

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.09.2019

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A.No.3126 of 2019
and
C.M.P.No.19839 of 2019

The Commissioner,
Corporation of Chennai,
Ripon Buildings,
Chennai - 600 003. Appellant/2nd Respondent

Vs

1.The Secretary,
Department of Municipal Administration
and Water Supply,
Fort St.George,
Chennai - 600 009.

2.The Chairman,
Tamil Nadu Electricity Board,
Chennai - 600 002.

... Respondents 1 & 2/Respondents 1 & 3

3.N.Ananda Kumar.3rd Respondent/Petitioner

PRAYER : Writ Appeal filed under Clause 15 of the Letters Patent against the order made in W.P.No.19149 of 2009 dated 04.07.2019 on the file of the High Court of Judicature at Madras.

W.P.No. 19149 of 2009: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Mandamus, directing the respondents to directing the Respondents to pay compensation amounting to Rs.32,92,550/- to the Petitioner for the loss incurred by him towards the medical expenses, loss of earning disability suffered by the Petitioner on account of the accident which occurred due to the Respondents negligence and allow this writ petition.

For Appellant : Mrs.Karthika Ashok

For Respondents : Mr.J.Pothiraj, Special
Government Pleader for R1.

Mr.P.R.Dhilip Kumar for R2.
Mr.S.Dayaleeswaran &
Mr.T.P.Prabhakaran for R3.

J U D G M E N T

(Judgment of the Court was delivered by N.KIRUBAKARAN, J)

"CELIBACY" or "MATRIMONY" is one's choice.

He or She can choose either "celibacy" or "matrimony" according to one's own wish. Nobody can be compelled either to undertake celibacy or to get into matrimony and if it is done, it will be violation of fundamental right guaranteed under Article 21 of Constitution of India, apart from the basic human right.

2. Here is the case where a healthy male person is constrained or compelled to undergo celibacy because of the disability due to the injuries sustained by him in the accident. Such a situation is very grave one. The victim loses marital prospects depriving of marital bliss apart from suffering serious complication of Autonomic dysreflexia. The pain, suffering and mental agony being undergone by the victim can neither be estimated nor compensated. Accidents are source of violations of human rights and mainly fundamental rights of the citizens. It is the duty of every Government to see that the fundamental rights of the citizens are protected or guarded. The actions of the officials should not be the cause of violation of the basic rights of the citizens. Therefore, they should be very vigilant and not negligent in performing their sovereign functions as they are coming under the definition of State as defined under Article 12 of the Constitution of India. Negligence by the officials would cause havoc in one's life is best evident from the facts of the present case.

3. The appeal has been preferred by the Corporation aggrieved over the compensation granted to the 3rd respondent / Writ petitioner who sustained spinal cord injury while he was walking on the road on 27.03.2009 towards his residence at Kamaraj Salai near Vivekananda Illam along Dr. Besant Salai, at about 09.30 P.M., during which time an Electric lamp post fell on him when the 2nd respondent employees were engaged in removing the old lamp post by welding it. Because of the fall of the Electric lamp post on the 3rd respondent and because of the negligence on the part of the officials of the appellant and the respondents 1 & 2, the 3rd respondent sustained injuries on his shoulder, head and spinal cord and immediately he was rushed to the Government General Hospital and admitted as an inpatient and thereafter, shifted to MIOT Hospitals wherein surgeries were performed on him. He took treatment by paying a sum of Rs.2,69,550/-. An FIR was registered in Cr.No.290 of 2009 in this regard. The 3rd respondent who was hale and healthy at the time of the accident has become a vegetable and wheel chair bound. Therefore, he gave a representation on 25.05.2009 to the appellant and the second respondent to pay a sum of Rs.32,92,550/- for being in this position due to the disability sustained by him in the accident. However, the said representation was not considered

which compelled the 3rd respondent to approach this Court by filing the Writ petition.

4.The learned Single Judge after considering the case in detail found that the accident occurred because of the negligence of the workers of the Corporation while removing the electric pole and awarded a sum of Rs.1,00,000/- towards Loss of earning capacity, Rs.80,000/- towards Disability, Rs.2,70,000/- towards Medical Treatment, Rs.40,000/- towards Pain and Suffering and Rs.10,000/- towards Transportation totaling a sum of Rs.5,00,000/-. Aggrieved over the award of Rs.5,00,000/-, the Corporation of Chennai has come before this Court by filing this appeal.

5.Mrs.Karthika Ashok, learned standing counsel appearing for the Corporation of Chennai would submit that there was no negligence on the part of the workers of the Corporation. In fact, the contract work for supplying and laying cables and removal of lamp posts at Kamaraj Salai was awarded to M/s.Sabari Electricals and the contractor alone had executed the work. Moreover, the third respondent was carelessly walking on the road speaking over cell phone, instead of walking on the platform, inspite of cautioning made by the employees of the contractor and he invited the accident. Had he avoided speaking over cellphone and had he noticed the work being carried out by the employees of the contractor, the accident could have very well been avoided. Hence, there was no negligence on the part of the Corporation and the Corporation cannot be held liable. The finding given by the learned Single Judge is contrary to the facts. Moreover, there was no evidence that there was negligence on the part of the appellant/Corporation.

6.The appellant would further submit that as disputed question of facts are involved, the appropriate remedy is only to approach the competent Civil Court where both the parties could adduce evidence and prove their respective case. Article 226 cannot be invoked and no roving enquiry could be made with regard to the disputed question of facts. She would further submit that the Hon'ble Supreme Court had already held that when disputed question of facts are involved, the appropriate remedy is only to go before the competent Civil Court.

7.Mrs.Karthika Ashok, learned Counsel for the appellant would submit that there is no news about the 3rd respondent and his condition and without even verifying the same, the learned Single Judge ordered Rs.5,00,000/- as compensation. To ascertain the facts, this Court directed the 3rd respondent to be present before this Court.

8.Mr.S.Dayaleeswaran and Mr.T.P.Prabhakaran, learned counsel appeared on behalf of the 3rd respondent and submitted that the victim, 3rd respondent is present before this Court. This Court is shocked to see the condition of the 3rd

respondent who is wheel chair bound and the victim categorically stated that he suffers a lot due to spinal cord injury sustained by him, even though he underwent spinal cord surgery.

9.It is submitted by Mr.S.Dayaleeswaran that the victim does not have control over the passing of motion and suffers from incontinence and he is using catheter tubes and he remains as a bachelor. He suffers continuously and without the support of attendant, he cannot do his day to day activities. Catheter tubes have to be used everyday and replaced. He is undergoing physiotherapy treatment regularly by paying a sum of Rs.2,600/- per month apart from incurring expenditure towards buying of catheter tubes. He also stated that he had already passed Trade test in Refrigeration and Air conditioning Mechanic in July 2004 and he was studying B.A., and was earning about a sum of Rs.12,000/- per month at the time of accident by running Carousel (Kudai Rattinam) in Marina beach.

10.Heard Mrs.Karthika Ashok, learned Standing Counsel for the appellant, Mr.S.Dayaleeswaran & Mr.T.P.Prabhakaran for the third respondent, Mr.P.R.Dhilip Kumar for the second respondent and Mr.J.Pothiraj, learned Special Government Pleader for the first respondent.

11.A perusal of the order passed by the learned Single Judge would show that he had clearly recorded a finding that the accident occurred only due to the improper welding of the lamp post which was done by the Corporation officials and not by the Electricity Board officials. The learned Single Judge came to the conclusion based on the submissions made by the learned counsel for the Electricity Board that the electricity board had not done any work and it should have been only due to the work done by the workers of the Corporation, that too improper welding of the lamp post. Any work performed in a public place, especially when people are passing through, should be done with proper precaution, after placing appropriate warning boards. It is not the case of the appellant in the counter affidavit that they took precaution by putting up warning boards informing the public about the work done at the spot. Therefore, the appellant failed to take precaution and warn the public about the ongoing work by placing sign boards.

12.In the absence of putting up of any warning board about the work being carried out by the officials/contractors of the Corporation, it has to be safely concluded that there was negligence on the part of the Corporation officials/contractors. If warning boards had been placed in the workspot, people could have avoided using that road. Removing the lamp post on the busy Kamarajar Salai from Kannagi Statue to Gandhi Statue is very difficult and proper sign board was a must. Appellant should have cautioned the

people about the work being carried out in that place.

13. In this case, it is not disputed by the appellant that the lamp post fell on the third respondent while being removed and the third respondent sustained grievous injuries because of the fall. The contention that the third respondent carelessly walked on the road speaking over his cell phone while the work was being carried out cannot be accepted as there was no complaint given either by the contractor or by the Corporation officials stating that the accident occurred only because of the careless act of the third respondent. If proper sign boards had been installed or put up at the work site and inspite of the same, the third respondent had negligently walked on the road and invited the accident, the appellant/corporation could have taken photographs of the warning board which were said to have been placed by the corporation officials or contractors. However, no such proof has been filed before this Court. Therefore, the contention made in this regard by the appellant has to be necessarily rejected.

14. It is not only the contention of the third respondent/victim but also the contention of the Electricity Board/second respondent that there was negligence on the part of the appellant and that improper welding of the lamp post by the Corporation authorities/contractors caused the accident. In view of the above, this Court confirms the finding of the learned Single Judge that because of the negligence of the workers/officials/contractors of the Corporation, the accident occurred in which the third respondent sustained grievous injuries resulting in sustaining Paraplegia.

DISABILITY

15. A perusal of the discharge summary dated 20.04.2009 issued by MIOT hospitals, Chennai would disclose that the third respondent was admitted on 02.04.2009 and discharged on 20.04.2009. The certificate issued by the MIOT Hospitals reads as follows:-

"Mr. Anand Kumar, 25 yrs gentleman has got admitted on 02/04/09 with complaints of pain in the back with inability to move both lower limbs with bowel and bladder involvement following a fall of heavy object - 6 days ago. He has sustained the following injuries:

1. Burst fracture of D7 and D8 vertebral bodies with retropulsion of D8 and spinal fragments at D7, D8 with severe cord compression, cord edema and cord contusion.

2. Compression fracture of D5 vertebral body, both lamina and right parsinterarticularis.

3. Clavicle Fracture on left side.

He has complete total paraplegia below this level.

He has total motor sensory loss below D8. He has completely lost control over bladder and bowel.

MRI shows the fragments and displaced posteriorly causing canal compromise. The cord at this level is completely divided. There is absolutely no chance of recovery.

He is offered posterior stabilization, anterior decompression and stabilization with cages. The surgery is only to stabilize the spine and not to make him recover. The stabilization is intended only for easy nursing care and Rehabilitation. He may be made to sit after stabilization in a wheel chair and then he can make use of his hands to propel the chair.

He will require hospitalization for another 10 days."

The above medical certificate would show that the third respondent has complete paraplegia below hip and he has sustained total motor sensory loss below D8 and he has lost complete control over the bladder and bowel. He is bound to be wheel chair bound. Therefore, the disability sustained by the 3rd respondent is 100% as he has total paraplegia, unable to do any work. Hence there is 100% loss of his earning capacity.

DETERMINATION OF INCOME

16.The 3rd respondent was aged about 26 years at the time of accident. He had passed "Trade test in Refrigeration and Air Conditioning Mechanic". He was stated to be running a carousel in Beach at the time of accident earning a sum of Rs.12,000/- per month. However, proof of income has not been produced. This Court follows the principles as per Motor Vehicles Act for determining the compensation to be awarded to the 3rd respondent. The Honourable Supreme Court in the judgment in Syed Sadiq Vs.United India Insurance Company, reported in 2014 (1) TNMAC 459, fixed the monthly income at Rs.6,500/- for a vegetable vendor, who sustained injuries in the accident which occurred in the year 2008, whereas in this case, the 3rd respondent sustained injuries in the accident which occurred in the year 2009. Considering the fact that the third respondent is a certificate holder in "Refrigeration and Air conditioning mechanic" and was running a carousel and allegedly earning a sum of Rs.12,000/- per month, this Court determines the monthly income of the 3rd respondent at Rs.10,000/- per month notionally.

17.The 3rd respondent's date of birth is 24.04.1983 as per Transfer Certificate issued by the school authorities and therefore, at the time of accident he was aged about 26 years. Since the age of the 3rd respondent was 26 years, as per the Constitution Bench judgment of the Honourable Apex Court in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC), 40% has to be added toward future prospects. If 40% is added, the monthly income would be Rs.10,000 + 40% = Rs.14,000/-.

18.As per the judgment of the Honourable Supreme Court in Sarla Verma & Others .Vs. Delhi Transport Corporation & another, reported in 2009 (2) TNMAC 1 (SC), the appropriate multiplier is '17' as the age of the 3rd respondent was 26 years. Hence, the loss of income would be Rs.14,000 x 12 x 17 = Rs.28,56,000/-.

PAIN, SUFFERING AND AUTONOMIC DYSREFLEXIA

19.The pain and sufferings sustained by the 3rd respondent at the time of accident and resultantly throughout his life can neither be estimated nor compensated in terms of money. Spinal cord injured men suffer a serious complication called "Autonomic dysreflexia (AD)". A case report "Malignant autonomic dysreflexia in spinal cord injured men" by S.Elliott, Department of Psychiatry, Vancouver, Canada and A.Krassioukov, GF Strong Rehabilitation Center, Sexual Health Rehabilitation Service, Vancouver, Canada published in Spinal Cord (2006) 44, 386-392 describes about the serious complication AD being suffered by Spinal Cord injured persons. The important portion of the report reads as follows:-

"AD is a serious complication of SCI triggered by a variety of noxious or non-noxious stimuli below the level of injury. Autonomic dysreflexia (AD) is a clinical emergency that commonly occurs in individuals with spinal cord injury (SCI) at level T6 and above. An episode of AD is characterized by acute elevation of arterial blood pressure (BP) and bradycardia, although tachycardia may also occur. Symptomatically, patients can experience severe headache, profuse sweating and/or flushing and piloerection above the injury. Objectively, an increase in systolic BP greater than 20-30 mmHg is considered a dysreflexic episode. Commonly, episodes of AD could be triggered by urinary bladder or colon irritation. However, it is not unusual in sperm retrieval and urology clinics to see 100% increases in systolic and diastolic BP, respectively, during ejaculation or urology procedures. AD is caused by massive sympathetic discharge triggered by either noxious or non-noxious stimuli below the level of the SCI. Numerous reports of AD cases are cited in the literature: they are usually short-lived due to being treated or being self-limiting per se. However, there are a few reports of AD triggered by a specific stimulus, which then continued to be present for a period of days to weeks."

The above medical literatures and reports prove that the life of the third respondent would be miserable as he is bound to have serious clinical emergency, pain and suffering. Therefore, a sum of Rs.3,00,000/- is awarded towards Pain and Sufferings being sustained by the 3rd respondent.

20.As an eligible normal human being, he would have got married and would have enjoyed marital bliss. As already pointed out, the 3rd respondent is compelled to remain as a bachelor against his wish, as no lady would marry a person with paraplegia, depriving him of marital pleasure and bliss. Forced abstinence is nothing but violation of third respondent's human right. Forced abstinence has nothing more than negative consequences on the health of such a man. The likely side effects of sexual abstinence as per medical literature are:

- persistent decrease in sexual desire, as such after a long abstinence;
- development of neuroses and inferiority complex;
- fear of new acquaintances;
- nervousness and aggression;
- suppression of prostatic secretion;
- varicose veins of the scrotum;
- tumors (prostate adenoma, testicular cancer);
- erectile dysfunction and impotence.

Specialists name the following consequences of sex abstinence as the most dangerous ones:

- Congestions and inflammatory conditions in the prostate gland. It may cause acute prostatitis or chronic prostatitis, which may result in impotence and prostatic adenoma;
- The decrease in reproductive function. The inhomogeneous constitution characterizes seminal fluid after a long-term abstinence; sperm motility is minimal. It unlikely leads to male infertility; but, the health of an unborn child may be harmed.
- Reduced oxygen saturation of the penis. The inflow of blood during sexual acts contributes to sufficient overload of cells with oxygen, and abstinence can lead to cholesterol blockages, trophic disorders in the penis, and subsequently to worsening or disrupting the work of erectile function;
- Psychological disorders - the body reacts to the lack of testosterone and emotional satisfaction with irritability, nervousness, depressive and aggressive states;
- Hormonal imbalance - the condition of the skin, hair, nails deteriorates, overweight appears. Hormones exert the most substantial influence on the psyche, causing the appearance of obsessive thoughts, manias, and even a split personality.

"Problems of sexual function after spinal cord injury" a research paper made by Stacy L.Elliott, Department of Psychiatry and Urology, University of British Columbia, BC, Canada, British Columbia Centre for Sexual Medicine published

as Chapter 26 in L.C.Weaver and C.Polosa (Eds), Progress in Brain Research, Vol. 152 gives the following details:-

"Sexual functioning is recognized by the health care profession as an area of joy for many people, but it can also be an area of great mental and physical suffering. Medicine is mandated to relieve suffering. After spinal cord injury, in general, sexual satisfaction decreases. Sex is a legitimate and fundamental need in humans. Substantial changes to both the autonomic and somatic nervous system occur after spinal cord injury, and result in altered sexual function and fertility potential. This chapter provides a clinical overview of the main sexual and reproductive concerns and priorities men and women face after spinal cord injury. Besides genital functioning, other autonomic functions affect sexuality, such as bladder and bowel function, cardiovascular control and temperature regulation. These interlinked autonomic functions are presented in their impact on sexuality. The mind-body interaction and spinal feedback loops are discussed. It is proposed that human sexuality after spinal cord injury can be a model for investigating integrated autonomic function. Recent research on the measurement of cardiovascular parameters during vibrostimulation and ejaculation demonstrates the discordance between objective and subjective signs of autonomic dysreflexia. "

A medical study "Social, Sexual and Personal Implications of Paraplegia" made by Colette Ray, B.A., Ph.D. and Julia West, B.a, Department of Psychology, Brunel University, Uxbridge, Middlesex UB, U.K., reported in Paraplegia 22 (1984) 75-86 gives the implications of Paraplegia. The relevant paragraphs of the report are as follows:-

"Social implications

PHYSICAL DISABILITY has been described as a 'stigma', a term which refers to any attribute which marks its possessor as different from others, discredits him or her and disqualifies the person from a full participation in society (Goffman, 1963; Katz, 1981). As part of the process of stigmatization there is a tendency to 'typify' the whole person on the basis of the attribute in question. Thus, the disabled person will find that his or her social identity has been redefined in terms of the disability (Rubington and Weinberg, 1973) and, furthermore, that this redefinition results in some degree of social exclusion and rejection. Attitudes towards the disabled are ambivalent. On the one hand there exists a positive prejudice. People are often protective, helpful and considerate in their behaviour, and rate the disabled in favourable terms (Kleck, 1968; Mussen and Barker, 1944). On the other hand, disability can be a source of distress and embarrassment for the able-bodied; people often avoid contact with the disabled and are critical

towards them (Kleck, 1968; Piliavin et al., 1975; Snyder et al., 1979; Tringo, 1970). Our self perception depends in part upon the image that we are seen to have in the eyes of others (Mead, 1934) and the disabled person may come to accept the typification imposed or, if they are rejected by others, may introject this evaluation and value their own worth more negatively.

Sexual implications

The nature and degree of impairment in sexual functioning after injury to the spinal cord will depend upon the level and the completeness of the lesion. With a complete lesion paraplegic men will rarely experience ejaculation, although orgasm can occur with this. Some have referred to this as a 'phantom orgasm', while others argue that orgasm as such is a central event and does not depend for its occurrence upon peripheral responses (Geiger, 1979). Male paraplegics will generally be able to achieve a reflexogenic erection, but not a psychogenic one and the erection may be difficult to maintain. Less is known about the sexuality of spinal cord injured women than that of men (Thornton, 1979). Vaginal lubrication may still occur as a response to stimulation, and orgasm, as in men. A woman's fertility is not affected, although child-bearing and labour will be more difficult; most men, in contrast, will find that their fertility is severely impaired. The act of intercourse itself is complicated by the spinal cord injury, whichever partner is the injured one. There will be limitations in the positions that can be adopted; involuntary spasms may occur and incontinence, or the management of an indwelling catheter, can be a problem also. Little is known of the psychological impact of sexual dysfunctions. Some commentators have suggested that patients are more concerned about these than about any other aspect of their disability (Bloom, 1974; Breslin, 1971; Cole et al., 1973), but this may overstate the case. In one study paraplegics rated sex the least of the major functional losses resulting from their injury; 52 per cent thought the loss of the use of their legs the most important, 35 per cent the loss of control over bowel or bladder, and only 13 per cent the loss of sexual functioning (Hanson and Franklin, 1976). Furthermore, in long term relationships sexual difficulties may be of secondary importance compared with other problems such as loss of fertility (David et al., 1978).

Personal implications

The difficulty that any particular individual finds in adjusting to the social, sexual and other implications of injury will depend in part upon the personal significance that these have for him or for her. No stress or crisis is uniform in its impact. This will

depend upon how the situation is appraised within the framework of the individual's own life style and values (Lazarus, 1966). Thus a person whose sense of personal worth is centred upon their appearance or physical prowess might, other things being equal, be more greatly affected by injury than another whose focus in life is intellectual and non-active. The meaning of the injury at a more general level will also be important. For example, if it is seen (unconsciously or otherwise), as some kind of punishment, then feelings of worthlessness may be enhanced (Simon, 1971). If, in contrast, it is associated with an act of bravery it may acquire a positive as well as a negative meaning; Katz and colleagues (1978) found that disabled war veterans had a more positive self image than people who had received their injuries in accidents at work. Disabled people, as a group, do have a poorer adjustment than the able-bodied (Wright, 1960). Those with spinal injuries often have emotional problems (Geis, 1972; Hohmann, 1966), have higher scores than normal on the Hypochondriasis, Hysteria and Depression scales of the M.M.P.I. (Bourestom and Howard, 1956), and may be more prone to self destructive behaviour and suicide (Hopkins, 1971)."

Therefore, for the loss of marital prospects & bliss a sum of Rs.2,50,000/- is awarded.

LOSS OF AMENITIES

21.The third respondent has lost the amenities in his life. He is wheel chair bound and cannot walk and do work. Even for attending nature's call, he has to depend up on others and there is no meaningful life for him. Therefore, he cannot a lead a normal life and hence, a sum of Rs.2,50,000/- is awarded towards Loss of Amenities.

ATTENDANT CHARGES

22.The condition of the 3rd respondent is that he has to depend upon a third party as an attendant. The Honourable Supreme Court in Kavitha Vs. Deepak and others reported in 2012 (2) TNMAC 362, attendant charges is awarded at Rs.2,000/- per month for 25 years (Rs.2000/- x 25) totaling to Rs.6,00,000/- for a person who sustained injuries and unable to look after himself. The said accident occurred in the year 2004, whereas, this accident occurred in the year 2009 and therefore, this Court fixes the monthly attendant charges at Rs.4,000/- for 25 years. Hence, the attendant charges would be Rs.4,000/- x 12 x 25 = Rs.12,00,000/-.

FUTURE MEDICAL EXPENSES

23.Even though the 3rd respondent would submit that Rs.2,600/- is being paid towards physiotherapy charges, the amount would increase in due course of time. Further, the 3rd respondent has to use catheter tubes for passing urine and is wheel chair bound and it requires to be replaced and

therefore, a sum of Rs.1,00,000/- is awarded for the purchase of new wheel chair. Therefore, this Court determines the monthly medical expenses at Rs.3,000/-. Hence, Future Medical Expenses would be Rs.3,000/- x 12 x 25 = Rs.9,00,000/- + Rs.1,00,000/- = Rs.10,00,000/-

TRANSPORTATION & EXTRA NOURISHMENT

24.The 3rd respondent has to pay towards transportation for taking treatment and for further follow up and therefore, Rs.1,00,000/- is awarded under this head. For extra nourishment, the 3rd respondent has to shell out more amount and therefore, a sum of Rs.1,00,000/- is awarded under this head.

MEDICAL EXPENSES

25.Rs.2,70,000/- paid by the 3rd respondent towards medical expenses has been accepted by the learned Single Judge as per the medical bills issued by MIOT Hospitals and the said amount is confirmed. The sum of Rs.5,00,000/- awarded by the learned Single Judge is enhanced suo motu in an endeavor to award just compensation, as follows:

SI.No	Head	Amount (Rs.)
1.	Loss of income	28,56,000/-
2.	Pain and Sufferings	3,00,000/-
3.	Loss of Marital Prospects	2,50,000/-
4.	Loss of Amenities	2,50,000/-
5.	Attendant Charges	12,00,000/-
6.	Future Medical Expenses (physiotherapy)	9,00,000/-
7.	Transportation	1,00,000/-
8.	Medical Bills	2,70,000/-
9.	Wheel Chair	1,00,000/-
10.	Extra Nourishment	1,00,000/-
	Total	63,26,000/-

The total compensation payable in this case is Rs.63,26,000/-. The interest awarded by the learned Single Judge at the rate of 6% per annum is enhanced to 7.5 % p.a payable for the above compensation except for future medical expenses of Rs.10,00,000/- from 30 days from the date of the accident viz., 27.04.2009 till payment.

26.Though the Corporation has filed this appeal against the award of Rs.5,00,000/- in favour of the 3rd

respondent, this Court Suo motu, enhances the same to Rs.63,26,000/- even in the absence of appeal by the Claimant for which this Court has got power and jurisdiction. This Court is convinced that because of the negligence of the appellant's officials, the accident occurred and the 3rd respondent got injured resulting in sustaining of 100% disability.

POWER & JURISDICTION OF THIS COURT

27.The issue with regard to power and jurisdiction of this Court in awarding compensation has been categorically declared by the Hon'ble Supreme Court in very many judgments holding that the party need not be driven to file Civil Suit before the Civil Court, when there is violation of fundamental right. A full bench of the Hon'ble Supreme Court in the case of Nilabati Behera v. State of Orissa and others reported in (1993) 2 Supreme Court Cases 746 has categorically stated that a claim in public law for compensation for contravention of human rights and fundamental rights, either Article 32 or 226 can be invoked. The relevant paragraphs 17, 20 and 22 are usefully extracted hereunder:-

"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 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 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.

20.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. It is 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.

22. 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. This was indicated in *Rudul Sah* and certain further observations therein adverted to earlier, which may tend to minimise the effect of the principle indicated therein, do not really detract from that principle. This is how the decisions of this Court in *Rudul Sah* and others in that line have to be understood and *Kasturilal* distinguished therefrom. We have considered this question at some length in view of the doubt raised, at times, about the propriety of awarding compensation in such proceedings, instead of directing the claimant to resort to the ordinary process of recovery of damages by recourse to an action in tort. In the present case, on the finding reached, it is a clear case for award of compensation to the petitioner for the custodial death of her son."

The aforesaid judgment has been followed in the case of *Delhi Jal Board v. National Campaign for Dignity and Rights of Sewerage and Allied Workers* reported in 2011 AIR SCW 491.

28. A learned Single Judge of this court in the case of *M. Gangachalam v. State of Tamil Nadu* has cited a list of judgments wherein it was held that Article 226 can be invoked

for awarding compensation. The relevant portion of the said judgment is usefully extracted hereunder:

"9. Payment of compensation can be ordered by the High Court in appropriate case, particularly when there is no factual disputes, under Article 226 of the Constitution of India is no longer res integra, in this regard, the following decisions can be usefully referred to.

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

(ii) In AIR 2001 SC 3668:(2001) 8 SCC 151=2002-1-L.W.491 (M.S.Grewal V.Deep Chand Sood), Rs.4.10 lakhs each was awarded for the unfortunate death of 14 young children, who died due to drowning in a river, when they were on picnic organised by the School Authorities.

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

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

Insofar as our High Court is concerned, the said issue is dealt with in several cases. Few decisions are as follows:

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

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

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

(d) 2006 WLR 13 (DB) (C.Thekkamalai V. State of Tamil Nadu) The Division bench enhanced the compensation from Rs.7.00 lakhs to Rs.5.00 lakhs for the rape victim, who was

illegally arrested and raped.

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

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

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

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

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

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

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

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

(m) In (2011) 1 MLJ 1329 (Thangapandi V. Director of Primary Health Services) A sum of Rs.5 lakhs was ordered to the family of a woman, who died after delivery, due to not giving proper treatment by Government Hospital Doctors.

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

(o) In W.P.No.20081 of 2007 dated 04.06.2012, I had an occasion to award a sum of Rs.29.26 lakhs to the petitioner therein, who lost both his parents due to fall of a tree on the road side.

Applying the above decisions to the facts of this case, I am of the view that the respondent department is liable to pay compensation to the family of the petitioner for the death of petitioner's wife Malathy due to electrocution on 17.05.2009."

Therefore the plea taken by Ms.Karthika Ashok, learned Standing Counsel for Corporation of Chennai that the party has to approach the Civil Court has to be necessarily rejected.

29.The very existence of the Court is only to do justice and it is not the duty of this Court to direct the parties to approach the forums created under law whenever there is a violation of fundamental rights and human rights of the party. The Hon'ble Supreme Court in the decision reported in (2014) 2 Supreme Court Cases 532, Manohar Lal Sharma v. Principal Secretary and Others held that Constitutional Courts are sentinels of justice and have been vested with extraordinary powers of judicial review to ensure that rights of citizens are duly protected. In yet another decision reported in (1996) 5 Supreme Court Cases 54, Shangrila Food Products Ltd and Another v. Life Insurance Corporation of India and Another, the Hon'ble Supreme Court has held that the High Court in exercise of its jurisdiction under Article 226 of the Constitution can take cognizance of the entire facts and circumstances of the case and pass appropriate orders to give the parties complete and substantial justice. The compensation granted by the learned Single Judge is found to be inadequate. Hence, this Court has power under Article 226 of the Constitution of India to enhance and award just compensation to the victim as per medical records and his medical conditions.

30.Moreover, the pathetic condition of the 3rd respondent would not allow him to avail the strenuous process of filing a Civil Suit before the Civil Court. He has already sustained injuries, unending mental agony, sorrow and sufferings and continuous pain through out his life for no fault of his. Having become immobile and paraplegic, it cannot be expected of him to go to the Civil Court by paying heavy amount as Court-fee for which he has neither wealth nor health. Therefore, the contention of the learned Counsel for the appellant that the proper remedy is to approach the Civil Court is rejected.

31.This Court has got every power and jurisdiction to pass orders in case of violation of fundamental rights as well as human rights. The very life of the victim has become bleak. If one wishes to be a bachelor and lead a saintly life, it is his own wish. Here, the 3rd respondent has been compelled to live a life without marital bliss for no fault of his. The untold misery and the unending pain which the 3rd respondent undergoes everyday has to be compensated. In an endeavor to do justice to the 3rd respondent and to grant just

compensation for the disability sustained and the loss because of the disability, this Court enhances the compensation suo motu even in the absence of appeal by the 3rd respondent. Further, this Court cannot decide this kind of matters by appreciating technical points raised by the parties. This Court is a constitutional Court which is duty bound to safeguard the interest of the citizens of this County and to take care of their welfare.

32.The appellant shall deposit a sum of Rs.63,26,000/- along with interest at the rate of 7.5% from 30 days from the date of accident viz., from 27.04.2009 on or before 22.02.2020 in the account of the third respondent opened in Syndicate Bank, Triplicane failing which the Commissioner, Corporation of Chennai, the appellant herein shall appear before this Court on 24.02.2020, On such deposit being made, the Syndicate Bank, Triplicane is directed to pay a sum of Rs.10,00,000/- to the 3rd respondent within a period of one week and the balance amount shall be deposited in interest bearing Fixed Deposit at least for a period of ten years and the accrued interest shall be withdrawn by the 3rd respondent every month and the bank shall pay the amount without causing any inconvenience to the 3rd respondent, whenever he approaches the bank for withdrawing the amount. The bank shall not deduct any amount towards TDS as the amount fixed and ordered is only the compensation for the disability sustained by the 3rd respondent which is not his own invitation. The amount can neither be called as income nor as taxable amount and therefore, no tax can be levied on the said amount. The bank details of the 3rd respondent are as follows:

- (i) Name of the Bank : Syndicate Bank, Triplicane Branch.
- (ii) Address : No.387, Dr.Natesan Road, Opp. to Ice House Police Station, Triplicane, Chennai - 600 005.
- (iii) Name of the Account Holder : N.Anand Kumar
- (iv) Address : No.7/2, Muzafar Jung Bahadur Street, Triplicane, Chennai - 600 005.
- (v) Account No : 60112010054505
- (vi) IFSC : SYNB0006011

33.In the result, this Writ appeal is dismissed by suo motu enhancing the compensation granted by the learned Single Judge from Rs.5,00,000/- to Rs.63,26,000/- along with 7.5% interest in the absence of any appeal or cross appeal by the

injured/claimant. No costs. Consequently, connected miscellaneous petition is closed.

Call the matter for reporting compliance on 24.02.2020.

Sd/-

Assistant Registrar(Insp Cell)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Secretary,
Department of Municipal Administration
and Water Supply,
Fort St.George,
Chennai - 600 009.
- 2.The Chairman,
Tamil Nadu Electricity Board,
Chennai - 600 002.
- 3.The Commissioner,
Corporation of Chennai,
Ripon Buildings,
Chennai - 600 003.

Copy To

- 1.The Section Officer, सतयमेव जयते
Judicial Section, High Court,
Madras.(Post on 24.02.2020)
- 2.The Branch Manager, WEB COPY
Syndicate Bank,
Triplicane, Chennai.

+2cc to Mr.J.Ashok, Advocate, S.R.No. 80553
+1cc to Mr.T.P.Prabakaran, Advocate, S.R.No. 80074
+1cc to Mr.Karthikaa Ashok, Advocate, S.R.No. 80257

W.A.No.3126 of 2019

and

C.M.P.No.19839 of 2019