 Plaza, Chandigarh. At that time due to windy weather a heavy branch of a dead tree snapped and fell on the petitioner causing severe injuries. She was immediately taken to government hospital at sector 16 and was shifted to trauma centre in PGI. Thereafter due to torso metatarsal dislocation and other injuries, right leg of the petitioner below the knee had to be amputated. It has been pointed out that the tree was in front of SCO No. 7 Sector 17, Chandigarh. Its occupant had given a representation way back on 05.05.2013 that the dead branch needs to be removed but the Corporation turned a blind eye.

On notice, a reply has been filed on behalf of respondent Nos. 2 and 3 and pleaded that the injuries received by the petitioner are not concerned with said respondents. The plea taken by respondent Nos. 2 and 3, is as follows:-

*“It is however submitted that there is a procedure for removal/ disposal of dead / dry trees in Chandigarh. The Chandigarh Administration issued a notification on dated 12.11.1992 & dated 23.2.1999 laying down the said procedure according to which the final orders for removal of tree is to be obtained from the Advisor to the Administrator after verification. Copy of the said letters/ notifications are appended as **Annexure R-1 and R-2**. The letter dated 16.1.2013 addressed to the Executive Engineer (Horticulture) was dealt by the office and the case was refer to the SDE (H) for necessary action for scrutiny / processing the case. The SDE (H) vide his letter dated 28.1.2013 recommended for removal of three trees in Sector 17, Chandigarh. The case was thereafter dealt by the office on 8.2.2013 and was recommended to the Superintending Engineer. The case file was received back after the approval of the Advisor and the matter was referred to the SDE for submission of case for fixation of the reserved price and its*

approval thereof. The reserve price was fixed on 11.4.2013. It is further submitted that the cases for the approval of the trees are grouped in one lot and thereafter the bids are invited for the removal and disposal of such trees. Accordingly, in that lot of 19 no. trees were got uprooted and the approval for the reserve price of last lot Ram Darbar trees (4 nos) was received on 19.6.2013, thus making it a total of 19 nos. The bid documents were prepared and for the 1st time the bids were invited on 20.7.2013 and no bids were received on that date. In the 2nd time, the bids were invited on 2.8.2013 and no bids were received for the 2nd time also. For the 3rd time, the bids were invited on 30.9.2013 and the allotment of the work was approved in favour of Sh. Anil Kumar, Contractor, Maloya, Chandigarh for Rs. 63,642/- on dated 1.10.2013 and the allotment letter to him was issued by this office on 8.10.2013 with a time limit of one month and the trees were uprooted within the stipulated period. It is further crystal clear that the office is required to follow procedure laid down for the removal of trees and there is no laxity on the part of any official of the M.C. Chandigarh and as such none is responsible for the mishap.”

As per written statement filed by respondent No. 1, it was admitted that a DDR was registered at Sector 17 Police Station, Chandigarh. However, it has been stated that it is the Horticulture Department which comes under the preview of Municipal Corporation Chandigarh, which has to take approval for removal of the trees and after that the work of removal is assigned to the Horticulture Department, which is under M.C. Chandigarh, who calls for the tenders and invites the bids for the said purpose of removal of trees. There is no role of Chandigarh Administration. It has been further stated that if any damage or accident is occurred under the extreme climatic

conditions or natural calamity, in that circumstances no blame can be put on

the administration as no one has control over the nature and climate.

Thereafter, in compliance of order dated 19.07.2017, an affidavit dated 02.08.2017 has been filed by N.P. Sharma, Chief Engineer and stated that the Chandigarh has the highest density of trees in India and has 40% green cover of the total area due to its efforts to protect the indiscriminate felling of trees. The Chandigarh Administration vide notification dated 12.11.1992 (A-1) has laid down the procedures for cutting down trees in Chandigarh according to which permission has to be accorded by the Advisor to the Administrator UT Chandigarh. Thereafter, vide letter dated 23.02.1999 (A-2), the Director Forest and Horticulture Chandigarh Administration has issued orders for not giving permission for cutting of trees as these powers can only be exercised by the Advisor to the Administrator. It has further been stated that as per instructions dated 11.11.2011 even for pruning of trees beyond 90 cm girth, the approval of Advisor had to be obtained but vide instructions dated 18.04.2017 (A-4) the same has been modified and the powers have been conferred to the Commissioner, M.C Chandigarh and the Chief Engineer, UT Chandigarh. Similarly, the power for pruning of trees up to 90 cm girth has now vide order dated 18.04.2017 has been conferred upon Executive Engineer (Horticulture) (A-5). With regard to road, gully and manhole covers, the same are replaced as and when these are reported missing or broken. In this regard, 604 gully covers and 180 manhole covers have been replaced from May, 2017 to July, 2017 (A-6). The patch work is carried out on the road for covering the pot holes in Chandigarh. The detail of patch work carried out at 1322 locations w.e.f 01.01.2017 to 30.06.2017 (A-7). Thus, all efforts are being made to protect the green cover in City Chandigarh.

Thereafter, an affidavit dated 06.09.2017 was filed by Yash Pal Gutpa, Supdt Engineer on behalf of respondent No. 1. This Court on 06.09.2017 passed the following order:-

Mr. Sehgal submits *that he has received instructions in light of order dated August 2, 2017. He seeks to file an affidavit of Yashpal Gupta, Superintending Engineer, Construction Circle-II, Union Territory, Chandigarh. Same is taken on record. It has been stated before the court that vide order dated 23.08.2017 passed by Home Secretary-cum-Secretary (Forest) Chandigarh, powers of identifying dead and dry trees has been delegated to a Committee of three officers i.e. SDO (Horticulture), Municipal Corporation, SDO (Horticulture) Engineering Department, Chandigarh and Range Forest Officer (RFO), Chandigarh. They shall identify the dead and dry trees and even those posing immediate threat to life and property. Thereafter, exercise for removing the same shall be undertaken after certification by Chief Engineer, Union Territory and Commissioner Municipal Corporation. He has also referred to Para 5 and 6 of the affidavit. Same read as under:-*

“5. That further in reference of the direction issued by this Hon’ble Court in respect of maintaining the Road Gully covers provided on the main roads is concerned it is submitted the inspection, repairing and replacement/rectification of road gully covers falling within the jurisdiction of Chandigarh Administration is a continuous process. The regular repair/replacement of road gully grating/covers is being carried out by the field staff of the Engineering Department.

6. That further in reference to the directions of this Hon’ble Court with regard to the public hazards such as potholes it is submitted that the same are being attended to and as and when they occur on the road as it is a regular phenomenon on the bituminous roads. The same is taken care of regularly.”

Learned counsel appearing for U.T. and Corporation may apprise the court on the next date of hearing about the progress pursuant to the aforesaid steps taken by the Administration. Amicus curiae may also assist in light of same.

Learned counsel representing the respondents have assured the court that no healthy tree would cut in the process.

To come up on 23.10.2017.”

Thereafter, another affidavit dated 23.10.2017 was filed by Yash Pal Gutpa, Supdt Engineer Petitioner, in compliance of order dated 06.09.2017 reiterating the facts as stated in affidavit dated 02.08.2017 filed by N.P. Sharma, Chief Engineer.

The above mentioned replies/affidavits indicates that on account of cumbersome procedure provided by the Chandigarh for removal of trees, including the dead trees, the incident of September 15, 2013 has occurred. It is admitted that the dead tree, which has caused injuries to the petitioner, was one of the tree which was to be removed after all the formalities as per the recommendation dated 28.01.2013 for removal of the tree by S.D.E Horticulture. This Court does not want to interfere in the working of Chandigarh Administration, as everyone is working as per notifications issued from time to time but the fact is that petitioner received injuries due to the dead tree which fell on her. This dead tree was to be removed, as per replies filed above. The petitioner is now 70% physically disabled, as per disability certificate dated 29.08.2014 issued by PGI Chandigarh, which has been placed on record by learned counsel for the petitioner in the Court today, which is taken on record as Annexure A-1. The petitioner has lost her leg in such prime age of her life that now she would be crippled throughout her life and would have to rely on assistance of other persons. Her marriage

prospects have also been diminished due to the injuries suffered by her.

This Court granted interim compensation of Rs.5 lacs to the petitioner, as per order dated 09.02.2017 and 19.12.2017.

Compensation has been granted in similar circumstances by this Court as well as Hon'ble Supreme Court in the judgments i.e ***Kumari Seema alias Seema vs. Himachal Pradesh State Electricity Board, 1994(3) RRR 235 and Balram VS. HVPNL, 2002 (2) RCR (Civil) 159.***

For giving compensation to the petitioner, reference at this stage can be made to a judgment of Hon'ble the Supreme Court in a case of ***Narendra Singh vs. Nishant Sharma and another, 2016 (2) SCC (Crl) 380*** wherein right leg of the appellant (22 years) was amputated up to three inches below knee due to infection caused by multiple operations and he suffered 60% permanent disability. The appellant required artificial limb for mobility for rest of life. The chance of getting employment reduced substantially. Hon'ble the Supreme Court took the earning of the appellant at Rs.7000/- per month by treating him to be a skilled labourer and added 30% future prospects. The multiplier of 17 was applied. The amount comes to Rs.18,56,400/-. 60% of this amount i.e Rs.18,56,400/- were taken to be loss of future income which comes to Rs.11,13,840/-. Rs.50,000/- were awarded towards pain and suffering. Rs.1 lacs for medical expenses. Rs.3 lacs for loss of amenities and enjoyment of life. Rs.50,000/- for attendant charges and Rs.50,000/- towards food and nourishment.

In the present case, the petitioner suffered 70% permanent disability and she was 20 years of age at the time of accident. Her income can be taken at Rs.10,000/- per month by treating her to be a skilled labourer.

<i>Sr. No.</i>	<i>Head</i>	<i>Amount (₹)</i>
1	Loss of income by multiplier method	(10000 X 40% future prospects X 12 X 18) X 70% permanent disability=19,65,000/-
2	Future Medical expenses	Rs.1,00,000/-
3	Compensation for engaging an attendant	Rs.50,000/-
4	Compensation for special diet	Rs.50,000/-
5	Pain and suffering	Rs.50,000/-
6	Loss of enjoyment and amenities of life	Rs.3,00,000/-
	Total compensation awarded	Rs.25,15,000/-
	Interim compensation	Rs.5,00,000/-
	Total compensation to be awarded	25,15,000-05,00,000/- =Rs.20,15,000/-

Resultantly, the petitioner shall be entitled to a total compensation of Rs.20,15,000/-, which is to be given by the respondent Nos 2 and 3, within a period of four months from the date of receipt of certified copy of this order. The petitioner shall also get interest @ 7.5% per annum from the date of filing of the claim petition, in view of the judgment of Hon'ble the Supreme Court in a case of *Shri Nagar Mal and ors vs. The Oriental Insurance Co. Ltd and others, passed in Civil Appeal No. 448-2018., decided on 19.01.2018.*

Accordingly, the petition stands allowed.

(RITU BAHRI)
JUDGE

21.08.2018
G Arora