

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP No.17331 of 2010 (O&M)
Date of Decision: 27.05.2019

Nisha and others

... Petitioners

Versus

State of Punjab and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. G.B.S.Gill, Advocate for
Mr. Gaurav Dhir, Amicus Curiae.

Mr. Anurag Arora, Advocate,
for the petitioners.

Ms. Ambika Sood, DAG, Punjab.

Mr. Sunil Kumar Vashisth, DAG, Haryana.

Mr. Raajan Soni, Advocate for
Mr. Ashish Verma, Advocate,
for respondent No.3-UT.

ARUN MONGA, J.(ORAL)

1. How can a stray bull hit and lift a person on its horns and throw him on the road is the question raised by respondent, Municipal Council, Sangrur in response to the petition filed by a victim of stray bull seeking compensation. The deceased victim eventually during pendency of petition succumbed to the injuries caused by the stray bull. He had originally filed the instant writ petition alleging negligence of respondents in protecting his life and liberty. After his death, his widow, son and daughter respectively, were substituted as petitioners.

2. Succinctly, the factual matrix of the case is that the deceased Vijay, suffered 90% permanent disability with reduced IQ and severe weakness in his limbs, having been involved in an accident with a stray bull

on the fateful night of 21.09.2007. He underwent various surgeries at Patiala, Ludhiana and even at PGI, Chandigarh but could not be successfully treated for the head injury caused by the accident. The extent of the injuries and the disability caused to the deceased is evident from the medical certificate dated 21.08.2009 (Annexure P-1).

3. The deceased had spent around Rs. 15 lacs till filing of the present writ petition and had to undergo further surgery. He made representations to the Deputy Commissioner, Sangrur and also the Executive Officer, Municipal Council, Sangrur vide letter dated 02.03.2010 (Annexure P-20), to grant him compensation as per policy dated 26.05.2006 (Annexure P-17) so that he could undergo further surgery necessary for his recovery. His plea was rejected vide letter dated 06.05.2010 (Annexure P-21), stating that no funds had been sanctioned for such purposes.

4. Being aggrieved by the letter rejecting his claim, he caused a legal notice dated 11.06.2010 (Annexure P-22) on the Municipal Council, Sangrur seeking compensation and also money for further treatment, but to no avail. Hence the present writ petition.

5. Vide order dated 15.11.2011, this Court had ordered Rs. 1,00,000/- be paid as interim compensation to the original petitioner, since deceased. The said order was challenged in an intra-Court appeal vide LPA No. 316 of 2012, which was dismissed. Consequently interim compensation was paid. The original petitioner i.e. Vijay, passed away and his LR's were brought on record.

6. During the hearing of writ petition, this Court raised the issue of stray cattle menace in whole of Sangrur and sought a status report to be filed vide order dated 17.07.2017. Problem of stray cattle causes annoyance

to the local residents and also places them in danger of injury. Mr. Gaurav Dhir, was appointed as Amicus Curiae to assist the Court regarding this issue. Status report dated 09.08.2017 was filed wherein it is stated that the Municipal Council, along with NGOs, is capturing stray cattle and putting them in cattle pounds.

Lateron, vide an order dated 23.01.2019, this Court enlarged the scope of the writ petition being an issue which needed to be dealt with on a larger scale and impleaded State of Punjab, State of Haryana and also U.T. Administration, Chandigarh as parties.

7. Separate status reports were filed by the different State Governments. State of Punjab vide report dated 23.01.2019, stated that a Policy by way of bye laws namely, Punjab Municipal Corporation and Municipal (Registration, Proper Control of Stray Animals and Compensation to the Victims of Animal Attack) Bye-laws has been framed. The said bye laws have been forwarded to all the Municipal Corporations and Councils across the State of Punjab. Future cases of compensation, with respect to persons who are either accidentally killed or injured by stray animals will be dealt under the new Bye-laws.

8. State of Haryana, by way of affidavit dated 21.05.2019, stated that no policy has been formulated by them so far. The cases of compensation are dealt with under notification dated 06.08.1976, namely Haryana Municipal Ownerless and Stray Cattle Bye-laws, 1976. It is stated that vide this notification, directions have been issued to construct cattle pound/Gau-Greh/Gaushala to check the menace of stray cattle. Status of these Gaushalas has also been placed on record vide Annexure R-4/1.

9. U.T. Administration, Chandigarh failed to place on record the

status report despite opportunity being given to file the same.

10. Adverting to the case and claim of the petitioners, learned counsel for the petitioner has urged that the untimely and tragic death of Vijay is on account of negligence on the part of the respondents No.1-3 collectively. They are under a bounden duty to protect the people from being harmed by the stray animals and it is on account of grave neglect on their part that the life of a citizen has been lost.

11. Learned counsel for the petitioner has referred to the judgments of Delhi High Court *titled Shakuntala Vs. Government of NCT of Delhi and another, 2010 (7) RCR (civil) 2397, Delhi High Court, Parmeshwar Vs. Government of NCT of Delhi and Another passed in W.P. (C) 6396 of 2010, decided on 30.08.2013 and a judgment of this Court reported as Parminderjit Kaur and another Vs. State of Punjab and others, 2015 (2) PLR 693.*

12. In the course of proceedings, it was pointed out by the learned Amicus Curiae that a Coordinate Bench of this Court in *Sushma Rani vs. State of Punjab and others reported as 2016(2) RCR (Civil) 289*, in similar circumstances not only granted compensation but also directed the State of Punjab to frame a Policy for compensating those persons who suffer injury or are killed due to the menace of stray animals on the road. The relevant of the said judgment is as below:-

“Thus, in the facts and circumstances of this case, and taking into account the fact that it was/ is the duty of respondent No.3 to keep public places free from the menace of stray animals and as a previous life has been lost, therefore, I am of the considered opinion that the Municipal Corporation(respondent No.3) should pay

compensation of Rs.10 lacs to the petitioner with 9% interest from the date of filing of the petition till the date of realization of the amount. It is ordered that the amount of compensation shall be paid by the Municipal Corporation/ respondent No.3 within three months from the date of production of certified copy of this order. While departing, the State of Punjab is also directed to at least frame a Policy for compensating the persons, who suffers injuries or are killed by stray animals, roaming around on the streets, so that such like cases could be decided by the respondents themselves.”

13. In the return filed on behalf of respondent No.3/ Municipal Council Sangrur, claim of the petitioner has been resisted and dismissal of writ petition is sought on the ground that 'story' narrated by the petitioner is completely false. It is stated that no such incident, of the kind that the petitioner was hit by a stray bull, as alleged by the petitioner, ever occurred. The petitioner has not produced any evidence in this regard. It is stated that most vital aspect of the matter is that the petitioner did not report the alleged incident to any authority.

14. It is further stated that it cannot be believed that a bull lifted the petitioner on his horns and threw him on the road. The DDR, which was recorded by the police on 16.10.2007 was after a delay of about 25 days as the alleged incident occurred on 21.09.2007. No request was made to verify these facts. A DDR is just the recording of the statement by a person giving his version and it has no evidentiary value. Petitioner came up with these allegations in 2010 when the writ petition was filed. It is stated that the version given in writ petition is different from what was stated in the legal notice issued by the petitioner, demanding compensation from the District

Administration. Thus, it shows that the version is an after-thought. It is stated that the medical record and other documents do not prove the story put forth by the petitioner and are required to be proved by him at trial before Civil Court. An objection regarding maintainability of the petition on the ground that the petitioner has alternative remedy of filing a civil suit seeking compensation has also been taken.

15. It is stated that the Municipal Council/ respondent is diligently pursuing the matter of catching of stray cattle and lodges them in '*gaushalas*' and there is no question of any stray cattle roaming on roads.

16. Having perused the rival pleadings and after hearing the arguments of the respective counsel for the parties and learned Amicus Curiae, I am of the opinion that arguments of learned counsel for the petitioner and Amicus Curiae are fair and reasonable and in view of the merits of the case of the petitioner, particularly, in view of unimpeachable nature of documents/ evidence annexed with the writ petition, the veracity of which has not been challenged, the petition deserves to be allowed. Merely bald assertion qua the documents/ evidence which have been issued by the competent authorities viz. Medical Officer of Civil Hospital, Post Graduate Institute of Medical Sciences, Chandigarh, Police officials etc., by saying that the answering respondent has no knowledge of the same, would not entitle the respondent/ Municipal Council, Sangrur to assert that the same cannot be believed.

17. The petitioner has effectively shown that he was admitted in Civil Hospital, Sangrur in a precarious situation. As apparent from

admission record(Annexure P-2), his condition was so critical that he was referred to the Higher Centre in the night at 8:30 p.m. The petitioner was thereafter taken to Amar Hospital, Patiala where he remained admitted in Intensive Care Unit and was treated for head injury until December, 2007. In the course of medical treatment, RTFT Craniotomy with evacuation of Subdural hematomas was done at Amar Hospital, Patiala on 21.09.2007. The petitioner was, thus, in no condition to report the matter to the police until his father got the DDR No. 16 dated 16.10.2007 recorded with the police. A copy thereof has been annexed as Annexure P-3.

18. It would not be out of place to mention here that contention in the written statement that the police was not informed in time and DDR is an after-thought, on the face of it seems to have been raised for the sake of it, as would be borne from the admission record of the petitioner prepared by the attending Doctor on the same day when the petitioner was hit by a bull, which clearly records that “police has been informed”.

19. The woes of the petitioner continued to multiply after he was discharged from Amar Hospital as he was taken to Post Graduate Institute of Medical Sciences, Chandigarh for ventriculoperitoneal Shunt/ Revision, owing to which he remained admitted under C.R. No. 46444 with effect from 07.12.2007 to 10.12.2007, as is reflected from Annexure P-4 (collectively), as stated in the admission record. After being discharged from Post Graduate Institute of Medical Sciences, Chandigarh, the petitioner was further taken to Christian Medical Centre, Ludhiana, wherein he continued to be treated in OPD with effect from 12.12.2007 to 23.12.2007 under Patient Card No. C-7118104. Requisite proof of treatment etc. has been appended as Annexures P-5 to P-14.

20. The treatment at Christian Medical Centre, Ludhiana did not make the petitioner recover from the effects of head injury and he had to be taken to Department of Neuro Surgery at Post Graduate Institute of Medical Sciences, Chandigarh with effect from 29.01.2008 to 01.02.2008, as is gathered from medical record (Annexure P-15, collectively), wherein it is stated that the petitioner's case was that of blow up head injury with hydrocephalus. After Post Graduate Institute of Medical Sciences, Chandigarh, the petitioner throughout continued to get himself treated for the after effects of head injury at Apollo Hospital, Ludhiana, per his medical record appended as Annexure P-16(Collectively).

21. The fight of the petitioner, despite his best efforts, did not yield the requisite results as he ultimately had to live with permanent physical disability of 90% with left side severe upper and lower limb weakness, dysphasia with urinary incontinence and very low IQ caused by the head injury, as certified by the Board of Doctors at Post Graduate Institute of Medical Sciences, Chandigarh vide disability certificate dated 21.08.2009(Annexure P-1).

22. It is duty of the State to protect the life of its citizens under Article 21 of the Constitution of India. There is no escape from the liability of the State particularly in view of the Punjab Municipal (Registration and Proper Control of Stray Animals) Bye-laws 2006, notified vide Government Notification dated 25.04.2006 (Annexure P-17), of which, sub clause 2 of Clause 9 is reproduced hereinbelow:-

“2) The stray animals found moving in streets/roads/any public place within the municipal limits by the private individual, Animal Welfare Organization(s) shall be caught and handed

over to the official incharge of the committee for impounding in the cattle pound or enclosure fixed for this purpose by the committee. The above said cattle pound or enclosure shall have a boundary wall of such height as the animal inside the enclosure is not able to cross/jump.”

A perusal of the Sub-Clause 2 of Clause 9, *ibid* leaves no manner of doubt that there is a statutory duty casted on the State/Municipal Council/Corporation to tend to the stray animals and to protect the citizens from being harmed by stray animals.

23. I am also of the view that when the protection of a human life must take precedence over stray animals' life, at all costs and any failure on the part of the State would have to be visited with adverse consequences including payment of compensation. Obviously, the negligence of respondents No.1 to 3 led to the injuries and death of Vijay Kumar caused by the stray bull. They are, therefore, liable to pay compensation for the same.

24. Now the question arises with regard to the compensation amount payable to the legal heirs, who have been impleaded during pendency of writ petition, for the injuries and death of Vijay Kumar caused by the stray bull. In my opinion, the same ought to be and may be assessed according to the formula under the Motor Vehicles Act.

25. Petition shows that on the date of incident (21.09.2007), Vijay Kumar was aged about 45 years and enjoyed perfectly good health. At the time of death in 2012, the age of Vijay Kumar was above 50 years.

26. It is averred that till the filing of the petition in September, 2010, an amount of Rs.15 lacs had already been spent for the treatment of Vijay Kumar necessitated by the injuries caused by the stray bull. Bill dated

22.10.2007 issued by Amar Hospital, Patiala shows that even after allowing concession of Rs.23,000/-, a sum of Rs.1,94,329/-was charged by the hospital for treatment of Vijay Kumar up to 07.12.2007. Thereafter, he remained under treatment at PGIMER, Chandigarh, CMC Hospital, Ludhiana but despite everything, he was rendered 90% disabled and continued to suffer the rest of his life. Ultimately, as stated above, he died sometime in 2012 during pendency of the petition.

27. It is stated in the petition that till ill fated day (21.09.2007), Vijay Kumar had been working in the purchase and sale of rice husk and earning an income of Rs.2.5 lacs per annum. Income tax return for the financial year 2005-06 (assessment year 2006-07) [Annexure P-19] shows that his date of birth was 29.04.1961 and his net taxable income for the year was Rs.2,49,112/-. According to this document, his age was about 51 years at the time of death in about September, 2012.

28. To calculate the compensation to be awarded to the dependents of the deceased, Hon'ble the Apex Court has laid down various principles in its judgments. Addition of income for future prospects, deduction of personal and living expenses, selection of multiplier, various heads of compensation and the formula for computation of compensation have been explained and settled by the Hon'ble Supreme Court of India in its judgments reported as '*Sarla Verma and others v. Delhi Transport Corporation and another*' 2009(3) RCR (Civil) 77 (SC) and '*National Insurance Company Limited v. Pranay Sethi and ors.*' 2017 (4) RCR (Civil) 1009 (SC). Relevant paras thereof, are reproduced hereunder:-

“Sarla Verma and Others v. Delhi Transport Corporation and another:-

21. We therefore hold that the multiplier to be used should be as mentioned in column (4) of the Table above (prepared by applying Susamma Thomas, Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years.

National Insurance Company Limited v. Pranay Sethi and Ors:-

61. In view of the aforesaid analysis, we proceed to record our conclusions:-

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(iii) While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.

(iv) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.

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(vii) The age of the deceased should be the basis for applying the multiplier.

(viii) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years.”

29. Taking all these facts and circumstances into account and as per principles and formula under the Motor Vehicles Act, the amount of the compensation payable for the injuries and expenses for treatment and ultimately death of Sh. Vijay Kumar is assessed as under:-

a) Income of the deceased in financial year 2005-06	Rs.2, 50,000/-
b) Add 30% of income as increased by virtue of further improvement and growth of business from 2005-06 to 2012	Rs.75,000/-
c) Total income	Rs.3, 25,000/- per annum say Rs. 27,000/- per month
d) Deduct 1/3 rd expenses for own maintenance of Vijay Kumar	Rs.9,000/- p.m.
e) Dependency of the wife,son and daughter	Rs.18,000/- per month say Rs. 2,16,000/- per annum
f) Multiplier applicable at age 51	12
g) Loss of dependency income	2,16,000 x 12 =25,92,000/-
h) Re-imbursement of expenses for treatment including Rs.1,94,329/- charged by Amar Hospital, Patiala for treatment of Vijay Kumar up to 7.12.2007	Rs.3, 00,000/-
i) Loss of estate	Rs.20,000/-
j) Funeral expenses	Rs.20,000/-
k) Total Compensation	Rs.29,32,000/-

30. Accordingly, respondents No.1 to 3 are directed to jointly and severally pay to the petitioners a sum of Rs.29,32,000/-(Rs. Twenty Nine Lakhs and Thirty Two Thousand only) with interest thereon @ 6% from 01.09.2012 till payment. The amount of compensation along with interest

shall be shared inter se the petitioners as under:-

- a) Smt. Nisha-wife of Vijay Kumar: 50%
- b) Mohit Garg-Son of Vijay Kumar: 25%
- c) Akshika-Daughter of Vijay Kumar: 25%

Let the needful be done by the respondents within four months from the date of receipt of a certified copy of this order.

31. As regards the larger question, per order dated 23.01.2019 of this Court, the States of Punjab and Haryana have filed their respective affidavits qua stray cattle menace. But the UT Administration, Chandigarh has neither filed any affidavit nor placed any status report on record. Position that emerges in Punjab is that approved bye Laws called the Punjab Municipal (Registration and Proper control of Stray Animals) bye Laws, 2006 as notified vide Gazette Notification dated 25.04.2006 are being implemented.

32. Similarly in the State of Haryana, the Haryana Municipal Ownerless and Stray Cattle Bye-laws, 1976 as notified vide Notification dated 06.08.1976 are being implemented. As for UT Administration, it has neither been shown if any of the Bye-laws as applicable in States of Punjab and Haryana have been adopted or they have notified any independent set of Bye-laws to deal with the menace of the stray cattle in Chandigarh.

33. After hearing the learned Amicus Curiae and taking into considerations, the suggestions given by him in course of the hearing, a writ of mandamus is issued for implementation of the following directions by the State of Punjab as well as State of Haryana under Punjab Municipal (Registration and Proper Control of Stray Animals) Bye-Laws, 2006 and Haryana Municipal Ownerless and Stray Cattle Bye-Laws, 1976

respectively.

- i) An official shall be duly notified as an 'authorized official' for every sub division of every district by the Department of Local Government of respective State/UT who shall seize any animal found on the highway or in any public place, which he has reason to believe to be stray animal and detain it for a week until the owner of such animal has claimed for it and paid all expenses incurred by the official of the Local Government for its detention.
- ii) In the event the authorized official of the Local Governments has reason to believe that the animal so seized is a paid one or has an owner, then the official shall locate address of owner from relevant office record and serve a written notice to the owner that the animal has been seized and is liable to be sold by way of auction or disposed of as may be decided by the official if not claimed within a period of 7 days after service of the notice.
- iii) Stray animals found moving in the streets/roads/any public place within the Municipal limits by any private individual and/or Animal Welfare Association shall be caught and handed over to the authorized official as notified by the Local Governments, for impounding the said animal in his cattle pound and/or enclosures fixed for this purpose by the Local Governments.
- iv) The Local Governments shall ensure that every town in Municipal limit has a cattle pound and/or enclosures for impounding the stray animals and the said cattle pound and/or enclosures shall have a boundary wall of such height so as the animal inside the enclosure is unable to cross/jump out of it.
- v) As has already been done by the State of Haryana, the Department of Local Government in Punjab and UT Administration shall issue necessary instructions to all the Deputy Commissioners/ Commissioners / Mayor and Executive Officers/ Secretaries of Municipal Corporation/

Council / Committees in the States of Punjab/ UT Administration to construct cattle pound/ enclosures within municipal limits.

vi) On receipt of information regarding infectious or dangerous disease (like rabies) to any animal stray or otherwise, or if any animal appears to be causing harm to any person in general public, it shall be the duty of the authorized official of the Local Government to immediately remove such animal and it shall thereafter either dispose of such animal forthwith, in a manner as may be decided by the said official, or send it to veterinary hospital for observation for a period not more than 14 days.

34. As far as UT Administration is concerned in view of lack of affidavit or otherwise placing on record any Policy or Bye-Laws applicable to curb the menace of stray animals and it would not be appropriate for this Court to transgress into the legislative domain. In the absence of any applicable Statute/ Rules/ Notification framed by/for UT Administration, it is expected that until the framing of any such Law/Notification, the UT Administration shall also make endeavours to implement the above directions as issued in the case of States of Punjab and Haryana.

35. With the above directions and observations, the writ petition is disposed of.

36. In the parting, it may not be out of place to observe that the department of Local Government of the respective States, Governments are expected to frame Policies to deal with the menace of stray animals keeping in mind that preventive measures, and not compensatory measures, are to be taken to avoid the re-occurrence of the accidents of the nature which led to the filing of the present writ petition seeking compensation. Focus should be

on the prevention of stray animals attacks instead of steps to be taken once such attacks have taken place.

27.05.2019
vandana/Jiten

(ARUN MONGA)
JUDGE

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| 1. | Whether speaking/reasoned | Yes/No |
| 2. | Whether Reportable | Yes/No |