

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
Chandigarh**

CWP No. 10977 of 2018

Date of Decision: February 24, 2020

Joginder Bai and others

.... Petitioner(s)

Versus

State of Haryana and others

..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Narender Singh Kamboj, Advocate
for the petitioners.

Mr. Ashish Yadav, Addl. A.G., Haryana.

LISA GILL, J.(oral)

The petitioners seek compensation to the tune of Rs.25,00,000/- on account of death of Gurnam Singh. Petitioners are the wife and children of Gurnam Singh.

It is averred that Gurnam Singh had gone to a barber shop at his village Hijrawan Khurd on 31.05.2016 and when he was coming out of the said shop, a branch of an aged Kikker tree fell upon him. He sustained injuries and ultimately succumbed to them on the same day. Copy of the Daily Diary No.36 dated 31.05.2016 and the postmortem report dated 31.05.2016 are attached as Annexures P-1 and P-2. It is contended that the Kikker tree in question is a old, worn out diseased tree and it is due to this reason that the branch of the tree fell upon Gurnam Singh. The respondents it is submitted were responsible for the maintenance and upkeep thereof and in case the tree was found to be diseased, it was the duty of the respondents to have removed

the tree. In this situation, the petitioners seek compensation on account of death of Gurnam Singh.

The petitioners, it is submitted, sought compensation and legal notice dated 08.09.2016 (Annexure P-7) in this respect was served upon the respondents, who are alleged to have illegally denied and repudiated petitioner's claim, as reflected from the reply to the legal notice (Annexure P-8).

Learned counsel for the petitioners, thus, prays that this writ petition be allowed and the respondents be directed to suitably compensate the petitioners.

Learned counsel for the State, however, refutes the arguments as raised and submits that the tree in question is a healthy one and is still existing on the spot. Learned counsel for the State while referring to the photographs of the tree attached as Annexure P-4 and P-5 submits that the fresh leaves on the tree itself indicate the health of the tree, which is still existing on the spot. It is further pointed out that as per the DDR (Annexure P-1), there is not even a mention regarding the tree in question being diseased. It is, thus, prayed that this writ petition be dismissed.

I have heard learned counsel for the parties and have gone through the file. I have also gone through the judgment of the Hon'ble Supreme Court in ***the Municipal Corporation of Delhi Vs. Smt. Sushila Devi and ors. (1999) 4 SCC 317*** and a judgment of Madras High Court in ***The Commissioner, Corporation of Chennai Rippon Buildings Chennai Vs. The State of Tamil Nadu 2017(1) MLJ 650***, relied upon by learned counsel for the petitioners.

Learned counsel for the petitioners is unable to deny that the present writ petition does involve disputed questions of fact. There is no mention about the health of the tree in the DDR. Neither is there any document on record to indicate the health or otherwise of the tree in question, which is admittedly standing on the spot even as on date. Death of Gurnam Singh due to the injuries caused by falling of the branch on him, though borne out by the DDR (Annexure P-1) and the postmortem report Ex.P-2, does not indicate the state of health of the tree in question. In *Smt. Sushil Devi's* case (supra), the Hon'ble Supreme Court was dealing with a matter where the claimants had filed a suit for damages. Expert evidence in the form of the testimony of a Botany Professor was duly brought on record. Thus the said judgment is clearly distinguishable. Judgment of the Madras High Court is also not relevant for adjudication of the present controversy. In my considered opinion, this writ petition involves disputed questions of fact, which cannot be decided in exercise of writ jurisdiction.

This writ petition is thus disposed of with liberty to the petitioners to avail the remedy/remedies as may be available to them in accordance with law.

February 24, 2020

Sunil

**(Lisa Gill)
Judge**

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No