

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

211

**CWP-11525-2017 (O&M)
Date of decision: 16.02.2023**

MAMTA

.....Petitioner

VERSUS

UNION OF INDIA AND OTHERS

.....Respondents

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

Present:- Mr. Rishav Jain, Advocate with
Mr. Kanish Jindal, Advocate
for the petitioner.

Mr. Sudhir Nar, Senior Panel Counsel
for respondent No.1-Union of India.

Mr. Birinder Pal, Advocate
for respondent No.2.

Mr. Simran Bhardwaj, Advocate for
Mr. Aman Kashyap, Advocate
for respondents No.3 and 4.

Mr. Sarthak Soni, Advocate for
Mr. Sanjeev Soni, Advocate
for respondent No.6.

VINOD S. BHARDWAJ, J. (Oral)

The petitioner prays for issuance of direction to the respondents to grant compensation to the tune of Rs. 50 lakhs on account of death of her son- Himanshu Gupta.

2. Briefly summarized the facts of the present case are that Himanshu Gupta (since deceased son of the petitioner) aged about 26 years died of falling in a pit dug by respondents No.4 along laning project, on the intervening night of 11.06.2016 at about 9: 30 p.m. while going to Rajpura on his motorcycle bearing registration No.PB-24-B-5370 in connection with some

domestic work. The said accident occurred within the jurisdiction of Police Station, Gandiyan, District Patiala and DDR No. 015 dated 12.06.2016 was registered in this regard. It has been submitted that Himanshu Gupta, since deceased, was working as Chief Chemist with M/s Jai Durga Cement Pvt. Ltd., situated at Industrial Growth Centre, SIDCO, Phase-1, Samba (Jammu & Kashmir) and was getting a salary of Rs. 18,000/- per month. It is further submitted that the deceased was first admitted to A.P. Jain Hospital, Rajpura from where he was shifted to Civil Hospital, Rajpura. He succumbed to the injuries and his postmortem was conducted on 12.06.2016. A Death Certificate has also been attached as per which the cause of death was injury sustained in the aforesaid incident. It is averred that the work of widening of the road from Chandigarh to Patiala (NH-64) had been allotted to the respondent No.4-Centrodorstroy India Pvt. Ltd. by the National Highway Authority of India and was being executed under the supervision of the Executive Director, Public Works Department (PWD), Patiala. During the process of widening of the road, big deep trenches had been dug since September, 2015 even though a target completion date was of February, 2017. The aforesaid pits had been kept open and without any safety or precautionary measures. Even no signs boards of caution had been affixed for the safety of the passengers/travelers. It is further averred that the Chandigarh-Patiala Highway attracts a huge and diverse traffic and that there was no occasion why the mandatory safety measures ought not to have been installed once such pits were being dug along the side berms of the road itself and the motorists were being exposed to danger. The photographs showing the actual site and the depth of the pit being nearly 6 feet and length of more than 15 feet approx. has been appended as Annexure P-6. It also shows that the side of the road is pebbled and is earthen and thus exposing the two-wheelers to skid. Besides, there is an intersection at the point. Further

photographs appended also show that no safety measures or diversion sign boards had been installed by the respondents despite them being obligated to take appropriate precautionary measures and that the pits in question have been dug at different places of along the road and only sand filled bags at some places at some distance have been put as a preventive measure. The same can be hardly considered as a safety or a preventive measure.

3. Written statement on behalf of respondents No.1 & 5 by way of affidavit of Vipin Bansal, Executive Engineer, Central Works Division PWD B & R, Patiala had been filed wherein the factual aspect is sought to be disputed, however, it is submitted that the project in question was under EPC (Engineering Procurement & Construction Project) as per which the safety of men and material is the sole responsibility of the Executing Agency. The ROW/Site had been handed over to the agency i.e. respondents No.3 and 4 on 11.08.2015 and all safety measures are required to be maintained by the Executing Agency.

4. Surprisingly, the said reply falls short of referring to the minimum safety measures that were required to be put in place by the Executing Agency and also fails to point out the responsibilities of the respondents No.1 and 5 or to ensure that adequate safety measures are adopted. The respondent being the employer, cannot be absolved of their liability merely on the ground that execution of the work had been transferred to third party. It is well settled principle of law that where on person authorizes another to commit a tort, the liability for that would not be of that person who committed it but also of that person who authorized it. The principle of "Qui facit per alium facit per se" which means that "the act of an agent is the act of the principal". The liability is thus joint and several between principal and the agent qua the victim, irrespective of their internal arrangement. The principal

may not ask his agent to do what is illegal, but yet, when the agent acts in the course of performance of his duties or functions for the principal-he becomes liable for the same alongwith the agent. The employer remains principally liable even if he may, under any contractual arrangement, seek indemnification of any such loss sustained by him from the agent for any failure to take precautions or damage/ loss sustained thereby and due to acts/omissions on the part of the executing agency.

5. A short reply on behalf of respondent No.2-Project Director, Project Implementation Unit, Chandigarh –National Highway Authority of India has also been filed as per which it has been stated that 4-laning project-NH-64 from Chandigarh to Patiala, where the accident of the son of the petitioner took place, had not been entrusted to NHAI for widening of the road and NHAI never awarded the road project to any contractor at any point of time. The acquisition for the widening of the National Highway -64 was done by PWD-State of Punjab and not by the NHAI and that they have no role in the said case.

6. Another reply on behalf of Municipal Corporation, Patiala had been filed in which it has averred that the accident in question had taken place outside the municipal limits of Municipal Corporation, Patiala. It was also averred that the Municipal Corporation has no link with the construction of the aforesaid 4-laning project and that the same was being undertaken by the Executive Director, Public Works Department (PWD), Patiala through the Executing Agency-respondents No.3 and 4.

7. A separate reply by respondents No.3 & 4 Executing Agency has also been filed in which they have submitted that the deceased was driving the motorcycle off-road and fell into natural drain as it was not a proper road which was functional for plying traffic on the same. The place of accident is stated to

have occurred at chainage 36+372 (between Patiala and Rajpura) where the work of laying pipe culvert was completed in February, 2016. The payment was released by the executing agency in favour of the contractor after the completion of the said work. All other work except of the final layer of DBM was complete and the road was motor able in all aspects about four months prior to the alleged accident. The deceased came on the un-motorable part and fell in the pit as a result of his own negligence.

8. I have heard learned counsel appearing on behalf of the respective parties and have gone through the record with their assistance. The photographs Annexure P-6 appended alongwith the present petition are not disputed by the respondent-authorities. The same clearly shows that a pit with a depth of more than 06 feet and length of around of 15 ft. was lying open, unguarded and unprotected and without any adequate safety and security measures. *De hors* what is *inter se* arrangement of the parties, the respondent State agencies cannot seek their exoneration from liability as a principal under the cover of a contractual arrangement. The said aspect are applicable only qua the inter se arrangement amongst the respondent PWD (B&R) and the Executing Agency. The primary responsibility of the respondent-Executive Director, PWD (B&R) thus cannot be ignored. The same is supported by judicial pronouncement in the matter of **“Anand Sagar Ahluwalia and others versus State of Punjab and others”** bearing ***CWP No. 6485 of 2000 decided on 04.07.2011***, the relevant paragraphs are extracted as under:

“3. If there had been an open manhole and a death had resulted, it was evidently on account of the negligent maintenance of the Municipal Corporation that the death must have come about. It simply answers res ipsa loquitur situation that requires no further probe on finding who is culpable. Learned counsel for the State argues that the petitioner himself was guilty of contributory negligence. I reject the plea as untenable for an open

manhole is indeed a death trap and the State ought to own responsibility for the consequences of not properly taking care to ensure that no untoward incident could take place by an unwary member of the public falling into the hole in an unguarded moment. Roads are meant for use by the public and if an user comes to harm, the State shall be directly responsible for the consequences of such harm.

4. A person dying by injuries by fall of trees has been dealt with by the Supreme Court in **Municipal Corporation of Delhi v. Sushila Devi, 1999(3) R.C.R.(Civil) 207 : (1999) 1 SCC 317**. In the context of duty to maintain a road by the Municipal authority free from danger, the Supreme Court said in **S. Velayndha Charya v. High Way Department of South Arcot, (1987) 3 SCC 400** that the duty included the "duty to warn". In **Dr. C.B. Singh v. Component Band Agra, 1974 ACJ 248**, it was held that a local body was bound to make proper arrangements for lighting a street and a lapse that caused damage to the individual was held actionable. There is no dearth of authorities for the principle that local bodies are liable for maintenance of roads and their failure resulting in harm will give rise to claim for damages. Please see, **Arhrat Lal v. Ahmedabad Municipality, (1904) 6 Bombay LR 75, Mohanlal v. Ahemdabad Municipality, (1937) Bombay CR 552; District Board, Badaun v. Sri Niwas (1942) ALJ R 619; Rahim Bakhsh v. Municipal Board, Bulandsahr 1939 Allahabad.**

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7. In **Punjab Civil Consumer Welfare Front (Regd.), Banur v. U.T., Chandigarh, AIR 1999 Punjab and Haryana 432**, a Division Bench of this Court found fault with the Corporation for death of a child falling through an uncovered manhole. Referring to Section 44 (a) of the Punjab Municipal Corporation Act, the Bench underscored the obligatory duties of municipal Corporation and said that when Corporation was obligated to provide basic amenities like water, electricity and streets, it cannot be absolved of the liability caused due to death of child in an uncovered manhole, even in an unauthorized colony established within its limits. The liability of the State and

particularly the Municipality is therefore clearly established to answer the claim arising out of the death of a member of the public.

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9. *The right of invoking a public law remedy is well established by several decisions of the High Courts and Hon'ble Supreme Court. The Supreme Court has held in Common cause of **Registered Society v. Union of India, (1999) 6 SCC 667** that the power or Court is not merely injunctive in ambit, that is preventing the infringement of a fundamental right but it is also remedial in scope and provides relief for the breach by damages. In **Darshan and others v. Union of India, 2000 ACJ 578** the Delhi High Court approved of the public law remedy through writ for a claim for compensation for death of a person due to a fall in a manhole in the metropolitan city of Delhi. The Delhi High Court observed, "Relief to the unfortunate victims of the accident can not be allowed to be lost in the quagmire or morass of a protracted civil trial, where inter se liability is to be determined." It made the Public Works Department liable in the first place and gave it a liberty to record in turn the amount from the Municipal Corporation."*

9. 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 inalienable 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."

10. The issue which arises next for consideration is whether the respondents were in breach of this obligations and/or were thus liable to compensate the victim for the loss so caused.

11. The first question which thus arises is as to who is under an obligation to construct and maintain the roads and safety of the commuters.

12. The history of roads would necessarily show that construction of Roads had been always undertaken by the sovereign and expenditure was to be met through taxes or user charges. The nomenclature apart may be as Road tax; Cess or Toll-the work of construction of Roads has been undertaken by the State or under an authority of the State. So much so, any public passage which is used for common thoroughfare or is laid by public funds is deemed to be vested in the State. Title of such land vests in the provincial govt; the panchayat, the local bodies or the State instrumentalities, as the case may be. The State may, in its process of carrying out construction of Roads exercise the options of doing it itself or under any agreements in a public private mode. All such agreement do stipulate that the ownership of the Roads vests with the State and the collection of user charges is under the authority of State and finally the asset has to be transferred to the State. Hence, the State remains the principal as well as owner of the property i.e. Roads.

13. The statute imposes various requirements to be complied for safety of users of the Roads. The Motor vehicles Act-1988 specifically provides for signages depicting the width limit in Schedule 1 (M.22); the loose gravel (C-14); the intersections etc.

14. The photographs (which are not disputed) show that the trenches have been dug and left open. There is no signage put up by the agencies to caution the users. The agency says that the work was completed and payment had been made to the Contractor in February, 2016 itself. The incident took place in June, 2016 and photographs of the incident shows

open pits at many places. Invariably refilling of the dug pits and their compression would have been within the scope of work and payment for the same has also seemingly been done by the authorities without ensuring refilling of the dug pits. The authorities have clearly been at fault, as is evident from the photographs itself.

15. Various guidelines have been issued for public safety in construction zones which include affixation of proper signages caution the drivers/riders; sufficient diversion sign boards; appropriate barricading and fencing; proper lighting include hazard lights; proper laying of NJB (New Jersey Barrier) with spacing which does not lead to safety hazard; proper delineation of excavation sites and barricading thereof; to ensure that reinforcement near construction are not exposed etc. The photographs show that all safety norms have been grossly violated. The barricading is in the form of distantly placed sand filled non-reflective cement sacks. Evidently, the agencies failed to adhere to the safety guidelines and thus exposed people to greater danger. The circumstances thus speak for themselves. The respondents chose to save money in installation of safety measures and gave it precedence over safety of human lives.

16. The instant case is only one amongst numerous such accidents that happen on roads in India and majorly due to complete disregard of the constructions agencies to apply the safeguards mandated. The roads in India are thus amongst the deadliest roads in the world. Merely because the respondents choose to close their eyes does not mean that the danger is not their creation. It is indeed a time ripe when such instances need to be checked and not just tolerated or ignored. Citizens cannot be left at the

mercy of agencies and to fend for themselves-even for the lapses of the agencies.

17. Article 21 extends right to life to every person. Open pits/trenches are indeed death traps and State has to own responsibility for the consequences of not taking proper care to ensure that no untoward incident takes place. The State shall be directly responsible where such lapse is evident and the harm is in direct proximity to such place.

18. Right to life is an actionable right when violated. All public safety laws must be interpreted keeping in view undivided rights under Article 21 of Constitution which aims to protect the person. To provide him with compensation for breach of public safety is thus necessary for promoting the said objective. Duty of care is expected from the State and its officials functioning under public safety legislation. A plea of sovereign action would not be applicable or available in such cases.

19. Taking into consideration the totality of the circumstances noticed above and the fact that some questions of fact would emerged for determination of sufficiency of compensation; the income; the dependency; the multiplies to be applied as also the other aspects relating to the deceased that are required to be taken into consideration for which leading of evidence would be essential and that High Court is not a Court where such questions of facts may be determined. The petitioner may, if so advised, take recourse to filing of an appropriate petition for seeking compensation before the competent Civil Court under a private law action for just compensation. However, as an infeasible right guaranteed under Article 21 of the Constitution of India has been infringed due to breaches attributable exclusively to the respondents, an immediate compensation needs to be awarded to the aggrieved family to overcome the consequential hardships and to enable them to pursue their rights

further. Hence, as an interim measure, respondents No.1 & 5 Executive Director, Department of PWD (B&R) are directed to pay an interim compensation of Rs. 4,50,000/- to the petitioner within a period of two months from today. The said amount shall be disbursed to the petitioner i.e. mother of the deceased as the petitioner contends there is no other heir and the deceased was unmarried. The petitioner may take recourse to her alternative remedies in accordance with law. The petitioner would be entitled to the higher of the low compensation as assessed. In the event of the petitioner being granted any higher compensation by the Court, the respondents would be allowed to claim a set-off for the above amount. However, if the compensation assessed is lower than the awarded interim compensation, no refund would be admissible to the respondents.

The petition is accordingly disposed of.

(VINOD S. BHARDWAJ)

JUDGE

FEBRUARY 16, 2023

Vishal Sharma

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