



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

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CWP-6868-2022 (O&M)

Date of decision: 14.11.2024

Kamal Kishore and another

...Petitioners

VERSUS

The Union Territory Administration and others

...Respondents

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

Present :- Mr. Ritesh Aggarwal, Advocate and
Mr. Pankaj Bains, Advocate for the petitioners.

Mr. Rohit Kaushik, Advocate
for respondents-UT Chandigarh.

VINOD S. BHARDWAJ, J. (Oral)

1. The present petition has been filed for seeking directions to the respondents to grant adequate compensation along with interest to the petitioner on account of injuries sustained by them and the damage caused to their residential house due to the negligence on part of the respondents in performance of their duties with proper care and caution holding them vicariously liable.

2. The facts of the present case in brief are that the petitioners along with one son, two daughters and a grandson were present at their residence, when on the fateful night of 26.06.2021, at about 03:45 AM, a huge mango tree standing beside the house of the petitioners fell upon their house damaging the same. Petitioner No. 1, who was sleeping in the front room also sustained head injuries while petitioner no. 2, who had gone out to close the windows and park the two wheeler, had also received severe injuries since a huge branch of the same tree fell on her. She thus got stuck under the tree and received grievous injuries on her left thigh and head.



3. It is also averred that the petitioners, their family members and other residents of the locality had been constantly requesting the respondents to remove the trees as its condition was such that it could fall anytime and could result in a huge disaster but the respondents least bothered about the danger and the risk exposed to the petitioner and other local residents.

4. Much earlier, on 28.08.2015, the petitioners wrote an application to respondent no. 4 requesting him for cutting down the old mango tree which was standing just next to their house apprising about the condition of the said mango tree and its likelihood to fall on the roof of their house, enhancing risk and endangering the life of the petitioners, their family and other residents of the locality. It was also informed to the respondent authorities that branches of the same mango tree had fallen on earlier occasion on the house of the petitioner however the issue still remained unresolved.

5. Further, even on 21.08.2017, the daughter of the petitioner had written an email to the respondents raising the abovementioned demand again and requesting them to cut down the *mango* tree as well as one *shahtut* tree. She also sent a video demonstrating that the roots of the said trees were badly damaged due to mice sheltering in its roots.

6. That on 06.09.2017, on receiving no reply from the respondents, the petitioners forwarded the aforementioned email also to the XEN and SDO of the respondent department to bring the issue to their notice and on 06.11.2017 the advisor to the UT Administrator forwarded the email to the Commissioner, Municipal Council, Chandigarh for necessary action but no action was taken.



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7. That even on 30.05.2021, the neighbours of the petitioners, one Mahesh Garg r/o House No. 1220, Sector 15B, also lodged a complaint no. 028819 on the web portal of Municipal Council, Chandigarh regarding removal of the said trees, which was assigned to Mr. Rohit Garg, Junior Engineer, Horticulture Division-I. After about three weeks, the *shahtut* tree was removed but the mango tree was left as it is and no further action was taken by the respondent department.

8. In a quick follow, at around 03:45 AM on 26.06.2021, the mango tree fell on the house of the petitioners and in that fateful incident petitioner no. 1, who was sleeping in his room received head injuries as the wall of the room fell upon him and petitioner no. 2, who was outside the house, got buried under the huge tree branch. It was only after the efforts from the police authorities, fire brigade and ambulance that they were rescued. As a result of suffering severe injuries, the petitioners were taken to GMCH Sector 16, Chandigarh and petitioner no. 2 was got admitted and had to undergo surgery as there was a huge impact on her thigh.

9. A DDR was also recorded vide GD No. 008 in the Police Station West Sector 11, Chandigarh by Mr. Jai Bhagwan 1576CHG and the incident was mentioned as a natural calamity and the petitioners were directed to sign on the same. The petitioner and their family members were in a state of shock and were negligent in paying attention to the details mentioned in the DDR and just signed wherever the officials asked them to sign.

10. The injuries suffered by petitioner no. 2 were serious in nature due to which she was not able to walk. Even though she was discharged



from the hospital on the same day due to the Covid-19 pandemic but had to undergo regular dressing/checkup. She was taken to Max Hospital for further diagnosis and a minor surgery was recommended to heal her wounds.

11. On 26.06.2021, the petitioners had written an email to the Deputy Commissioner bringing the abovementioned issue to his knowledge and requesting for a criminal action against the erring officials for their negligence and inaction.

12. That petitioner no. 2 had to visit the hospital regularly for dressing/check for 3 months, risking her own life and that of her family members due to the ongoing pandemic. Further, she was also referred to a psychiatrist because she was not able to come out of the trauma and was undergoing treatment under the psychiatrist of max hospital.

13. A surveyor was appointed to assess the damage caused to the house of the petitioners due to falling of the tree and on 06.07.2021 the petitioners received the report of the surveyor and the gross loss was analysed to the tune of Rs. 2,84,201/-.

14. That on 03.12.2021 the petitioner served a legal notice upon the respondent authorities for paying compensation to the tune of Rs. 50 lakhs for the miseries and loss suffered by the petitioners. The respondents replied to the aforesaid legal notice on 21.12.2021 and denied everything.

15. In the reply filed, the respondents acknowledged the receipt of the letters sent in the year 2015 & the year 2017 and pruning was done. Even on 30.05.2021, pruning was got done under the supervision of J.E.-cum-SDE, Department of Horticulture. It is stated that it was a healthy green living tree and that there was a heavy wind-storm on 26.06.2021 due to



which the branch fell down. It was thus an act of god and being a natural calamity, no liability can be fastened. There was thus no negligence on their part.

Arguments on behalf of the petitioners

16. The counsel for the petitioner contends that the said incident had occurred due to the lacklustre attitude of the respondent authorities in acting upon the letters sent by the petitioners, who had continuously been warning the authorities about the impending danger of the tree being in a fragile state and the possibility of the tree falling upon the house of the petitioner. However, the respondent authorities didn't pay sufficient heed to the requests of the petitioner and it is because of their failure to act in a timely manner that the incident had happened.

17. The counsel further states that the petitioners had suffered a monetary loss to the tune of about 12 lakh rupees due to the negligence of the respondent authorities, including medical expenses, repair costs of the house etc. The petitioner served a legal notice on 03.12.2021 upon the respondents for paying compensation for the miseries and loss suffered by the petitioner due to the negligence of the respondents. Respondent no. 3 replied to the abovementioned legal notice and denied everything.

18. The counsel places reliance on the judgments passed by the Apex Court and various High Courts to establish that the liability of the state has been affixed for the tortious lapses committed by its servants. The counsel refers to the case of **State of Rajasthan vs. Vidyawati** reported as **AIR 1962 SCC 933** in which a constitutional bench observed that:



“Viewing the case from the point of View of first principles there should be no difficulty in holding that the state should be as much liable for tort in respect of a tortious act committed by its servant within the scope of his employment and functioning as such as any other employer. The immunity of the crown in the United Kingdom, was based on the old feudalistic notion of justice, namely, that the king was incapable of doing a wrong, and, therefore, of authorizing or instigating one, and that he could not be sued in his own courts. In India, ever since the time of the East India Company, the sovereign has been held liable to be sued in tort or in contract, and the common law immunity never operated in India.

19. Further, the counsel relies upon the judgment of this court in the matter of Joginder Kaur v. Punjab State reported as 1969 ACJ 28 (P&H) wherein this court held that

In the matter of liability of the state for the torts committed by its employees, it is now the settled law that the state is liable for tortious acts committed by its employees in the course of their employment.”

20. Vehemently arguing to establish the liability of the respondent authorities to pay compensation, the counsel places reliance on the case of MC Mehta v. Union of India reported as AIR 1987 SC 1086, wherein the Hon’ble Supreme Court held that when violations of fundamental rights is brought to the notice of the court, then hyper technical approach should be avoided, to meet the ends of justice and that while dealing with an



application for enforcement of a fundamental right, the court must look at the substance and not the form.

21. The counsel draws the attention of this court to the injuries received by the petitioners and the losses suffered by them due to the negligence of the respondent in spite of the fact that they were duly informed about the existence of the mango tree that might fall upon the house of the petitioner. He further states that no effort was made by the respondents to take care of the tree having knowledge of the fact that it could cause serious injuries or death of a person/resident.

22. Reliance is also placed on the case of **MP Electricity Board v Shail Kumar & Ors.** reported as **AIR 2002 SC 551**, where it was observed that:

Even assuming that all safety measures had been adopted, a person undertaking an activity involving hazardous or risky exposure to human life, is liable under law of torts to compensate for the injury suffered by any other person, irrespective of any negligence or carelessness on part of the managers of such undertaking. The basis of such liability is the foreseeable risk inherent in the very nature of such activity. The liability case such person is known, in law, as "strict liability". It differs from the liability which arises on account of the negligence or fault in this way, i.e. the concept of negligence comprehends that the foreseeable harm could be avoided by taking reasonable precaution.

**Arguments of respondents**

23. Summing up his arguments, the counsel contends that it is purely on account of careless conduct of the respondents which made the petitioner receive life threatening injuries and suffer huge monetary loss and thus, the respondents are vicariously liable to compensate on account of injuries sustained by the petitioners and the damage to the residential house of the petitioners. No action till date has been taken by the respondent authorities to compensate the petitioners, despite various letters/representation and the same is violative of Article 21 of the constitution.

24. The counsel for the respondents on the other hand contends that the complaints were made by the petitioner in 2015 and then in 2017 and that appropriate action had been taken by them on the said complaint as officials were deputed and the Mango tree standing near the house of the petitioner was pruned. Moreover, on another request of the petitioner on 30.05.2021, the required pruning was done again under the supervision of Rohit Garg, Junior Engineer cum SDE, Department of Horticulture, Municipal Corporation, Chandigarh. The counsel also submits that it was a healthy green living tree and was far away from the house of the petitioner.

25. The counsel vehemently argues that the tree had fallen because of the heavy wind storm on the said date of incident and the same is just a natural calamity and the respondent authorities cannot be held liable for act of god. The counsel places reliance on news reports of the said date and contends that as per the news clippings dated 27.06.2021 thunderstorms



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have hit the city at around 3 am followed by 4mm rain and winds gushing up to the speed of 89 kmph.

26. Further, the counsel refers to the statements given by the petitioners in the general diary details wherein both the petitioners had told the police that the accident had happened due to sudden and coincidental storm and that due to the storm outside petitioner no. 2 had gone out to park her scooter inside when the said tree fell on her and she was rescued by the fire brigade, police and horticulture department. Thus, the officials were never negligent in their duties and that the accident had occurred without any fault of the respondents and is an unfortunate act of god.

27. Moreover, the counsel also contends that the petitioners had been complaining about the said tree since 2015 and had it been a snag it wouldn't have stood for those 6 years and must have fallen earlier and thus the present writ petition filed by the petitioners is liable to be set aside.

28. Countering the arguments of the counsel for the respondent, the counsel for petitioner submits that the respondent authorities had taken no action whatsoever on the complaints submitted by them in 2015, 2017 as well as on 30.05.2021. The petitioners and other nearby residents had even sent photographs of the said tree to reflect its poor condition and that it was just 5 meters away from the house of the petitioners and that the tree had not fallen due to an act of god but rather due to negligence of the respondent authorities.

29. Further, the counsel argues that the statements made by them in the DDR had been made under coercion from the police officials and they were intimidated into signing blank papers for getting proper treatment during



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the Covid-19 pandemic. Also, that the complaints submitted by the petitioners was regarding removal of the said tree and not just its pruning and the respondent authorities have negligently waited for a natural calamity to happen to brush the responsibility off their shoulders.

30. No other argument has been made by any party.

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

32. 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 held 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 live 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 extra ordinary 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: (1996) 3 SCC 212. 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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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) 3 SCC 178 , Rudul Sah v. State of Bihar & Anr., (1983) 4 SCC 141 , Bhim Singh, MLA versus State of J.K & Others reported as (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 [Sanjay Gupta Vs. State of U.P. (2015) 5 SCC 283'] 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 common sense 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 Transport Co. Ltd.* [(1950) 1 All ER 392, 399] (HL)).*

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 ***Pushpabai Purshottam Udeshi & Others 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 para 79, 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 as; 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."

33. The Hon'ble Supreme Court in the matter of **Vohra Sadikbhai Rajakbhai & Ors. V State of Gujrat & Others** reported as **(2016) 12 SCC 1**, has held that, *"the defendant will be liable to pay damages as it was its duty so to work as to make proprietors or occupiers on a lower level as secure against injury as they would have been had nature not been*



interfered with, and hence, the defendant must indicate what anticipatory prevention action was taken. The fact that the danger materialised subsequently by an act of god is not a matter which absolves the defendant from its liability for the earlier failure to exercise adequate care and skill in taking the necessary anticipatory preventive action. Thus, what needs to be examined is as to whether the damage to the property of the appellant herein was the result of an inevitable accident or unavoidable accident which could not possibly be prevented by the exercise of ordinary care, caution and skill i.e. it was an accident physically unavoidable. While examining the issue, it has to be kept in mind that the onus was on the respondents to satisfy the aforesaid requirements.”

34. It is not a dispute that complaint against the overgrown mango tree was being regularly submitted by the residents and one such complaint was also submitted a few weeks before the incident. The respondents claim that pruning was done but yet the incident was in quick succession.

35. There is thus some error in the assessment of the authorities, if the contention of the respondents is to be accepted for the sake of arguments, which eventually was established in felling of the trees. There is also no denial of the allegation that mice infestation had taken place. Besides, merely saying that rain and storm happened on the day is not sufficient to take a defence of act of God. For a natural act to be labelled as an Act of God, the act should not be within human contemplation. It cannot be said that the rain or wind-speed was unprecedented and was a phenomenon that had never occurred earlier. Hence, a defence of an act of God, in law, would require a higher test before it can be invoked. A party raising such defence



has to be establish it and there can be no presumption of such factual defence.

36. From a perusal of the above I am of the view that a writ court, may, in a given circumstance, award compensation to a person aggrieved, where a person has suffered injury/loss of life as a result of a danger occasioned on account of negligence on the part of the respondents. The element of compensation is granted against the breach of public duty as is expected in ordinary prudence 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.

37. In the case at hand, the surveyor as appointed by the petitioner himself assessed the damage to the house to the tune of Rs. 2,84,201/- vide its report dated 06/07/2021.

38. 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 as to whether it was a case of negligence, lest it may prejudice the case of the respective parties, the present case is being disposed of being partly allowed at this stage as it raises disputed questions of facts which cannot be ascertained in writ jurisdiction.

39. However, considering that the tree did fall upon the house of the petitioners and they indeed suffered losses due to the same, an interim compensation of Rs.3,50,000/- (Rupees Three Lakhs Fifty Thousand Only) is awarded to the petitioners. They may, if so advised, approach the court of competent jurisdiction for seeking just and appropriate 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 Motor Vehicles Act, 1988 as it may deem fit and proper.

40. The interim compensation shall be disbursed to the petitioners within a period of two months of the date of receipt of certified copy of this order failing which the petitioners shall be entitled to interest @ 6% per annum on the interim compensation from the date of filing of the petition. The respondent/department shall however be entitled to seek a set off of the principal out of the interim compensation ordered above, from the amount finally awarded, but there shall be no recovery in case the compensation assessed by the court is less than the interim compensation ordered above.

41. Needless to mention that the period during which the present petition has remained pending before this court and till such time when the certified copy of the order is received by the petitioner shall be excluded while computing the limitation for institution of such proceedings.

42. The present petition is accordingly partly allowed with liberties as aforesaid.

(VINOD S. BHARDWAJ)
JUDGE

14.11.2024

Mangal Singh

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