

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1423 of 2023

In

Civil Writ Jurisdiction Case No.5827 of 2015

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Saroj Devi Wife of Late Ram Bhushan Singh, Resident of Mohalla - Indira Nagar, P.S.-Kankarbagh, District - Patna.

... .. Appellant/s

Versus

1. The State of Bihar through Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Urban Development and Housing Department, Government of Bihar, Vikas Bhawan, Patna, (Bihar).
3. The Commissioner, Patna Division, Bihar.
4. The District Magistrate, Patna, Bihar.
5. The National Building Construction Corporation, through its Managing Director, (B-6, Vijay Nagar, Rash Bihari Path, Rukunpura, P.O.- B.V. College, Sheikhpura, Patna -800014).

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Vishwajeet Singh, Advocate

For the State : Mr. Y.P. Sinha, AAG-7

For the Respondent/s : Mr. Satish Kumar Sinha, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

CAV JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 09-01-2025

The appeal is filed against the judgment of the learned Single Judge awarding an amount of Rs. 10 lakhs as compensation, in lieu of the death of the petitioner's son; which was occasioned by reason of an accident wherein the bike in which the deceased was travelling along with his friend fell into an open drain. The open drain was being constructed by the National Building Construction Corporation (for brevity 'NBCC'), the 5th respondent through a contractor. A criminal



case registered against the contractor had not been proceeded with, by reason of the death of the contractor. The petitioner, the grieving mother approached this Court with the writ petition which was allowed granting compensation as mentioned above. The appellant's contention is that in fact the Court ought to have applied the multiplier method of calculating compensation which the Hon'ble Supreme Court has made applicable in compensation cases arising out of motor accidents.

2. The learned Single Judge framed two issues for consideration; the first one as to whether the writ petition was maintainable for grant of compensation as claimed under Article 226 of the Constitution of India. The second question framed was as to whether the 5th respondent had taken full care and precaution to ensure that no mishap happens and even after that when the accident occurred, if the 5th respondent was liable to pay compensation.

3. The learned Single Judge relied on a number of Supreme Court judgments to find that the award of compensation in a proceeding under Article 226 of the Constitution of India 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 a private law action based on tort (sic). It was also held that in cases where the relevant facts are not in dispute and there is established, acts and omissions of the respondent authorities on the face of the record, and there is a consequential deprivation of a fundamental right of the petitioner, the Writ Court can award monetary compensation to which end reliance was also placed on Article 21 of the Constitution of India; to hold that the negligent act of the 5th respondent; a State authority, resulted in deprivation of the life of a person. The writ petition was hence allowed.

4. Having gone through the judgment, we are of the opinion that the second question raised as to whether the contractor was negligent or whether they took full care and precaution to ensure that no mishap occurs was not at all dealt with by the learned Single Judge. We find that the 5th respondent has filed a counter affidavit specifically disputing the claim of negligence. It was categorically averred that the area in which the construction work was going on, was barricaded and notices were issued in newspapers about the ongoing construction work of main drain at Kankarbagh, specifying the exact location and notifying a diversion to avoid the work site. This aspect has not



been dealt with by the learned Single Judge at all. However, we find that there is no appeal filed by the 5th respondent and in that circumstance, we would not dwell further on the issue as to whether a compensation, on the facts coming out, could have been granted or not. However, the above reasoning would restrain us from considering any enhancement of the compensation as awarded by the learned Single Judge or applying the multiplier method to award compensation.

5. Admittedly, the question of compensation is not one merely on law and there are competing factors which have to be considered, with respect to, proper care having been taken by the authorities and the authority not having acted in any negligent manner juxtaposed with the complicity of the injured and any contributory negligence, if any, in the actions of the injured. These aspects are a matter of evidence and so would the question of the multiplier formula being applied, require evidence to be led on various aspects. We hence find absolutely no reason to interfere with the judgment of the learned Single Judge.

6. We further notice the judgment of the Hon'ble Supreme Court in *Sube Singh vs. State of Haryana* reported in *AIR 2006 SC 1117* relied on in the impugned judgment also



which said so ‘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 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 Civil Procedure’ (sic). Hence, the appellant would be entitled to approach the Civil Court but subject, however, to laws of limitation and also requiring proper evidence adduced insofar as the negligence attributed to the respondent authority.

7. We make it clear that the mere fact of a compensation having been awarded by the Writ Court would not enable a finding of negligence by the Civil Court, if approached.

8. With the above reservation and observation, we dismiss the appeal.

(K. Vinod Chandran, CJ)

Partha Sarthy, J I agree

(Partha Sarthy, J)

Anushka/-

AFR/NAFR	
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