

2024:PHHC:109482



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

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**CWP-3346-1998 (O&M)
Date of Decision: 22.08.2024**

ROSHNI DEVI AND ORS.

... Petitioners

VERSUS

HARYANA STATE THROUGH CHIEF SECY. AND ORS.

... Respondents

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

Present: Mr. Akshay Jain, Advocate
for the petitioners.

Mr. Pankaj Mulwani, DAG, Haryana.

VINOD S. BHARDWAJ, J. (ORAL)

Prayer in the present petition is for directing the respondents to grant compensation to the tune of Rs.10,00,000/- on account of death of Ram Kumar Aggarwal caused in an accident as recorded in FIR No.108 dated 06.02.1998 registered at Police Station Sadar Jind.

Learned counsel for the petitioners contends that the petitioners are widow and children of late Ram Kumar Aggarwal, who had gone to his native place i.e. Jind to perform the marriage of his son Purshotam Kumar from Shankargarh, District Ambikapur (M.P.), where he had been carrying his business. On 02.02.1998, he alongwith Shiv Narayan and Miss Nisha had gone to see the factory of their relative situated at Bhiwani Road, Jind in a jeep bearing registration No.MP-27B-3226, which was being driven by Pawan Kumar holding a valid Driving Licence. The jeep was owned by petitioner No.3- Purshotam



Kumar son of Ram Kumar Aggarwal. When they reached near bye-pass Bhiwani Road, Jind, a few police men in uniform gave a signal to stop the vehicle. On the command, the vehicle was stopped. The police directed the driver to speed up the jeep and follow another jeep which was going towards Bhiwani as they had suspicion that the jeep which was going towards Bhiwani had been carrying some illegal arms and ammunition, illicit liquor and other such contraband. One Constable Ajmer Singh son of Gopi Ram sat in the jeep and ordered the driver to follow another jeep to catch hold of the persons escaping in the same. When the jeep, which was at a distance of about 2 Kms from village Ghimana, the driver of a jeep gave repeated horn blows in an attempt to overtake the jeep, but instead of giving side, the said jeep hit the jeep owned by petitioner No.3, from the back side as a result of same, the jeep of petitioner No.3 turned turtle leading to multiple injuries being sustained by all the occupants of the jeep as well as spontaneous death of Ram Kumar Aggarwal. Shiv Narayan was also seriously injured and he was taken to Medical College, Rohtak. Later on, he was shifted to Apollo Hospital, New Delhi for his treatment. Other occupants of the jeep were also injured and Constable Ajmer Singh remained unconscious for several days. When he regained his consciousness, he got the FIR No.108 dated 06.02.1998 registered at Police Station Sadar Jind under Sections 279, 338 and 304-A of the IPC against the offending jeep.

Counsel for the petitioners contends that the vehicle of the petitioners had been requisitioned by the respondents-State for law and order purpose and that the petitioner had sustained injuries and that Ram Kumar Aggarwal ultimately died on account of the impact of the said accident. Thus, the



petitioners are entitled for compensation on account of death of Ram Kumar Aggarwal.

Written statement had been filed on behalf of respondents No.1 to 4 through the Superintendent of Police, Jind. The aforesaid factual aspects have not been disputed. The relevant extract of the reply filed by the respondents reads thus:

“4. That para No.4 of petition is admitted to the extent that the police party was on duty to check the vehicles in connection with the elections on 02.02.1998. In the meantime, a jeep whose number could not be read was given a signal for checking but the driver of the jeep did not stop his jeep rather he ran away with his jeep towards Bhiwani. In the meantime one jeep bearing No. MP-27B/3226 came from Jind side which was also given signal to stop. The said jeep was stopped in order to check it. In that jeep 7/8 passengers were sitting. Shri Ajmer Singh constable, a member of the police Party boarded the said jeep to catch the jeep which was taken away towards Bhiwani. The driver of Jeep No.MP-27B/3226 chased the jeep and blew horns for the side but instead of giving side to the Jeep No. MP-27B/3226, the absconding jeep hit the chasing jeep and the jeep No.MP-27B/3226 turned turtle and the passengers including the police constable namely Ajmer Singh sustained injuries in the accident. It is wrong to allege that the driver of the Jeep No.MP-27B/3226 was ordered by the police official to follow the jeep which was going ahead. Rather the driver of jeep No.MP-27B/3226 was rash and negligent in driving the Jeep. However, a criminal case vide FIR No.108 dated 6.2.98 U/s 304-A IPC, P.S. Sadar, Jind was got registered by Constable Ajmer Singh which is still under investigation. No one could be arrested in this case so far despite the best efforts of the local police.



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8. That para No. 8 of petition is admitted being correct. A criminal case has already been registered in Police Station Sadar, Jind vide FIR No. 108 dated 6.2.1998 U/s 279/338/304 IPC on the statement of constable Ajmer Singh which was made on 6.2.1998 after regaining senses.

9. That para No. 9 of petition is admitted to the extent that the policemen were on official duties. Rest of the para is wrong and hence denied. The police never took the custody of the Jeep No.MP-27B/3226 as alleged. The policemen Ajmer Singh, constable only boarded the jeep with a view to catch the jeep which had ran away towards Bhiwani without caring for the signal of the police party. The driver of the Jeep No.MP-27B/3226 was never ordered to drive the jeep in a rash and negligent manner. The police is for the welfare of the general public and it helps the Govt. in implementing the law and order in the country. So the police cannot be supposed to issue any illegal directions to any citizen of India. The story put forward by the petitioner is cooked up, made up and concocted one. However, the criminal case registered with regard to the present accident has already been registered which is still under investigation but none could be arrested in this case so far.”

Vide order dated 10.03.2023, learned State counsel was directed to inform the status of the abovementioned FIR No.108 dated 06.02.1998, which was registered against the offending persons. In compliance thereof, an affidavit of Jitender Singh, Deputy Superintendent of Police, Jind-Safidon, District Jind has been filed today in Court. Copy thereof has been furnished to learned counsel for the petitioner. It has been averred in the said affidavit that an untraced report had been prepared in the said case as the accused persons involved in the crime



could not be nabbed despite earnest efforts. The said untraced report was accepted by the Illaqa Magistrate vide order dated 07.08.2003.

Counsel for the petitioners has argued that the incident in question took place on account of the vehicle having been requisitioned under the order of the member of the police force i.e. the State and for discharge of a sovereign function. Accordingly, even though the same does not have callings of an acquisition of the vehicle or the same having been taken in custody by any order, however, the same would still be in requisitioned custody of the police force. Thus, once the vehicle is being deployed and is being used for official police function, the consequences and liability in relation to the injuries, sustained by the petitioners as well as the death of R.K. Aggarwal- husband of petitioner No.1 are to be borne by the State and as such, the petitioners are entitled to be compensated by the respondent-State. He also places reliance on the **"State of Maharashtra and others Versus Kanchanmala Vijaysing Shirke and others"** reported as **(1995) 5 SCC 659**. The relevant extract of the same is reproduced hereinafter below:

"9. The question of payment of compensation for motor accidents has assumed great importance during the last few decades. The road accidents have touched a new height in India as well as in other parts of the world. Traditionally, before court directed payment of tort compensation, the claimant had to establish the fault of the person causing injury or damage. But of late, it shall appear from different judicial pronouncements that the fault is being read as because of someone's negligence or carelessness. Same is the approach and attitude of the courts while judging the vicarious liability of the employer for negligence of the employee. Negligence



is the omission to do something which a reasonable man is expected to do or a prudent man is expected not to do. Whether in the facts and circumstances of a particular case, the person causing injury to the other was negligent or not has to be examined on the materials produced before the Court. It is the rule that an employer, though guilty of no fault himself, is liable for the damage done by the fault or negligence of his servant acting in the course of his employment. In some case, it can be found that an employee was doing an authorised act in an unauthorised but not a prohibited way. The employer shall be liable for such act, because such employee was acting within the scope of his employment and in so acting done something negligent or wrongful. A master is liable even for acts which he had not authorised provided they are so connected with acts which he has been so authorised. On the other hand, if the act of the servant is not even remotely connected within the scope of employment and is an independent act, the master shall not be responsible because the servant is not acting in the course of his employment but has gone outside. In Salmond's Law of Torts (Twentieth Edition) at page 458, it has been said:

".....On the other hand it has been held that a servant who is authorised to drive a motor-vehicle, and who permits an unauthorised person to drive it in his place, may yet be acting within the scope of his employment. The act of permitting another to drive may be a mode, albeit an improper one, of doing the authorised work. The master may even be responsible if the servant impliedly, and not expressly, permits an unauthorised person to drive the vehicle, as where he leaves it unattended in such a manner that it is reasonably foreseeable that the third party will attempt to drive it, at least if the driver retains notional control of the vehicle."

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18. *So far the facts of the present case are concerned, the High Court has rightly come to the conclusion, on basis of the pleadings and evidence on record, that it was the year ending day i.e. 31.3.1980, and the clerks and officers were required to work during night time. This direction had been given by the appellant No. 2 who was incharge of the office. It further appears that after normal working hours of the office, the employees had gone to their homes and were required to come back after taking dinner. The jeep was used for bringing such employees to the office. In this background, there is no escape from conclusion that jeep was being used in connection with the affairs of the State and for official purpose. The High Court has also found that respondent who was the clerk in the office of appellant No. 2 was driving the vehicle under the authority of the driver who was in-charge of the said vehicle and as the driver had consumed more liquor on that day he permitted respondent to drive the vehicle that night, The facts of the present case disclose and demonstrate that an authorised act was being done in an unauthorised manner. The accident took place when the act authorised was being performed in a mode which may not be proper but nonetheless it was directly connected with in the course of employment'- it was not an independent act for a purpose or business which had no nexus or connection with the business of the State Government so as to absolve the appellant-State from the liability.*

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20. *We are of the view that the appellant-State cannot escape its vicarious liability to pay compensation to the heirs of the victim. The appeal is accordingly dismissed. There shall be no orders as to cost."*



Reference is also made to the judgment of Hon'ble Supreme Court in the matter of "**Nilabati Behera Versus State of Orissa and others**" reported as **(1993) 2 Supreme Court Cases 746**, relevant part of which is extracted as under:

"31. It is axiomatic that convicts, prisoners or undertrials are not denuded of their fundamental rights under Article 21 and it is only such restrictions, as are permitted by law, which can be imposed on the enjoyment of the fundamental right by such persons. It is an obligation of the State to ensure that there is no infringement of the indefeasible rights of a citizen to life, except in accordance with law, while the citizen is in its custody. The precious right guaranteed by Article 21 of the Constitution of India cannot be denied to convicts, undertrials or other prisoners in custody, except according to procedure established by law. There is a great responsibility on the police or prison authorities to ensure that the citizen in its custody is not deprived of his right to life. His liberty is in the very nature of things circumscribed by the very fact of his confinement and therefore his interest in the limited liberty left to him is rather precious. The duty of care on the part of the State is strict and admits of no exceptions. The wrongdoer is accountable and the State is responsible if the person in custody of the police is deprived of his life except according to the procedure established by law. I agree with Brother Verma, J. that the defence of 'sovereign immunity' in such cases is not available to the State and in fairness to Mr. Altaf Ahmed it may be recorded that he raised no such defence either.

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34. The public law proceedings serve a different purpose than the private law proceedings. The relief of monetary compensation, as exemplary damages, in proceedings under Article 32 by this Court or under Article 226 by the High Courts, for established



infringement of the indefeasible right guaranteed under Article 21 of the Constitution is a remedy available in public law and is based on the strict liability for contravention of the guaranteed basic and indefeasible rights of the citizen. The purpose of public law is not only to civilize public power but also to assure the citizen that they live under a legal system which aims to protect their interests and preserve their rights. Therefore, when the court moulds the relief by granting "compensation" in proceedings under Article 32 or 226 of the Constitution seeking enforcement or protection of fundamental rights, it does so under the public law by way of penalising the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizen. The payment of compensation in such cases is not to be understood, as it is generally understood in a civil action for damages under the private law but in the broader sense of providing relief by an order of making 'monetary amends' under the public law for the wrong done due to breach of public duty, of not protecting the fundamental rights of the citizen. The compensation is in the nature of 'exemplary damages' awarded against the wrongdoer for the breach of 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.

35. This Court and the High Courts, being the protectors of the civil liberties of the citizen, have not only the power and jurisdiction but also an obligation to grant relief in exercise of its jurisdiction under Articles 32 and 226 of the Constitution to the victim or the heir of the victim whose fundamental rights under Article 21 of the Constitution of India are established to have been flagrantly infringed by calling upon the State to repair the damage done by its officers to the fundamental rights of the citizen, notwithstanding the



right of the citizen to the remedy by way of a civil suit or criminal proceedings. The State, of course has the right to be indemnified by and take such action as may be available to it against the wrongdoer in accordance with law-through appropriate proceedings. Of course, relief in exercise of the power under Article 32 or 226 would be granted only once it is established that there has been an infringement of the fundamental rights of the citizen and no other form of appropriate redressal by the court in the facts and circumstances of the case, is possible. The decisions of this Court in the line of cases starting with Rudul Sah v. State of Bihar granted monetary relief to the victims for deprivation of their fundamental rights in proceedings through petitions filed under Article 32 or 226 of the Constitution of India, notwithstanding the rights available under the civil law to the aggrieved party where the courts found that grant of such relief was warranted. It is a sound policy to punish the wrongdoer and it is in that spirit that the Courts have moulded the relief by granting compensation to the victims in exercise of their writ jurisdiction. In doing so the courts take into account not only the interest of the applicant and the respondent but also the interests of the public as a whole with a view to ensure that public bodies or officials do not act unlawfully and do perform their public duties properly particularly where the fundamental right of a citizen under Article 21 is concerned. Law is in the process of development and the process necessitates developing separate public law procedures as also public law principles. It may be necessary to identify the situations to which separate proceedings and principles apply and the courts have to act firmly but with certain amount of circumspection and self-restraint, lest proceedings under Article 32 or 226 are misused as a disguised substitute for civil action in private law. Some of those situations have been identified by this Court in the cases referred to by Brother Verma, J.”



Learned State Counsel has, on the other hand, argued that the vehicle in question was never in the custody of the police at the time of accident and that in any case, it being a sovereign act, the State would be exonerated of its liability to grant any compensation.

I have heard the learned counsel for the respective parties and have gone through the documents and record available on the case file as well as the undisputed factual aspects in the reply filed by the respondents, with their able assistance.

It is not in dispute that the police officials stopped the vehicle and had directed the driver to chase the vehicle that had crossed the naka/barriers set up by the police. The said vehicle was suspected of carrying prohibited items and illegal arms and ammunitions. The direction to chase the vehicle in a hot pursuit was accordingly issued by the police officials posted at the Naka by authority of law and while discharging State function. The vehicle in question would be deemed in the custody of the State for discharging the official functions at the time when the accident in question took place. The accident in question thus occurred at a time when the vehicle in question was being used by and under the authority, control and command of the respondent-State. The occupants of the vehicle were thus exposed to higher degree of risk and danger by the acts for and on behalf of the State. The injuries sustained and the consequential fatality was a direct outcome of the accident that was caused during hot pursuit by the suspected vehicle, in a bid to escape. The State cannot be permitted to contend that even though the persons may have sustained injuries or have suffered irreparable damage on account of an act undertaken by the

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occupants/owner/driver of the vehicle as good citizens to help the State Agency in maintaining law and order, however, it is not liable to pay compensation to the persons/victims of such incidents.

I find that the ratio of judgments relied on by the counsel for the petitioners would apply to the facts of the present and the petitioners would be entitled to claim compensation for the loss of life of Mr. R.K. Aggarwal in the incident in question.

Accordingly, the present writ petition is allowed. The respondents-State are directed to pay a compensation of Rs.10,00,000/- alongwith interest @ 6% per annum from the date of filing of the petition till actual realization. The petitioners would, however, be at liberty to take recourse to the appropriate remedy available to them as per law for seeking enhancement of compensation, if so advised.

As per instructions received from the counsel for the parties, the compensation awarded above alongwith interest is directed to be disbursed in favour of petitioner No.1 within a period of three months of the receipt of certified copy of this order.

Petition stands allowed accordingly.

All other misc. application(s), if any, also stand(s) disposed of accordingly.

AUGUST 22, 2024
rajender

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No