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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 10.11.2023

Judgment pronounced on: 22.01.2024

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W.P.(C) 6362/2013

LAKHAN SINGH & ANR.

..... Petitioner

Through: Ms. Aruna Mehta, Adv.

versus

DELHI DEVELOPMENT AUTHORITY & ORS.

..... Respondent

Through: Ms. Mansi Bajaj, Ms. Nidhi Tyagi,
Adv. for R1

Mr. Abhinav Sharma, Adv. for R2

Ms. Reeta Chaudhary, Adv. for R3

SI Prabhakaran, PS Dwarka South

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

JUDGMENT

:

JASMEET SINGH, J

1. The present writ petition has been filed by the petitioners against respondent no. 1/DDA, respondent no. 2/Delhi Police and respondent no. 3/contractor. The petitioners are the kin of the deceased minor child, i.e. Master Praveen Kumar, aged 11 years, and are praying for the following:

“a. To cover the above said manhole so that above said mishap should not happen in future, and any other citizen should not become prey to the above said open manhole.



- b. To direct the respondent no. 1 to pay a sum of Rs.27,00,000/- (Rs. Twenty seven Lakhs only) or a reasonable and just amount to the petitioners herein along with 12% interest from the date of filing of the petition till the realization of the compensation award.*
- c. To direct the respondent no.2 through its I.O. to conclude the investigation and to arrest the Erring Officers of the Respondent No.1 and supply the copies of the investigation done by them to the petitioner and to this Hon'ble court for the proper adjudication of the case.”*

Background

2. The brief facts encapsulating the unfortunate incident is that the deceased minor child was riding pillion on the bicycle of his friend, Mr. Ashutosh Rana, while travelling from Mata Rani Mandir, Sector 1 to his home, i.e. C-2/207, C-2 Block, Mahavir Enclave, Part-1, on 11.08.2013 at about 7.55 pm. Due to detaching of the bicycle chain, both continued walking. Mr. Ashutosh was walking in front and Master Praveen was following behind. Mr. Ashutosh heard someone fall down and on looking, he found Master Praveen inside the manhole at pocket-2, sec-1, Dwarka. Mr. Ashutosh raised a hue and cry for help which was answered by one Mr. Sishu Pal, a passer-by who came for help. Mr. Ashutosh Rana then apprised the police of the mishap by calling emergency helpline 100 number.
3. After some time, PCR, Ambulance and Fire Brigade arrived at the site and fished out Master Praveen from the uncovered manhole. Hewas rushed to DDU Hospital at 9.25 pm where he was declared as ‘brought dead’.



4. AnFIR No. 278/2013 was registered dated 11.08.2013 against unknown person under section 304A of the Indian Penal Code, 1860.
5. The post mortem report No. 1081/2013 dated 12.8.2013 recorded the cause of death as “*asphyxia caused by drowning (ante mortem) into sewer where the body was recovered*”.
6. Pursuant to the proceedings, the learned MM, Dwarka Courts, Delhi held Mr. Kashif Haider, i.e. Supervisor appointed by respondent no. 3, guilty u/s 304-A of the Indian Penal Code, 1860 *vide* judgment dated 17.01.2018 in FIR No. 278/13. The operative portion reads as under:

“52. It is clear from the reading of the schedule that the contract was for constant vigil i.e. patrolling for detection of any broken/damaged/missing/open manhole and cover the same immediately, if the same is found to be broken or missing. Further, vide agreement no. 10/EE/WD/12/DDA/2012-13 on the date of incident i.e. 11.08.16, the contract was in operation. As per special directions and conditions, M/s A.K. Sharma Constructions was liable for any mishap at the site. M/s A.K. Sharma Constructions had sub contracted the responsibility to the accused Kasif Haider.

53. It was the responsibility of the accused to take due care in ensuring that all the covers of the manhole are intact. The accused has failed to discharge his responsibility. The manholes were to be properly barricaded and proper warning signs should have been placed. The accused has been negligent in his duties. He owed a duty of care to the passersby.

54. In view of the aforesaid discussion and testimonies of the witnesses, this Court comes at the conclusion that the prosecution had successfully established its case against the



accused beyond reasonable doubt for the offences alleged against him. Accordingly, accused Kasif Haider, s/o Sh. Riyaz Haider is convicted for the offence punishable under Section 304-A in present FIR No.278/13, PS Dwarka South."

7. The order of sentence dated 29.01.2018 reads as under:

"6. Keeping in view the above said discussion and submissions of both the parties and also in view of theories of punishment, the convict is sentenced for the offence under section 304 A with simple imprisonment for a period of 15 days.

7. This court is also under in obligation to award suitable compensation to the parents of the deceased in terms of mandate of section 357(3) of the Code of Criminal Procedure, 1973. The convict is an earning member of the family member and he is in a position to pay the compensation. The convict is directed to pay a compensation amounting to Rs.10,00,000/-(Rupees Ten Lakh only) to the parents of the deceased. In default of payment of compensation, the convict shall further undergo simple imprisonment for a period of 06 months(in terms of directions of Hon'ble Supreme Court in the case titled as Vijayan vs. Sadanandan K. &Anr., (2009) 6 Supreme Court Cases 652)."

8. The learned ASJ-03 on 21.02.2018 stayed the effect and operation of judgement dated 17.01.2018 and order on sentence dated 29.01.2018 in Criminal Appeal no. 69 of 2018. The said appeal is pending before the learned trial court.

Submissions on behalf of the Petitioners

9. The learned counsel for the petitioners submits that *prima facie* principle of *res ipsa loquitur* is applicable. The mishap occurred due to complete negligence on the part of the officials of respondent



no. 1 and respondent no. 3 since the manhole was neither covered with lid, fenced nor surrounded by safety brackets. There was no warning given, including but not limited to signboards indicating the existence of an uncovered manhole.

10. The petitioner submits that the defence of the respondent no. 1 shifting its liability to pay the compensation on the independent contractor is perverse. In public law, if there is any damage caused to the third party by the act of the contractor, the liability continues to be that of the principal. On account of inter-se agreement, the liability cannot be shrugged by the respondent no. 1/DDA. Reliance is placed upon the dictum in *Criminal Justice Society v UOI and Ors.*, 2010 SCC Online Del 2571, it reads as under:

“16. In the case at hand the MCD admittedly has entered into a contract. There is a stipulation in the contract enabling the owner to take steps against the contract. Section 29 of the Act casts responsibility on the Commissioner what steps to be taken when there is construction or repair of any public street. Cumulatively understood, the liability of the MCD cannot be denied. The liability in our considered opinion would come within the domain of in public law remedy which covers grant of compensation when right to life under Article 21 of the Constitution of India is jeopardized.

...

20. The aforesaid citations also cover the vicarious liability of a principal in respect of the act of the agent on certain conditions. In the case at hand, the MCD is the principal and the executing agency is the agent. Reading the statutory provisions in conjunction with the terms and conditions of the contract, the inescapable conclusion is that the MCD is primarily liable to make



good the loss and thereafter, it may proceed to realise the amount after causation of enquiry from any of its officers and if found responsible, take such action for recovery from the respondent No. 4 with which it had the privity of contract.”

11. It is submitted by the petitioners that the remedy under Article 226 of the Constitution of India is not only injunctive in nature but also remedial, the respondents are strictly liable for their inaction and irresponsible conduct which resulted in the loss of life of the Master Praveen. The court is in its power to hear and decide the matter. Reliance is placed upon *DK Basu vs State of West Bengal*, 1997 1 SCC 416, the operative portion of which reads as under:

“45. The old doctrine of only relegating the aggrieved to the remedies available in civil law limits the role of the courts too much, as the protector and custodian of the indefeasible rights of the citizens. The courts have the obligation to satisfy the social aspirations of the citizens because the courts and the law are for the people and expected to respond to their aspirations. A court of law cannot close its consciousness and aliveness to stark realities. Mere punishment of the offender cannot give much solace to the family of the victim — civil action for damages is a long drawn and a cumbersome judicial process. Monetary compensation for redressal by the court finding the infringement of the indefeasible right to life of the citizen is, therefore, useful and at time perhaps the only effective remedy to apply balm to the wounds of the family members of the deceased victim, who may have been the breadwinner of the family.

....
54. Thus, to sum up, it is now a well-accepted proposition in most of the jurisdictions, that monetary or pecuniary compensation is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for



redressal of the established infringement of the fundamental right to life of a citizen by the public servants and the State is vicariously liable for their acts. The claim of the citizen is based on the principle of strict liability to which the defence of sovereign immunity is not available and the citizen must receive the amount of compensation from the State, which shall have the right to be indemnified by the wrongdoer. 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 strait-jacket 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.”

12. The petitioner submits that whenever there is a violation of public duty, then the petitioners are entitled to pecuniary as well as standard compensation. Standard compensation is inclusive of damages for love, affection, mental agony, funeral expenses, etc. The petitioner has calculated the same as under:



“The base amount is taken as 50,000 the sum is adjusted for Aug 2013 when the child had died, based on consumer price index of industrial worker CPI(IW) for the year 1982. (=100) the average CPI (IW) for 198 was 171 and for Aug 2013 it was 1097. Hence inflation corrected value works out to be $50,000 \times 1097/171 = \text{Rs. } 3,20,760/-$.”

13. Pecuniary damages are calculated assuming that the child would have reached the salary of the father at the time of the accident, deducting 50% as personal expenses which is multiplied by 1.5 and multiplier of 15 is taken. Petitioner has calculated the same as under:

“In present case the father of the deceased was drawing the salary of Rs. 15000/ pm. by working in a meat shop. Applying the principle of Ram Kishore $(15000 \times 1.5) \times 12 \times 15 / 2 = \text{Rs. } 20,25,000/-$ Total compensation Rs. 3,20,000/- + Rs. 20,25,000/- = 23,45,000/ along with 12% interest pa from the date of petition till realization as granted Ram Kishore.

In Uphar case the Hon'ble SC granted a sum of Rs. 7,50,000/ along with 9% interest from the date of filing of the petition till realization for the children below 20 yr. But this incident has occurred in the year of 1994. In case we follow Uphar then inflation correct value should be- given as per Balram Prasad vs Kunal Sah 2014 SCC (1) 384.”

Submissions on behalf of the respondent no. 1/DDA

14. The respondent no. 1/DDA challenges the maintainability of the present writ petition on the ground that: (i) there are disputed question of facts and hence the matter should be decided by way of proceedings before the appropriate civil court; (ii) the correct



method for calculation of damages would be the multiplier method through process of trial which cannot be done by way of the present proceedings.

15.DDA submits that it is a settled principle of law that determination of negligence cannot be undertaken without a trial and it cannot be solely adjudicated upon on the basis of documents on record. Therefore, the present writ petition is not an appropriate remedy. Reliance is placed upon the dicta of the Hon'ble Supreme Court in *Chairman, Grid Corporation of Orissa Ltd. (GRIDCO) and Ors. v. Smt. Sukamani Das and Anr.* 1999 (7) SCC 298:

“6. In our opinion, the High Court committed an error in entertaining the writ petitions even though they were not fit cases for exercising power under Article 226 of the Constitution. The High Court went wrong in proceeding on the basis that as the deaths had taken place because of electrocution as a result of the deceased coming into contact with snapped live wires of the electric transmission lines of the appellants, that “admittedly/prima facie amounted to negligence on the part of the appellants”. The High Court failed to appreciate that all these cases were actions in tort and negligence was required to be established firstly by the claimants. The mere fact that the wire of the electric transmission line belonging to Appellant 1 had snapped and the deceased had come in contact with it and had died was not by itself sufficient for awarding compensation. It also required to be examined whether the wire had snapped as a result of any negligence of the appellants and under which circumstances the deceased had come in contact with the wire. In view of the specific defences raised by the appellants in each of these cases they deserved an opportunity to prove that proper care and precautions were taken in maintaining the



transmission lines and yet the wires had snapped because of circumstances beyond their control or unauthorised intervention of third parties or that the deceased had not died in the manner stated by the petitioners. These questions could not have been decided properly on the basis of affidavits only. It is the settled legal position that where disputed questions of facts are involved a petition under Article 226 of the Constitution is not a proper remedy. The High Court has not and could not have held that the disputes in these cases were raised for the sake of raising them and that there was no substance therein. The High Court should have directed the writ petitioners to approach the civil court as it was done in OJC No. 5229 of 1995.”

16. Reliance is also placed upon *Abdul Haque &Ors. BSES Yamuna Power Ltd.&Ors.*(2007) 142 DLT526. The operative portion reads as under:

“33. In the cases on hand, the victims belong to the economically weaker section of the society. The deaths of the victims have indeed occurred in tragic circumstances. The fact of death due to electrocution in each case is not disputed. However, the respondent electricity distribution company has denied liability on the ground that the live wire with which the victim came into contact was illegally tapped. In Sukamani Das it was held that “mere fact that the wire of the electric transmission line belonging to the appellant No. 1 had snapped and the deceased had come into contact with it and had died was not by itself sufficient for awarding compensation.” The facts of the cases on hand are in that sense not very different from the facts that arose for determination in the electrocution cases decided by the Hon'ble Supreme Court which have been referred to hereinabove.

34. This Court is conscious that relegating these petitioners to the civil court may delay the resolution of their claims but, in light of the binding decisions of the



Hon'ble Supreme Court in Sukamani Das, Sumathi and TimuduOram, this Court cannot possibly entertain these writ petitions and grant compensation by applying the principle of strict liability or res ipsa loquitur.

35. This Court accordingly upholds the preliminary objection of the respondents that since these petitions involve adjudication of disputed questions of fact, they are not maintainable as such under Article 226 of the Constitution. However, it is made clear that it will be open to the petitioners to avail of other appropriate legal remedies in accordance with law. It is also made clear that the petitioners would be able to claim the benefit of Section 14 of the Limitation Act to explain the delay if any in approaching the civil court.”

17.It is further submitted by DDA that due care and caution is exercised by DDA for maintenance of sewer manholes andfor this purpose, on account of shortage of staff, a tender was floated for maintenance of manhole covers by a contractor. It was not possible for DDA to detect damaged/missing/open manhole cover on a 40 kms long sewage line being maintained by the Division of Dwarka. Therefore, R-3 was awarded the contract for manhole covers from 10.09.2012 to 10.10.2013. The contract was alive when the unfortunate incident took place. As per the item no. 9 of the agreement, two male/supervisor with cycle were to be engaged by contractor/R3 to inspect the whole sewer lines daily for constant vigil, i.e patrolling for detection of any broken/damaged/missing/open manhole covers and if any manhole cover was found to be broken/damaged/missing/open manhole, the same was to be barricaded and replaced immediately.

18.It is the stand of DDA that the contractor is liable in terms of



condition 2 and 4 reads as under:-

“2. If the contractors does not engage supervisor and/or found absent, he will be personally responsible for any mishap occurred at site.

.....

4. If any manhole in peripheral line be found to bebroken/damaged/missing, the same shall be immediatelybarricaded and the matter be reported to JE for further necessary action.”

19. Additionally, DDA states that manhole was not opened by any agency for any work. The manhole cover frame deteriorated due to intermittent movement of heavy vehicles and there was no information regarding any damaged/missing manhole by any person or RWA or Police. It also stated that there is no lighting arrangement on the service road which makes the open manhole undetectable after hours. It is further submitted that there was no negligence or de-reliction of duty and a show-cause notice was also duly served upon R-3 regarding the incident.

Submissions on behalf of the Respondent no. 2

20. The respondent no. 2 submits that during investigation u/s 160 and 190 CrPC, notice was issued to Ex. Engineer, Western Division No. 3, DDA, Lakar Mandi, Kirti Nagar, New Delhi, which was replied stating that M/s A.K. Sharma, Contractor, was under contract to maintain and repair the manholes of the Dwarka Zone.

21. Thereafter, the proprietor of M/s. A.K. Sharma, Contractor was interrogated and he produced documents showing that Mr. Kashif Haider, who was appointed as Supervisor by M/s A.K. Sharma, Contractor, as being responsible.



22. Mr Kashif Haider was then interrogated and was found responsible for the maintenance and repair of the manhole. He was subsequently arrested on 24.08.2013.
23. It is submitted on behalf of the respondent no.2 that contrary to submissions of the petitioner, the respondent no. 2 has duly carried out its duties, conducted the investigation, seized related documents and arrested the accused. In this view, prayer c against respondent no. 2 is satisfied.

Submissions on behalf of the Respondent No. 3

24. The respondent no. 3/contractor challenged the maintainability of the present writ petition on the ground that the present writ petition only raises a relief for compensation on account of alleged negligence on behalf of the respondents. The same is a question of facts and needs to be examined and adjudicated in terms of the evidence brought on record before the Civil Court and the same cannot be entertained in the Writ jurisdiction.
25. The respondent no. 3 states that it had a contractual relationship with respondent no. 1/DDA. Respondent No. 1 awarded the contract to respondent no. 3 for maintenance of manhole cover frames and allied civil works on the peripheral sewer lines on 60m and 45m, which included patrolling for detection of any broken/damaged/missing/open manhole covers and in case the same is found, it is to be barricaded and replaced.
26. Respondent no. 3 submits that the wages for two persons are given only for one shift in a day and the same is admitted by J.E, (Civil), West Division-III, DDA Office, Kirti Nagar, Delhi on 05.01.2015



in FIR case No. 283/13 wherein the timings of the agency for its work were stated to be from 9 am to 5 pm and that the work wages for patrolling are given only for one shift a day. It is stated that the respondents are not responsible for around the clock supervision. The accident occurred at about 7.55 pm on 11.08.2013, and there were holidays from 09.08.2013 to 11.08.2013. In view of the same, respondent no. 3 is not liable for negligence since the incident took place beyond the duty hours.

27. It is further submitted that there is nothing on record to show the basis of the computation arrived at by the petitioner. It is stated that Master Praveen was not an earning member to the family, and there is no evidence to show loss of income in terms of future prospects of the deceased minor child.

28. I have heard the submissions on behalf of the parties and perused the documents on record.

A. Maintainability

29. The first issue that needs consideration of this court is whether this petition for compensation under the writ jurisdiction is maintainable and can be entertained?

30. The law on claim for compensation under Article 226 of the Constitution of India is well settled by the judgment of Hon'ble Supreme Court in *Nilabati Behera Alias Lalita Behera v. State of Orissa* and Ors. 1993 (2) SCC 746, the operative portion reads as under:

“17. It follows that ‘a claim in public law for compensation’ for contravention of human rights and



fundamental freedoms, the protection of which is guaranteed in the Constitution, is an acknowledged remedy for enforcement and protection of such rights, and such a claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right is 'distinct from, and in addition to, the remedy in private law for damages for the tort' resulting from the contravention of the fundamental right. The defence of sovereign immunity being inapplicable, and alien to the concept of guarantee of fundamental rights, there can be no question of such a defence being available in the constitutional remedy. It is this principle which justifies award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution, when that is the only practicable mode of redress available for the contravention made by the State or its servants in the purported exercise of their powers, and enforcement of the fundamental right is claimed by resort to the remedy in public law under the Constitution by recourse to Articles 32 and 226 of the Constitution. This is what was indicated in Rudul Sah [(1983) 4 SCC] and is the basis of the subsequent decisions in which compensation was awarded under Articles 32 and 226 of the Constitution, for contravention of fundamental rights.

...

20. We respectfully concur with the view that the court is not helpless and the wide powers given to this Court by Article 32, which itself is a fundamental right, imposes a constitutional obligation on this Court to forge such new tools, which may be necessary for doing complete justice and enforcing the fundamental rights guaranteed in the Constitution, which enable the award of monetary compensation in appropriate cases, where that is the only mode of redress available. The power available to this Court under Article 142 is also an enabling provision in this behalf. The contrary view would not merely render the court powerless and the constitutional



guarantee a mirage, but may, in certain situations, be an incentive to extinguish life, if for the extreme contravention the court is powerless to grant any relief against the State, except by punishment of the wrongdoer for the resulting offence, and recovery of damages under private law, by the ordinary process. If the guarantee that deprivation of life and personal liberty cannot be made except in accordance with law, is to be real, the enforcement of the right in case of every contravention must also be possible in the constitutional scheme, the mode of redress being that which is appropriate in the facts of each case. This remedy in public law has to be more readily available when invoked by the have-nots, who are not possessed of the wherewithal for enforcement of their rights in private law, even though its exercise is to be tempered by judicial restraint to avoid circumvention of private law remedies, where more appropriate.”

31. What is prevalent from the above is that a claim in public law is ‘distinct from and in addition to the remedy in private law for damages’. In case of loss of life due to act of neglect, failure of duty by government bodies and the state, the courts need not relegate the aggrieved party to the civil remedy/private law for damages. The courts in exercise of its extraordinary writ jurisdiction must not be a mute bystander and must come forward to ensure protection of human rights and in case of any contravention, the writ court can and should award damages under public law to do complete justice.
32. Public law envisages protection of fundamental rights through the available constitutional remedies, and the constitutional remedies are inclusive of grant of compensation for non-adherence of duties



and protections granted to the citizens by the state, government bodies or parties acting in furtherance of the duties of the state. It is the mandate of the state to safeguard public interest, any shortfall in this responsibility is bound to raise accountability of statutory institutions towards the citizens of this country.

33. The state under Article 226 of the Constitution of India is strictly liable and duly accountable of any contravention/deprivation of fundamental rights. Violation of the fundamental right to life and personal liberty under Article 21 of the Constitution of India is a right which raises an actionable claim against statutory bodies who fail their duty to safeguard the interests and rights of the citizens. Reliance is placed upon *Sube Singh v. State of Haryana*, (2006) 3 SCC 178, the operative portion reads as under:

“38. It is thus now well settled that the award of compensation against the State is an appropriate and effective remedy for redress of an established infringement of a fundamental right under Article 21, by a public servant. The quantum of compensation will, however, depend upon the facts and circumstances of each case. Award of such compensation (by way of public law remedy) will not come in the way of the aggrieved person claiming additional compensation in a civil court, in the enforcement of the private law remedy in tort, nor come in the way of the criminal court ordering compensation under Section 357 of the Code of Criminal Procedure.”

34. The respondent no. 1 has further submitted that there are disputed questions of facts which precludes the court from entertaining the present writ petition. I am unable to agree with this contention since the court is not debarred from entertaining writ petitions only



on the ground that alternate remedies are available and that there are disputed questions of facts. The power of the high courts under Article 226 is plenary in nature and it is the discretion of the high court to entertain petitions even on account of there being disputed question of facts or availability of alternate remedies. Reliance is placed upon the dicta of the Hon'ble Supreme Court in *Popatrao Vyanaktrao Patil v The State of Maharashtra and Ors*, Civil Appeal No. 1600/2020 dated 14.02.2020, the operative portion of which reads as under:

“6. It could thus be seen, that even if there are disputed questions of fact which fall for consideration but if they do not require elaborate evidence to be adduced, the High Court is not precluded from entertaining a petition under Article 226 of the Constitution. However, such a plenary power has to be exercised by the High Court in exceptional circumstances. The High Court would be justified in exercising such a power to the exclusion of other available remedies only when it finds that the action of the State or its instrumentality is arbitrary and unreasonable and, as such, violative of Article 14 of the Constitution of India. In any case, in the present case, we find that there are hardly any disputed questions of facts.”

35. Reliance is further placed upon *M/S Godrej Sara Lee Ltd. versus The Excise And Taxation Officer-Cum-Assessing Authority & Ors.*, 2023 LiveLaw (SC) 70, the operative portion of which reads as under:

“4. Before answering the questions, we feel the urge to say a few words on the exercise of writ powers conferred by Article 226 of the Constitution having come across certain orders passed by the high courts holding writ



petitions as “not maintainable” merely because the alternative remedy provided by the relevant statutes has not been pursued by the parties desirous of invocation of the writ jurisdiction. The power to issue prerogative writs under Article 226 is plenary in nature. Any limitation on the exercise of such power must be traceable in the Constitution itself. Profitable reference in this regard may be made to Article 329 and ordainments of other similarly worded articles in the Constitution. Article 226 does not, in terms, impose any limitation or restraint on the exercise of power to issue writs. While it is true that exercise of writ powers despite availability of a remedy under the very statute which has been invoked and has given rise to the action impugned in the writ petition ought not to be made in a routine manner, yet, the mere fact that the petitioner before the high court, in a given case, has not pursued the alternative remedy available to him/it cannot mechanically be construed as a ground for its dismissal. It is axiomatic that the high courts (bearing in mind the facts of each particular case) have a discretion whether to entertain a writ petition or not. One of the self-imposed restrictions on the exercise of power under Article 226 that has evolved through judicial precedents is that the high courts should normally not entertain a writ petition, where an effective and efficacious alternative remedy is available. At the same time, it must be remembered that mere availability of an alternative remedy of appeal or revision, which the party invoking the jurisdiction of the high court under Article 226 has not pursued, would not oust the jurisdiction of the high court and render a writ petition “not maintainable”. In a long line of decisions, this Court has made it clear that availability of an alternative remedy does not operate as an absolute bar to the “maintainability” of a writ petition and that the rule, which requires a party to pursue the alternative remedy provided by a statute, is a rule of policy, convenience and discretion rather than a



rule of law. Though elementary, it needs to be restated that “entertainability” and “maintainability” of a writ petition are distinct concepts. The fine but real distinction between the two ought not to be lost sight of. The objection as to “maintainability” goes to the root of the matter and if such objection were found to be of substance, the courts would be rendered incapable of even receiving the lis for adjudication. On the other hand, the question of “entertainability” is entirely within the realm of discretion of the high courts, writ remedy being discretionary. A writ petition despite being maintainable may not be entertained by a high court for very many reasons or relief could even be refused to the petitioner, despite setting up a sound legal point, if grant of the claimed relief would not further public interest. Hence, dismissal of a writ petition by a high court on the ground that the petitioner has not availed the alternative remedy without, however, examining whether an exceptional case has been made out for such entertainment would not be proper.”

36. Additionally, in my view there are no disputed questions of fact in the present case, Master Praveen lost his life due to an uncovered, unsecured and unguarded manhole. The same has also been stated as cause of death in the post-mortem report. There were no signages indicating the open manhole. The respondents have stated that there is shortage of lighting, however no action with respect to reporting/fixing the problem of shortage of lighting has been shown. Therefore, there is an apparent inaction, indifference and negligence by the respondent no. 1 and respondent no. 3 in their duty of taking reasonable care which is inclusive of putting safety measures in place, having an adequate system to ensure such unfortunate incidents do not occur.



37. For the said reasons, I am of the considered view that this petition under Article 226 of the Constitution claiming compensation for failure of securing and safeguarding the fundamental right to life of Master Praveen, is maintainable.

B. Vicarious Liability and Absolute Liability

38. The other issue for consideration before this court is that whether DDA is liable to pay compensation for the loss of life of Master Praveen?

39. The Delhi Development Act, 1957 recognises the object of the authority of DDA/respondent no. 1 as under:

“6. Objects of the Authority.—The objects of the Authority shall be to promote and secure the development of Delhi according to plan and for that purpose the Authority shall have the power to acquire, hold, manage and dispose of land and other property, to carry out building, engineering, mining and other operations, to execute works in connection with supply of water and electricity, disposal of sewage and other services and amenities and generally to do anything necessary or expedient for purposes of such development and for purposes incidental thereto:

Provided that save as provided in this Act, nothing contained in this Act shall be construed as authorising the disregard by the Authority of any law for the time being in force.”

40. The respondent no. 1 is a statutory body obligated with the role to develop and maintain buildings and amenities including upkeep of sewer/manholes. This requires strict adherence to safety norms, prevention strategies and risk analysis. The brunt of failure in doing so is directly felt by the citizens, which in this case is Master Praveen.



41. The Black's Law Dictionary (11th ed. 2019) defines the term 'negligence' as under:

“negligence n. (14c) 1. The failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation; any conduct that falls below the legal standard established to protect others against unreasonable risk of harm, except for conduct that is intentionally, wantonly, or willfully disregarding of others' rights; the doing of what a reasonable and prudent person would not do under the particular circumstances, or the failure to do what such a person would do under the circumstances. • The elements necessary to recover damages for negligence are (1) the existence of a duty on the part of the defendant to protect the plaintiff from the injury complained of, and (2) an injury to the plaintiff from the defendant's failure. The term denotes culpable carelessness. The Roman-law equivalents are culpa and neglegentia, as contrasted with dolus (wrongful intention). — Also termed actionable negligence; ordinary negligence; simple negligence.

2. A tort grounded in this failure, usu. expressed in terms of the following elements: duty, breach of duty, causation, and damages.”

42. In view of the above, it is understood that the act of negligence is a breach of a duty, which results in a foreseeable injury. In the present instance, DDA has a statutory duty of care and to take reasonable measures for maintenance of sewer, including covering of all manholes. The failure in performing this duty and leaving the manhole open has resulted in the death of an innocent child.

43. In such an instance, the stand of the respondent no. 1 to deflect its responsibility to the respondent no.3/private contractor is unacceptable. The statutory duty held by DDA cannot be so easily



deflected on the ground of an existing contractual relationship between respondent no.1 and respondent no. 3. Reliance is placed upon in *Criminal Justice Society v UOI and Ors*, (*supra*).

44. This court in a similar case, wherein the petitioner lost his life from falling into a uncovered trench and the DDA had engaged a contractor for maintenance, held DDA liable for negligence and granted Rs. 10,00,000/- as compensation. The operative portion of *Chitra Chary v. DDA*, 2004 SCC OnLine Del 940, it reads as under:

“19. Cause of death of the deceased as recorded in the post-mortem report was not challenged by the DDA. Post-mortem report reveals that the deceased died ‘brain death’. Cause of death was, coma due to head injury caused by blunt force which could be ‘fall in mud traffic accident’.

20. Facts as noted aforesaid reflect the general cynical irrelevance towards safety norms to be followed as one notices everyday whenever municipal agencies carry out construction work either by themselves or through a contractor. The facts evidence the usual mood of complacency seen each day. What is listed as a safety measure is observed more in breach and less in compliance. This Court has witnessed construction of fly-overs in Delhi, digging of roads for sewer, repair work, etc. Safety norms are found not being adhered to. It is the bounden duty of municipal agencies to ruthlessly require adherence to the safety norms in their minutest details and in their exacting requirements. Evidence on record conclusively establishes breach of putting barricades for safety of the passers-by.

21. Any activity under authority of the State has to be reckoned as that of the State itself. The State has to be held vicariously liable.

22. Would the petitioners be entitled to relief under



Article 226 of the Constitution of India is the question which needs to be answered next.

23. Remedy under Article 226 is not a matter of right. It is a discretionary jurisdiction. Equity plays a vital role in any action under Article 226. Fair, just, moral and ethical considerations permeate exercise of writ jurisdiction. Developed system of law in various countries has introduced the assistance of discretionary power to do justice in particular cases where strict rules of law may cause hardship. Principles of justice and conscience are the bedrock of equity jurisdiction. Where a common law remedy is onerous or beyond the means of a litigation, relief can be granted under Article 226 of the Constitution of India, more so when the cause is predicated on gross negligence or a patent violation of law by the State.

24. Tortious liability arises from the breach of duty primarily fixed by law, duty being towards persons generally. Breach of duty is redressable by an action for unliquidated damages.

25. There is a common law duty of taking reasonable care. Duty of taking reasonable care is attached when a person carries out excavation work resulting in the formation of a trench duty of care requires public warning signals notifying the passers by that there is a trench ahead. Additionally, duty of reasonable care would require putting into place all safety measures, being at least 2 in number. Firstly site of the trench must be barricaded and secondly the barricades must be seen.

26. In the decision (1985) 4 SCC 677 : AIR 1986 SC 494, Bhim Singh v. State of J&K, Their Lordships of the Supreme Court held that where a State tramples upon the legal right of a citizen, victim can be compensated by awarding suitable compensation in appropriate cases. In (1989) 3 SCC 223 : AIR 1989 SC 1570, A.S. Mittal v. State of U.P., it was observed that where safety norms are breached by the State or a person acting under authority of the State, compensatory relief can be



granted under writ jurisdiction. I was held that where a tortious act is committed by a person acting under the authority of the State, the State would be vicariously liable.”

45. In view of the above, it is apparent that DDA is vicariously liable for the actions and non-actions of its contractor, i.e respondent no. 3.

46. With respect to the extent of liability that can be fastened on the respondent no.1, the principle of strict liability shall be applicable since there is a claim for compensation for constitutional tort committed against the deceased minor child. The submissions by the respondent no. 1 that it is not liable since it was not informed of damage/broken/missing manhole from any person including the police/RWA or that there is no lighting arrangement on the service road is wholly unreasonable. This demonstrates and reflects the apparent callous approach of DDA towards safety and security norms. Since, the respondent no. 3 was acting under the authority of respondent no.1, DDA is held liable to pay compensation to the legal heirs of Master Praveen, i.e the petitioners. Reliance is placed upon *Ram Kishore v MCD*, 2007 SCC OnLine Del 992, the operative portion reads as under:-

“9. The next question that arises for consideration is the principle that should be applied in determining the existence and extent of liability of the respondent and consequent fastening of liability on it. It requires to be recapitulated that in terms of the ruling in Nilabati Behera, claim for compensation for constitutional torts in the form of a writ petition (SCC, p.762) “is an acknowledged remedy for enforcement and protection of



such rights, and such a claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right is 'distinct from, and in addition to, the remedy in private law for damages for the tort' resulting from the contravention of the fundamental right." This is necessary in order to find that there was a breach of a public duty to act fairly as a part of enforcement of the public law function of the state agency. It was explained in D.K. Basu that the claim of the citizen for compensation for constitutional wrongs is "based on the principle of strict liability to which the defence of sovereign immunity is not available and the citizen must receive the amount of compensation from the State, which will have the right to be indemnified by the wrongdoer."

10. In the cases involving a claim for compensation in writ petitions either under Article 32 or Article 226, the courts have in response to the defence raised by the respondent that the petitions involve disputed questions of fact fastened liability either by ordering an independent enquiry into the facts (for e.g. Nilabati Behera) or where there is no dispute as to the incident itself invoked the principle of res ipsa loquitur, thus obviating a need for any further inquiry into the facts."

C.Quantum

47. In view of the above, the third issue that remains to be adjudicated is with respect to the quantum of compensation payable by respondent no. 1 to the legal heirs of the deceased minor child, i.e. the petitioners.

48. Even though it is impossible to compute the cost of loss of life, agony and hardship, the courts have devised a mechanism to calculate the quantum of compensation that could be paid to compensate for the loss. Reliance is placed upon *Kamla Devi v*



GNCTD & Anr., 2004 SCC OnLine Del 721, wherein the following was emerged at:-

“21.

5. *The compensation to be awarded by the Courts, based on international norms and previous decisions of the Supreme Court, comprises of two parts:—*

(a) *‘standard compensation’ or the so-called ‘conventional amount’ (or sum) for non-pecuniary losses such as loss of consortium, loss of parent, pain and suffering and loss of amenities; and*

(b) *Compensation for pecuniary loss of dependency.*

6. *The ‘standard compensation’ or the ‘conventional amount’ has to be revised from time to time to counter inflation and the consequent erosion of the value of the rupee. Keeping this in mind, in case of death, the standard compensation in 1996 is worked out at Rs. 97,700/-. This needs to be updated for subsequent years on the basis of the Consumer Price Index for Industrial Workers (CPI-IW) brought out by the Labour Bureau, Government of India.*

7. *Compensation for pecuniary loss of dependency is to be computed on the basis of loss of earnings for which the multiplier method is to be employed. The table given in Schedule II of the MV Act, 1988 cannot be relied upon, however, the appropriate multiplier can be taken therefrom. The multiplicand is the yearly income of the deceased less the amount he would have spent upon himself. This is calculated by dividing the family into units - 2 for each adult member and 1 for each minor. The yearly income is then to be divided by the total number of units to get the value of each unit. The annual dependency loss is then calculated by multiplying the value of each unit by the number of units excluding the two units for the deceased adult member. This becomes the multiplicand and is multiplied by the appropriate multiplier to arrive at the figure for compensation of*



pecuniary loss of dependency.

8. The total amount paid under 6 and 7 above is to be awarded by the Court along with simple interest thereon calculated on the basis of the inflation rate based on the Consumer Prices as disclosed by the Government of India for the period commencing from the date of death of the deceased till the date of payment by the State.

9. The amount paid by the State as indicated above would be liable to be adjusted against any amount which may be awarded to the claimants by way of damages in a civil suit or compensation under the Criminal Procedure Code.”

49. What is evident from the above is that compensation can be given under two heads, i.e standard compensation and pecuniary compensation.

50. I am bound by the recent judgment of the Division Bench of this court in *Sharafat Khan and Anr. versus Northern Railway and Anr*, dated 26.05.2023 in LPA No. 615/2019, wherein in similar facts, the compensation was granted with the following computation:

“14.1 The standard compensation as mentioned in Kamla Devi was stated to be Rs.50,000/- in the year 1989. The average CPI(IW) for the year 1989 with respect to base year 1982=100 was 171. The Standard Compensation to be awarded to the appellants is required to be enhanced for May, 2013 when the deceased had died, on basis of the New Series of CPI(IW) with base year 2001=100. The CPI(IW) for May, 2013 with the base year 2001 is 228 as per data of Labour Bureau, Government of India. The linking factor between the New Series of CPI(IW) for base year 2001=100 and the previous series for base year 1982=100 is 4.63. The CPI(IW) in May 2013, with respect to base year 1982 would be calculated as $228 \times 4.63 = 1055.64$. Accordingly, the Standard



Compensation for May 2013 as per corrected value comes to Rs.50,000 $\times$ 1055.64/171 = Rs.3,08,666/-.

*15. The compensation under the head of pecuniary loss caused to the appellants is calculated on the principle of loss of earnings and can be assessed on basis of the method discussed in **Kamla Devi, Varinder Prasad** etc. As observed in **Varinder Prasad**, on the basis of **Kamla Devi**, i) for assessment of the pecuniary loss of dependency, the income of parents can be taken as a standard measure for arriving at the expected annual income of the children and ii) the method of calculating the compensation for pecuniary loss of dependency depends upon the potential earning capacity of the deceased, had she/he attained adulthood. The appellant no.1, who is father of the deceased, was stated to be earning Rs.700-800 per day on the day of incident, by plying a battery-operated rickshaw and after deducting his expenses, the net monthly income of the appellant no.1 could be assessed at Rs.15,000/-. The appellant no.2, who is mother of the deceased, had no earnings. The deceased was aged about 12 years at the time of his death. The income of the appellant no.1 for calculating the compensation would be taken as income of the child i.e. the deceased. It is presumed that the deceased would have earned at least what the appellant no.1 was earning. Accordingly, the multiplicand would be the expected annual income of the deceased less what he needed for himself. It would be appropriate after considering future increase in income of the appellant no.1, to apply and adopt the multiplicand factor of 1.5 to set off the effects of inflation and erosion of the value of the money. As the deceased would have grown up, his personal expenses would have risen. The contribution to the household would not have exceeded half of his income.*

16. The assessed income of the child i.e. the deceased is required to be multiplied by 1.5 which comes as



*Rs.15,000 x 1.5 = Rs. 22,500/- per month and after deducting 50% as the personal expenses of the deceased, the monthly income would be Rs.11,250/-; and the annual loss of dependency would be Rs.11,250 x 12 = 1,35,000/- . The deceased was less than 15 years of age, therefore, the multiplier of 15 would be applicable as per Second Schedule appended to the Motor Vehicles Act, 1988 on basis of **Kamla Devi**. The pecuniary loss as such would be Rs.1,35,000 x 15 = Rs.20,25,000/-.”*

51. Since Master Praveen passed away in August 2013, the calculation with respect to standard compensation will be modified as under:

Rs. 50,000x1097(the corrected value for August 2013)/171=
Rs. 3,20,760/-

52. The petitioners have admitted a cost of Rs. 50,000/- towards funeral expenses, which I find appropriate to include in the standard compensation. Therefore, the amount shall be Rs. 3,20,760 + Rs. 50000= 3,70,760/-.

53. With respect to pecuniary compensation, the petitioner no. 1 is stated to be earning Rs. 15,000/- p.m. while working at a Meat shop and the petitioner no. 2 is a house wife. Therefore, the assessment under the head of pecuniary loss shall be the same as given in *Sharafat Khan (supra)*, which is amounting to Rs. 20,25,000/-, since the assessed income of the child is calculated on the same amount of Rs. 15,000/- which is the monthly income of the father of Master Praveen.

54. In view of the above, a writ of mandamus is issued in favour of the petitioner and against the respondent no.1, directing respondent



no. 1 to pay total compensation of Rs. 23,95,760/- to the petitioners, i.e legal heirs of Master Praveen, along with interest at the rate of 9% interest with effect from date of filing the petition till the date of payment of compensation.

55.The question with respect whether the amounts paid under this judgment by respondent no. 1 are recoverable from respondent no. 3 are left open to be adjudicated by appropriate authority.

56.No amount would be able to adequately compensate the loss of life, however monetary compensation may provide some balm to the sufferings of the bereaved parents, i.e. petitioners.

57.The petition is disposed of in the above terms.

JASMEET SINGH, J

22nd JANUARY, 2024/ DJ

Click here to check corrigendum, if any