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21.11.2022
d.p.

**In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

W.P.A 16882 of 2022

**Mansura Bibi
-versus
The Kolkata Municipal Corporation & Ors.**

**Mr. Indranil Halder.
...For the Petitioner.**

**Ms. Chaitali Bhattacharjee,
Mr. Kartick Chandra Kapas.
...For the State.**

**Mr. Alok Kumar Ghosh,
Mr. Swapan Kumar Debnath.
...For KMC.**

Affidavit-of-service filed in Court today is taken on record.

The petitioner claims to be the widow of one Nausad Alam who expired on 13th May, 2022 at the age of 54 years allegedly on account of an accident which he suffered due to the inaction on the part of the Kolkata Municipal Corporation to take proper steps for guarding and fencing the area where construction work was being carried out at the instance of the Kolkata Municipal Corporation.

The petitioner has mentioned in the writ petition that, her husband on 13th March, 2022 at about 8.30 P.M., fell into an excavation ditch of the Kolkata Municipal Corporation, left without any caution board, on the Panch Masjid Road under the project, 'Development of S & D Network in Bakrahat Road

Catchment (Ward-125) by Cut and Cover Method and Laying of RCC Sewer Line along Bakrahat Road and Diamond Harbour Road by Microtunneling Method’.

The petitioner submits that after the accident, her husband was admitted to the S.S.K.M. Hospital and was under treatment in the said hospital till 8th April, 2022. Her husband breathed his last on 13th May, 2022 at B.M.R.I. Hospital Pvt. Ltd.

The petitioner contends that had the caution board being placed where the excavation had been made, her husband would have noticed the same and the accident could have been averted and he would have been alive.

The petitioner seeks for a direction upon the Kolkata Municipal Corporation to pay compensation on account of the accidental death of her husband caused due to negligence on the part of the Kolkata Municipal Corporation to act in accordance with Section 376 of the Kolkata Municipal Corporation Act, 1980.

Section 376 of the Act of 1980 has been placed in Court.

The prayer of the petitioner is opposed by the learned advocate appearing for the Kolkata Municipal Corporation.

The petitioner has annexed photograph of the signboard of the project where the construction work is being made.

It appears therefrom that the employer of the project is Kolkata Municipal Corporation and the

contractor is ATOZ ADHUNIK JV and the project is funded by ASIAN DEVELOPMENT BANK.

Whether the husband of the petitioner expired on account of the accident that was caused to him, whether the area in question was at all fenced or guarded, whether there was any negligence at the time of treatment of the husband of the petitioner, whether the husband of the petitioner was suffering from any other disease/illness which led to his death or whether the husband of the petitioner was physically and mentally fit or not, etc. are various questions which are required to be answered prior to fixing any responsibility holding the Corporation liable for the death of the husband of the petitioner.

Several factual aspects have to be ascertained after evaluation of evidence and examination of witnesses, which cannot be done by this Court sitting in the high prerogative writ jurisdiction under Article 226 of the Constitution of India.

It appears that prior to moving this Court, the petitioner neither highlighted this issue nor approached the Corporation for relief. Prayer has been made directly before this Court for issuing the writ of Mandamus seeking compensation. The same is not permissible in law.

In view of the above, it will be open for the petitioner to approach the appropriate forum for remedy, if so advised.

No further order can be passed in favour of the petitioner in the present writ petition.

The writ petition stands disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Amrita Sinha, J.)