

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

245

CWP-6527-2020
Date of decision: 20.04.2023

ANUJPetitioner
VERSUS

STATE OF HARYANA AND OTHERSRespondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present:- Mr. Jainainder Saini, Advocate
for the petitioner.

Mr. Vivek Chauhan, Advocate
for respondent No.1.

Mr. Ashish Yadav, Advocate
for respondents No.2 to 4.

VINOD S. BHARDWAJ, J. (Oral)

The present petition has been filed for issuance of directions to respondents to pay compensation to the petitioner, who lost both his arms, on account of electrocution. It has been averred that it was on account of the failure on part of the respondent-Transmission licensee to maintain the transmission lines at a safe height and condition and as a result of the same the said incident in question took place.

2. Counsel for the petitioner contends that the petitioner is a resident of village Belarkha, Tehsil Narwana, District Jind and aged 24 years. He possesses the qualification of Senior Secondary and has successfully completed diploma in electrical trade from the National Council

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for Vocational Training. Father of the petitioner is a small farmer having one acre of land. The petitioner was thus working at an electrical shop in the name of M/s Balaji Electrical, Sector-2, Panchkula to earn his livelihood and was earning Rs. 25,000/- to Rs.40,000/- per month. Being a technically qualified person, he was also pursuing for a government job. On 03.01.2018, the petitioner had gone to his native village Belarkha, which is at a distance of about 8 K.M. from Narwana. He visited Narwana to purchase household articles on 04.01.2018. He sat down at Hotel Blue Bird alongwith an old friend for snacks. There was no electricity on account of fault in the main line. A complaint in this regard had been registered with the respondent-distribution licensee. One of the official visited the spot to carry out the repair. When the petitioner and his friend came out from the Hotel at around 3:30 P.M., they noticed that there was a sparking in the electric pole in front of the Hotel and within a small span, there was a loud spark and the live broken electricity wire fell on the petitioner which hit his stomach, eyes and both hands causing severe burns on various body parts. The adjacent shopkeepers and passerby gathered at the spot and brought the petitioner to the Civil Hospital, Narwana from where he was shifted to Agroha Medical College. Finding no improvement, he was admitted to Jindal Institute of Medical Sciences at Hisar. The kidney and other body parts of the petitioner were badly damaged and he remained unconscious for about 10-15 days. Life of the petitioner could be saved only after amputating his arms from above the elbow. The petitioner thus suffered 100% disability in the said incident. The disability certificate has been appended alongwith the present petition. It is also averred that the petitioner was under treatment and in an

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unconscious state when the police personnel visited the hospital on 2/3 occasions. The statement of the petitioner thus could not be recorded. The father of the petitioner gave a statement to the police authorities on the basis of whatever had been told to him and in a distressed state of mind. Signatures of his father were obtained on certain blank papers on the pretext of completion of formalities. He contends that his father signed the said documents in good faith and without going through the contents of the same. He further contends that the petitioner got married in the year 2014 and is having one minor daughter aged about 02 years and a minor sister who is student of Class 7th apart from old parents. It is alleged that incident in question took place on account of the negligence of the respondent-distribution licensee in maintaining the transmission line in a safe condition and by ensuring a regular maintenance thereof. The cable had thus become weak over a passage of time and broke down as a result of wind. The liability of such negligence has to be fastened exclusively on the respondent-distribution licensee and that exemplary compensation ought to be awarded so as to protect the family of the petitioner from starvation. He contends that despite the demand having been raised by the petitioner, no compensation was awarded to the petitioner.

3. Upon issuance of notice, short reply by way of affidavit of Bhajan Singh son of Bachan Singh, Sub Divisional Engineer (Operational), Dakshin Haryana Bijli Vitran Nigam Limited, Narwana, District Jind was filed. Where it was averred that the accident in question had not occurred as a result of carelessness or negligence of the distribution licensee. It has been averred that the petitioner had in fact visited the Blue Bird Hotel on

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04.01.2018 at 3:30 P.M. to rectify the defective electricity supply. A reference is made to the statement of the petitioner himself forming the basis of recording the General Diary No. 30 dated 06.01.2018 wherein he averred that he had visited the Hotel Blue Bird to rectify the electric fault. He was trying to turn off the transformer's switch when he touched the electric current. It is further stated that the accident in question took place without any fault of the distribution licensee and that he did not intend to proceed against any person. It is thus averred that there was no fault in the system maintained by the distribution licensee and that there was no occasion for heavy sparking on the pole since the power supply of the electric line/feeder gets automatically tripped off in the event of any breakage of wire of any electric line or minor sparking on main line. Since the petitioner was illegally working on the transformer installed near by Hotel Blue Bird by the distribution-licensee for rectifying the fault of the internal wiring of the hotel, he thus was himself instrumental in causing the accident in question. He tried to open the G.O. Switch of the transformer illegally and without any intimation to the staff of the Dakshin Haryana Bijli Vitran Nigam Limited, Narwana- distributory licensee. He was not authorized to operate the G.O. Switch or to climb the transformer. The incident in question was deliberately being misinformed to keep the same as secret and to avoid legal action being taken by the distribution-licensee against such unauthorized attempt by the petitioner and the owner of the Blue Bird Hotel to fiddle with the transmission system of the distribution licensee. He further contends that the petitioner was never admitted to Civil Hospital, Narwana and no MLR of the incident was also conducted. Consequently, the distribution licensee

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cannot be held responsible for compensating the petitioner.

4. I have heard learned counsel appearing on behalf of the respective parties and have gone through the documents appended alongwith the present petition.

5. The first question which arises for consideration before this Court is as to whether the disability in question had been suffered as a result of electrocution or not. Even though, the respondents contends that no MLR had been issued by the Civil Hospital, Narwana, however, the respondents have themselves placed on record the General Diary No. 30 dated 06.01.2018 on record. The date of incident and the event of electrocution on 04.01.2028 alongwith the period i.e. at around 4:00 & 4:30 P.M. is not being disputed.

6. It is thus not in dispute that the incident of 04.01.2018 had actually taken place in which the petitioner sustained injuries due to electrocution. The dispute is, however, only with respect to the manner in which the incident in question took place. Whilst the case of the petitioner is that there was sparking in the electric wires and the transformer had not been maintained regularly & properly whereas the case of the respondent is that the petitioner being an electrician had come to check the electricity supply to Hotel Blue Bird and had tried to operate the G.O. Switch of the transformer in an unauthorized manner and that he touched the live electric wire in that process. The petitioner having himself done an unauthorized act of climbing over the transformer and to turn off the switch despite not being authorized to do so, triggered the occurrence of the incident. He thus cannot claim compensation by alleging that the distribution licensee had been negligent.

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7. The Apex Court in the matter of “**Sanjay Gupta and others versus State of Uttar Pradesh and others**” reported as **(2022) 7 SCC 203** has observed as under:-

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48. **In D.K. Basu v. State of W.B. (1997) 1 SCC 416** it was held that the claim in public law for compensation for unconstitutional deprivation of fundamental right to life and liberty, the protection of which is guaranteed under the Constitution, is a claim based on strict liability and is in addition to the claim available in private law for damages for tortious acts of the public servants. Public law proceedings serve a different purpose than the private law proceedings. Award of compensation for established infringement of the indefeasible rights guaranteed under Article 21 of the Constitution is a remedy available in public law since the purpose of public law is not only to civilise public power but also to assure the citizens that they have under a legal system wherein their rights and interests shall be protected and preserved. Grant of compensation in proceedings under Article 32 or Article 226 of the Constitution of India for the established violation of the fundamental rights guaranteed under Article 21, is an exercise of the courts under the public law jurisdiction for penalising the wrongdoer and fixing the liability for the public wrong on the State which failed in the discharge of its public duty to protect the fundamental rights of the citizen. In the assessment of compensation, the emphasis has to be on the compensatory and not on punitive element. The objective is to apply balm to the wounds and not to punish the transgressor or the offender, as awarding appropriate punishment for the offence (irrespective of compensation) must be left to the criminal courts in

*which the offender is prosecuted, which the State, in law, is duty bound to do. The award of compensation in the public law jurisdiction is also without prejudice to any other action like civil suit for damages which is lawfully available to the victim or the heirs of the deceased victim with respect to the same matter for the tortious act committed by the functionaries of the State. The quantum of compensation will, of course, depend upon the peculiar facts of each case and no straitjacket formula can be evolved in that behalf. The relief to redress the wrong for the established invasion of the fundamental rights of the citizen. under the public law jurisdiction is, thus, in addition to the traditional remedies and not in derogation of them. The amount of compensation as awarded by the Court and paid by the State to redress the wrong done, may in a given case, be adjusted against any amount which may be awarded to the claimant by way of damages in a civil suit. Dr Dhawan also relied upon the judgment reported as **M.C. Mehta v. Union of India** reported as (Shriram- Oleum Gas) (1987) 1 SCC 395, to contend that to justify the award of compensation, the requirement is that infringement must be gross, patent, incontrovertible and ex facie glaring. It is also his submission that the remedy of damages was an extraordinary remedy where there was gross violation arising out of deliberate action or malicious action resulting in deprivation of personal liberty. It is submitted that the exemplary damages in public law were not to be confused with damages in private law for which private law remedies were available. The damages available for constitutional wrongs were by very nature exemplary and have a limited meaning and were not intended to be compensatory in nature. In support of his contentions, he refers to the judgments of the Supreme Court in **Nilabati***

Behera v. State of Orissa and Indian Council for Enviro-Legal Action v. Union of India?" reported as (1993) 2 SCC 746: 1993 SCC (Cri) 527 In Nilabati Behera v. State of Orissa (supra), it was held by the Supreme Court that it would, however, be appropriate to spell out clearly the principle on which the liability of the State arises in such cases for payment of compensation and the distinction between this liability and the liability in private law for payment of compensation in an action on tort. It may be mentioned straightway that award of compensation in a proceeding under Article 32 by the Supreme Court or by the High Court under Article 226 of the Constitution is a remedy available in public law, based on strict liability for contravention of fundamental rights to which the principle of sovereign immunity does not apply, even though it may be available as a defence in private law in an action based on tort. This is a distinction between the two remedies to be borne in mind which also indicates the basis on which compensation is awarded in such proceedings. We shall now refer to the earlier decisions of this court as well as some other decisions before further discussion of this principle. The compensation is in the nature of "exemplary damages" awarded against the wrongdoer for the breach to its public law duty and is independent of the rights available to the aggrieved party to claim compensation under the private law in an action based on tort, through a suit instituted in a court of competent jurisdiction or/and prosecute the offender under the penal law.

49. In Indian Council for Enviro-Legal Action v. Union of India, reported as (1996) 3 SCC 212 the Supreme Court had held that even if it is assumed that the Court cannot award damages against the respondents in proceedings under Article 32 of the Constitution of India

that would not mean that the Court could not direct the Central Government to determine and recover the cost of remedial measures from the respondents. It was held that Section 3 of the Environment (Protection) Act, 1986 expressly empowered the Central Government to make all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of environment. The right to claim damages was left by institution of suits in appropriate civil courts and it was held that if such suits were filed in forma pauperis, the State of Rajasthan shall not oppose those applications for leave to sue in forma pauperis.

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*14. An appeal against the said order was partly allowed in **MCD v. Uphaar Tragedy Victims Assn.** reported as **(2011) 14 SCC 481** wherein this Court held as under: (SCC pp. 528-31 & 36. paras 60, 64, 67 & 76)*

"60. The contention of the licensee is what could be awarded as a public law remedy is only a nominal interim or palliative compensation and if any claimants (legal heirs of the deceased or any injured) wanted a higher compensation, they should file a suit for recovery thereof. It was contended that what was awarded was an interim or palliative compensation, the High Court could not have assumed the monthly income of each adult who died as being not less than Rs 15,000 and then determining the compensation by applying the multiplier of 15 was improper. This gives rise to the following question: whether the income and multiplier method adopted to finally determine compensation can be arrived at while awarding tentative or palliative compensation by way of a public law remedy under Article 226 or 32 of the

Constitution?

64. Therefore, what can be awarded as compensation by way of public law remedy need not only be a nominal palliative amount, but something more. It can be by way of making monetary amounts for the wrong done or by way of exemplary damages, exclusive of any amount recoverable in a civil action based on tortious liability..

*67. Insofar as death cases are concerned the principle of determining compensation is streamlined by several decisions of this Court. (See for example **Sarla Verma v. DTC** reported as (2009) 6 SCC 121) If three factors are available the compensation can be determined. The first is the age of the deceased, the second is the income of the deceased and the third is number of dependants (to determine the percentage of deduction for personal expenses). For convenience the third factor can also be excluded by adopting a standard deduction of one-third towards personal expenses. Therefore just two factors are required to be ascertained to determine the compensation in 59 individual cases. First is the annual income of the deceased, two- thirds of which becomes the annual loss of dependency; and second, the age of the deceased which will furnish the multiplier in terms of **Sarla Verma**. The annual loss of dependency multiplied by the multiplier will give the compensation. As this is a comparatively simple exercise, we direct the Registrar General of the Delhi High Court to receive applications in regard to death cases, from the claimants (legal heirs of*

the deceased) who want a compensation in excess of what has been awarded, that is, Rs 10 lakhs/Rs 7.5 lakhs. Such applications should be filed within three months from today. He shall hold a summary inquiry and determine the compensation. Any amount awarded in excess of what is hereby awarded as compensation shall be borne exclusively by the theatre owner. To expedite the process the claimants concerned and the licensee with their respective counsel shall appear before the Registrar without further notice. For this purpose the claimants and the theatre owner may appear before the Registrar on 10-1-2012 and take further orders in the matter. The hearing and determination of compensation may be assigned to any Registrar or other Senior Judge nominated by the learned Chief Justice/Acting Chief Justice of the Delhi High Court.

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16. We find the precedents for payment of compensation in a writ petition under Article 32 of the Constitution fall under three categories of cases. First category is where the acts of commission or omission are attributed to the State or its officers such as Nilabati Behera (supra), Sube Singh (2006) 3SCC 178 , Rudul Sah v. State of Bihar & Anr., (1983) 4 SCC 141 , Bhim Singh versus State of J.K, reported as (1985) 4 SCC 677, MLA v. State of J & K & Ors., (1985) 4 SCC 677 and D.K. Basu v. State of W.B., (1997) 1 SCC 416 .

17. The second category of cases is where compensation has been awarded against a corporate entity which is engaged in an activity having the potential to affect the life and health of people such as M.C. Mehta wherein the Court held as under:

"31. We would therefore hold that where an enterprise is engaged in a hazardous or inherently dangerous activity and harm results to anyone on account of an accident in the operation of such hazardous or inherently dangerous activity resulting, for example, in escape of toxic gas the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident and such liability is not subject to any of the exceptions which operate vis-a-vis the tortious principle of strict liability under the rule in *Rylands v. Fletcher* .

18. The third category comprises of the cases where the liability for payment of compensation has been apportioned between the State and the Organizers of the function. In ***Dabwali Fire Tragedy Victims Association v. Union of India & Ors., 2009 SCC OnLine P&H 10273*** wherein in a fire accident, 446 persons died and many others received burn injuries. The High Court in a writ petition under Article 226 of the Constitution held that the school which organized the function and respondent No. 8, the owner of the venue, would be jointly and severally liable to pay 55% of the compensation, remaining liability was to be borne out by the State.

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22. Keeping in view the judgments referred to by this Court in its order dated 31-7-2014', as also the judgments referred to above, we find that infringement of Article 21 may be an individual case such as by the State or its functionaries; or by the Organisers and the State; or by the Organisers themselves have been subject-matter of consideration before this Court in a writ petition under Article 32 or before the High Court under Article 226 such as *Uphaar Tragedy* or *Dabwali Fire Tragedy*. Similar arguments have not found favour with the Delhi High Court and in appeal by this Court. The view taken

therein does not warrant any interference and we respectfully endorse the same.

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54. In *Shyam Sunder & Ors. v. State of Rajasthan, (1974) 1 SCC 690*, this Court observed that the maxim *res ipsa loquitur* is resorted to when an accident is shown to have occurred and the cause of the accident is primarily within the knowledge of the defendant. The mere fact that the cause of the accident is unknown does not prevent the plaintiff from recovering the damages, if proper inference to be drawn from the circumstances which are known is that it was caused by the negligence of the defendant. It was observed as thus:

"9. The main point for consideration in this appeal is, whether the fact that the truck caught fire is evidence of negligence on the part of the driver in the course of his employment. The maxim res ipsa loquitur is resorted to when an accident is shown to have occurred and the cause of the accident is primarily within the knowledge of the defendant. The mere fact that the cause of the accident is unknown does not prevent the plaintiff from recovering the damages, if the proper inference to be drawn from the circumstances which are known is that it was caused by the negligence of the defendant. The fact of the accident may, sometimes, constitute evidence of negligence and then the maxim res ipsa loquitur applies.

10. The maxim is stated in its classic form by Erle, C.J.: [Scott v. London & St. Katherine Docks, (1865) 3 H&C 596, 601]

"... where the thing is shown to be under the management of the defendant or his servants, and the accident is such as in the ordinary course of things does

not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of explanation by the defendants, that the accident arose from want of care."

The maxim does not embody any rule of substantive law nor a rule of evidence. It is perhaps not a rule of any kind but simply the caption to an argument on the evidence. Lord Shaw remarked that if the phrase had not been in Latin, nobody would have called it a principle [Ballard v. North British Railway Co., 1923 SC (HL) 43]. The maxim is only a convenient label to apply to a set of circumstances in which the plaintiff proves a case so as to call for a rebuttal from the defendant, without having to allege and prove any specific act or omission on the part of the defendant. The principal function of the maxim is to prevent injustice which would result if a plaintiff were invariably compelled to prove the precise cause of the accident and the defendant responsible for it even when the facts bearing on these matters are at the outset unknown to him and often within the knowledge of the defendant. But though the parties' relative access to evidence is an influential factor, it is not controlling. Thus, the fact that the defendant is as much at a loss to explain the accident or himself died in it, does not preclude an adverse inference against him, if the odds otherwise point to his negligence (see John G. Fleming, The Law of Torts, 4th Edn., p. 264). The mere happening of the accident may be more consistent with the negligence on the part of the defendant than with other causes. The maxim is based as commonsense and its purpose is to do justice when the facts bearing on causation and on the care exercised by defendant are at the outset unknown to the plaintiff and are or ought to be

*within the knowledge of the defendant (see **Barkway v. S. Wales Transo [(1950) 1 All ER 392, 399]**).*

11. The plaintiff merely proves a result, not any particular act or omission producing the result. If the result, in the circumstances in which he proves it, makes it more probable than not that it was caused by the negligence of the defendants, the doctrine of res ipsa loquitur is said to apply, and the plaintiff will be entitled to succeed unless the defendant by evidence rebuts that probability."

*55. Further, this Court in **Pushpa bai Purshottam Udeshi v. Ranjit Ginning & Pressing Co. Pvt. Ltd. & Anr., (1977) 2 SCC 745** held that where the plaintiff can prove the accident but cannot prove how it happened to establish negligence on the part of the defendant, such hardship is sought to be avoided by applying the principle of res ipsa loquitur. It was observed thus:*

"6. The normal rule is that it is for the plaintiff to prove negligence but as in some cases considerable hardship is caused to the plaintiff as the true cause of the accident is not known to him but is solely within the knowledge of the defendant who caused it, the plaintiff can prove the accident but cannot prove how it happened to establish negligence on the part of the defendant. This hardship is sought to be avoided by applying the principle of res ipsa loquitur. The general purport of the words res ipsa loquitur is that the accident "speaks for itself" or tells its own story. There are cases in which the accident speaks for itself so that it is sufficient for the plaintiff to prove the accident and nothing more. It will then be for the defendant to establish that the accident happened due to some other cause than his own negligence. Salmond on the Law of Torts (15th Edn.) at p. 306 states:

"The maxim res ipsa loquitur applies whenever it is so improbable that such an accident would have happened without the negligence of the defendant that a reasonable jury could find without further evidence that it was so caused".

In Halsbury's Laws of England, 3rd Edn., Vol. 28, at p. 77, the position is stated thus: "An exception to the general rule that the burden of proof of the alleged negligence is in the first instance on the plaintiff occurs wherever the facts already established are such that the proper and natural inference arising from them is that the injury complained of was caused by the defendant's negligence, or where the event charged a; negligence 'tells its own story' of negligence on the part of the defendant, the story so told being clear and unambiguous". Where the maxim is applied the burden is on the defendant to show either that in fact he was not negligent or that the accident might more probably have happened in a manner which did not connote negligence on his part."

8. It is thus evident from a perusal of the above that a writ Court may award compensation to a person aggrieved and against the wrongdoer on account of breach of its public duty apart from the independent right of the aggrieved party to claim compensation under the private law in an action based on tort in a suit instituted before a Court of competent jurisdiction. The award of compensation in the public law jurisdiction is thus without prejudice to any other action like suit for damages which may be lawfully available to the victim or the heirs of the deceased qua the same matter. The quantum of compensation however would depend upon the peculiar facts of each case and no straight jacket formula can be evolved in that behalf.

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9. This Court, however, in the matter of “*Jagir versus State of Haryana*” bearing CWP-2648 of 2014 decided on 19.10.2015 held that writ Court has the power and discretion to assess a fair and proper compensation even in the absence of proper and impeccable pleadings or evidence. Further, this Court in the matter of “*Purshotam Parkash versus Dakshin Haryana Bijli Vitran Nigam Ltd.*” bearing CWP-15780 of 2016 decided on 03.09.2019 held that even though the principles laid down in claim cases under the Motor Vehicles Act are not strictly to be applied to compute quantum of compensation in electrocution cases, however, the same may be guiding factor for awarding compensation.

10. After noticing the above facts I have come to a conclusion that a writ Court may, in a given circumstance, award compensation to a person aggrieved where a person has suffered injuries as a result of a danger brought around by the respondent (the distribution licensee being the respondent in the present case). The element of compensation is granted against the breach of public duty and is without prejudice to the rights of a person aggrieved to seek his remedies in a private law action against the violator before a Court of competent jurisdiction. Even though, the principles of Motor Vehicles Act are not applicable per se, however, it may be regarded as the guiding principles by the Court of competent jurisdiction to ascertain the compensation payable to a person aggrieved.

11. The facts of the present case show that there are two different versions qua the same incident. It is however not in dispute that the 100% permanent disability was suffered by the petitioner as a result of the electrocution.

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12. A disputed question of fact would thus emerged as to whether the injury in question was sustained purely as a result of own default of the petitioner or the respondent-distribution licensee may also be at some fault. Even in an eventuality of contributory negligence, the petitioner would nonetheless be entitled to some compensation.

13. The petitioner is a young person of about 24 years having a minor daughter, minor sister, wife and parents to support. He is a qualified electrician and that amputation of his arms would drive him to pecuniary hardship. At the same time, the question of negligence/contributory negligence, the computation of income, the multiplying factor and also the quantum of compensation are required to be determined by leading an affirmative evidence.

14. Learned counsel for the petitioner contends that huge amount of about Rs. 5 lakhs was spent on the treatment of the petitioner, however, there is no medical record to substantiate the same at this stage.

15. It is a case of cross version qua the incident in question. While the petitioner relies upon the pleading made in the instant writ petition, the respondent-distribution licensee places reliance on the statement recorded in the General Diary of the Police.

16. Without going into the merits of the controversy involved in the present case or recording any definite finding as to which party was at lapse or whether it was a case of contributory negligence, lest it may prejudice the case of the respective party, the present case is being disposed of as it raises disputed questions of facts which cannot be ascertained in writ jurisdiction.

Such issues can only be determined after consideration of evidence.

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17. However, in order to meet the financial hardship of the petitioner, **an interim compensation of Rs. 2 lakhs** is awarded to the petitioner. He may, if so advised, approach the Court of competent jurisdiction for seeking compensation as per law. The Court of competent jurisdiction may thereupon determine the element of compensation on the basis of evidence led by the respective parties and be guided by such principles including the guidelines/parameters prescribed under the Motors Vehicle Act, 1988 as it may deem fit and proper. The interim compensation shall be disbursed to the petitioner within a period of **two months** from the date of receipt of certified copy of this Order. Needless to mention that the period during which the present petition remain pending before this Court and till such time when the certified copy of the order is received by the party shall be excluded from computing the limitation for institution of such proceedings.

The present petition is thus partly allowed with liberties as aforesaid.

(VINOD S. BHARDWAJ)
JUDGE

APRIL 20, 2023

Vishal Sharma

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No