IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4066 OF 2018

Shri Anil Bhanudas Kambale … Petitioner

Versus

The Barshi Municipal Council and Anr. … Respondents

Mr.Manoj Shirsat i/b. Mr. N.B.Patil for the Petitioner.

Mr.V.V.Pethe for Respondents.

CORAM : AKIL KURESHI &

S.J. KATHAWALLA, JJ.

DATE : 8TH AUGUST, 2019

P.C.:

1. This petition is filed by the brother of one Mangal Kambale, who died an accidental death on 16th May, 2015. He has sought compensation for himself and his aged mother from Barshi Municipal Council ('the council' for short). Though sufficient time was granted, no reply has been filed by the respondents. We may record that the counsel for the respondent No. 1 had asked for time for filing reply on 18th July, 2019, which was granted upto 25th July, 2019. Again on 25th July, 2019 at his request, the matter was adjourned to 8th August, 2019. Though the sufficient opportunities were thus granted, no reply has been filed so far. We have heard the learned counsel for the parties for final disposal of the petition.

2. Briefly stated the facts are that the deceased Mangal Kamble was aged about

50 years at the time of her death. She was a vegetable vendor. She was unmarried and resided with her mother and other family members. According to the petitioner, who happened to be elder brother of the deceased, she was a source of financial support for the family and in particular the aged mother.

3. It is undisputed that on 16th May, 2015, when the Petitioner was selling vegetables, a wall of a toilet constructed by the council collapsed causing serious injuries to the victim, which led to her death. According to the petitioner, the accident occurred only on account of fact that the council failed and neglected to maintain its property in proper state. The petitioner has therefore prayed for awarding appropriate compensation. Counsel for the petitioner had drawn our attention to a communication dated 17th June, 2015 from the council to a local residents, in which in connection with the incident, it was conveyed that the council was in the process of considering awarding compensation to the family of the victim and to take action against the responsible officers. Our attention was also drawn to a letter dated 15th October, 2015 from the council to the Mahila Police Sub Inspector, Barshi City Police Station, Barshi conveying that the construction in question was extremely old and that the file in relation to the same was not traceable.

4. Learned counsel for the council submitted that though the factum of incident is not challenged, the negligence of the council is not admitted. He further submitted that the writ petition for awarding compensation should not be entertained.

5. Having heard the learned counsel for the parties and having perused the documents on record, it emerges as an uncontrovertible position that when the victim Mangal Kamble was doing her business of selling vegetable, a wall of toilet constructed by the council collapsed on her causing fatal injuries. As noted, in the communication dated 15th October 2015, the council agreed that the building in question was extremely old. In the another communication, the council had stated that action was contemplated against the responsible officer. There was no earthly reason for the building to just collapse unless it was old and dilapidated. It is not even the case of the Respondents that there was heavy rain, earthquake or some natural cause, which led to collapse of the wall. In plain terms, therefore the construction was not properly maintained. There is no other conclusion possible at least from the material on record. Council cannot escape its liability to maintain its own constructed building so that the lives of the citizens in the nearby area are not jeopardized. The council therefore must own up the responsibility to pay compensation for the death of unfortunate victim. The mother of the deceased would be quite aged even at the time of incident. Her dependence on the deceased cannot be questioned, particularly looking to the fact that the deceased was unmarried. However, the task of computing such compensation, cannot be done in a writ petition in absence of full material facts before us. We therefore leave the petitioner to file appropriate civil proceedings seeking such compensation for and on behalf of his mother. As an interim relief,

however we would direct the council to pay adhoc compensation to the mother of the deceased.

6. Under the circumstances, the Petition is disposed off with following directions :

i. Respondent No. 1 shall pay a sum of Rs.2 Lakhs to the mother of the deceased through account payee cheque within a period of four weeks from today.

ii. This is by way of adhoc compensation payable. It would be open for the petitioner to file appropriate civil proceedings seeking further compensation for and on behalf of his mother, which may be decided in accordance with the law on the available evidence that may be brought on record by both sides.

Petition is disposed off accordingly.

(S.J.KATHAWALLA, J.) **(AKIL KURESHI, J.)**