IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

RFA No. 4106 of 2013
Reserved on: 20.03.2026
Date of decision: 27.04.2026

The District Collector, Mandi & another

....Appellants

Versus

Ved Vatti & another

…Respondents

Coram

Hon'ble Mr. Justice Sushil Kukreja, Judge

[1] *Whether approved for reporting?* Yes

For the appellants:	Mr. B.N. Sharma, Mr. Manoj Chauhan and Mr.Raj Kumar Negi, Additional Advocates General with Mr. Ankush Thakur, Mr. Balwinder Singh Ballu & Ms. Archana Negi, Deputy Advocates General.
For the respondents:	Mr. Devender K. Sharma, Advocate, for respondent No.1.
	Mr. Vinod Chauhan, Advocate, vice Mr.Vikas Rathore,Advocate, for respondent No.2.

Sushil Kukreja, Judge

The instant appeal has been preferred by the appellants/defendants No.1 &2/State against the judgment and decree dated 17.12.2012, passed by the learned District Judge, Mandi, HP, in Civil Suit No.5 of 2009, whereby the suit for damages filed by plaintiff (respondent No.1 herein), was partly decreed and she was held entitled for damages to the tune of Rs.3,33,000/- alongwith interest @ 6% per annum from the date of filing of the suit

[1] *Whether reporters of Local Papers may be allowed to see the judgment?*

till realization of the whole amount from the defendants. However, the ultimate liability to pay the amount of damages was fastened upon defendants No.1 and 2 (appellants herein), who were held vicariously liable for the act of defendant No.3 (respondent No.2 herein).

2. Briefly stated the facts of the case, as emerge from the plaint, are that on 24.05.2009, Shri Ajay Parshad, who was son of the plaintiff, was returning back from *Baijnath to Joginderngar* on his motorcycle and when he reached near village *Ahaju* on NH-20, he struck against a stone and died on the spot as half of the road was damaged on account of the big pit lying the road since May, 2008. The repair work of the said damaged portion of the road was awarded to defendant No.3 (respondent No.2 herein) and almost half of the road was dug by the labourers, but there was no sign board affixed on the spot and only some stones were put in the middle of the road without any white wash. As per the plaintiff, her son Ajay Parshad was aged about 25 years at the time of his death and he was a graduate. He had also done two years diploma in Ayurvedic Pharmacy. He was working as a Manager with M/s Harmeet Singh Tripat Enterprises, Dharamashala and was getting Rs.9,500/- per month as salary. A notice under Section 80 of CPC was also served upon defendant No.1, who had denied its liability. Since the accident in question had solely been attributed to the

negligent act of the defendants, therefore, it was prayed that a decree for damages in the sum of Rs.10,00,000/- be passed in favour of the plaintiff alongwith interest @ 10% from the date of death till the realization of the said amount.

3. Defendants No.1 and 2 (appellants herein), in their joint written statement, raised preliminary objections regarding maintainability of the suit, cause of action, no legal notice under Section 80, CPC was served upon the defendants and *locus standi* were taken. On merits, it was averred that proper guide stones and road sign boards were affixed at the site to warn the road users. It was further averred that there was no negligence on their part and the accident had taken place due to the over-speed of the vehicle in question and an FIR was also registered against the deceased.

4. In his separate written statement, defendant No.3 also raised preliminary objections regarding maintainability, cause of action and that the deceased had died on account of his own rash and negligent driving. On merits, defendant No.3 took almost sane and similar grounds as were taken by defendants No.1 and 2 in their written statement.

5. On the pleadings of the parties, the learned Court below framed the following issues on 16.07.2009:-

> ***"1. Whether son of the plaintiff (wrongly typed as deceased) suffered an accident on account of negligence of the defendants in not maintaining the road, as alleged? ...OPP***

2. Whether the plaintiff is entitled to recover damages, if so, to what amount? ...OPP

3. Whether the suit is not maintainable? … OPD

4. Whether the suit is bad for want of legal notice? … OPD

5. Relief."

6. The parties led their evidence and after hearing learned counsel for the parties, the suit of the plaintiff was partly decreed and she was held entitled for damages to the tune of Rs.3,33,000/- alongwith interest @ 6% per annum from the date of filing of the suit till realization of the whole amount from the defendants. However, the ultimate liability to pay the amount of damages was fastened upon defendants No.1 and 2, who were held vicariously liable for the act of defendant No.3.

7. Feeling aggrieved and dissatisfied, the appellants-defendants No.1 & 2 preferred the instant appeal against the impugned judgment and decree dated 17.12.2012 passed by the learned Court below, with a prayer to set-aside the same, being not sustainable both in law and facts.

8. I have heard the learned Additional Advocate General for the appellants as well as learned counsel for respondent No.1, and learned vice counsel for respondent No.2 and also carefully examined the entire record.

9. Learned Additional Advocate General has contended that the accident had occurred due to the negligence on the part of

deceased himself and there was no negligence on the part of the defendants. He further contended that the appellants had given the work to defendant No.3 (respondent No.2 herein) on contract, hence, the State cannot be held vicariously liable for his acts.

10. On the other hand, learned counsel for respondent No.1 supported the impugned judgment and decree passed by the learned Court below and submitted that accident had occurred due to the negligence on the part of the defendants. He further contended that the impugned judgment and decree have been passed by the learned Court below after appreciating the evidence in its proper perspective.

11. I have closely scrutinized the entire evidence on record. Perusal of the entire evidence on record reveals that Plaintiff-Ved Vati, while appearing in the witness-box as PW-1, tendered in evidence her affidavit, wherein she reiterated almost all the averments as made by her in the plaint. During cross-examination, she deposed that the place where the accident had taken place, was situated at a distance of about 10-12 KMs from her village. She admitted the suggestion that an FIR was registered about the accident, but she feigned ignorance that the accident was witnessed by some one. She also admitted that when she reached the spot, many persons were gathered there and the motorcycle was lying in the middle of the road and there was no obstruction in the free flow

of the traffic. PW-2 Nek Ram stated that the motorcycle of deceased Ajay Parshad was struck against the stones, which were put in the middle of the road, due to which, he fell down on the road and died on the spot. He further stated that when he reached the spot, the work was in progress, there was a big pit and half of the road was damaged/dug on account of the said pit. He also stated that the accident had taken place due to the negligent act of the defendants, who did not affix any proper sign boards regarding the damaged condition of the road. PW-3 Amit Kumar deposed that the deceased was working as Manager with M/s Tripad Enterprises and he was getting Rs.9,500/-p.m.

12. On the other hand, the defendants examined three witnesses in support of their case. DW-1 Brij Mohan, Junior Engineer, during his cross-examination, admitted that some portion of the road was damaged and width of the road at the spot was about 8 ½ meters, out of which, about 6 meters road was fit for the traffic. He stated that the warning board/parapet and guide stones duly white washed, were placed at the spot.He admitted the suggestion that the stones were to be put by the contractor. DW-2, the then, SDO, NH Sub Division, Gumma, deposed that the width of the road at the spot was about 8½ meters and the repair work was being done on the portion of two meters only. He also deposed that the guide stones were affixed at the spot, which were duly white

washed. DW-3 Praveen Kumar tendered in evidence his affidavit as Ext.DW3/A. This witness admitted that photograph Ext.PX pertained to the spot.

13. Now, the question, which arises for consideration before this Court, is as to whether the son of the plaintiff (respondent No.1 herein) had died on account of negligence of the defendants in not maintaining the road. The plaintiff (respondent No.1 herein) claimed the damages on account of the negligence of the defendants (appellants herein) in not providing/putting safety measures/sign boards on the spot, where road was damaged and was being repaired by the defendant No 3 on behalf of defendant No.2.

14. Negligence is the breach of a duty caused by the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do. Cause of action for negligence arises only when damage occurs and, thus, the claimant has to satisfy the court on the evidence that three ingredients of negligence, namely, (a) existence of duty to take care; (b) failure to attain that standard of care; and (c) damage suffered on account of breach of duty, are present for the defendants to be held liable for negligence. ***In Poonam Verma Vs. Ashwin Patel and others, (1996)4 SCC 332,*** the Hon'ble Supreme Court in paras- 14 to 16 has held as under:-

> *"14.Negligence as a tort is the breach of a duty caused by omission to do something which a reasonable man would do, or doing something which a prudent and reasonable man would not do.*
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> *15. The definition involves the following constituents:-*
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> *(1) a legal duty to exercise due care:*
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> *(2) breach of the duty; and*
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> *(3) consequential damages*
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> *16. The breach of duty may be occasioned either by not doing something which a reasonable man, under a given set of circumstances would do, or, by doing some act which a reasonable prudent man would not do."*

15. In the instant case, the factum of accident of the deceased has not been disputed by either of the parties to the lis. It has also not been disputed by the parties that defendant No.3, who was the contractor, was executing the construction/repair work of the damaged road, which work was awarded to him by defendant No.2. The road admittedly belongs to and was maintained by PWD and, therefore, it was their primary responsibility to ensure that the road was properly barricaded, the area was illuminated and warning signs were displayed regarding the damaged condition of the road.

16. In the decision reported in ***Darshan v. Union of India (2000 ACJ 578)*** the principle of *res ipsa loquitur* was invoked. That was a case in which the deceased had fallen into a manhole left uncovered by the authority concerned and the authority was held responsible. In the said case, it was observed as follows:

> *"9. ……Coming to the instant case, it is one of res ipsa loquitur, where the negligence of the instrumentalities of the State and dereliction of duty is writ large on the Red Fort in leaving the manhole uncovered. The dereliction of duty on*

> *their part in leaving a death trap on a public road led to the untimely death of Skattar Singh. It deprived him of his fundamental right under Article 21 of the Constitution of India. The scope and ambit of Article 21 is wide and far reaching. It would, undoubtedly, cover a case where the State or its instrumentality failed to discharge its duty of care cast upon it, resulting in deprivation of life or limb of a person. Accordingly, Article 21 of the Constitution is attracted and the petitioners are entitled to invoke Article 226 to claim monetary compensation as such a remedy is available in public law, based on strict liability for breach of fundamental rights."*

17. Hence, considering the principle laid down by the decision referred, the above principle of *res ipsa loquitur* will apply to the facts of the present case also. This principle applies in a case where the plaintiff proves the accident and the reason for the same is within the knowledge of the defendant. By proving the accident, the plaintiff is deemed to have discharged his burden and it is for the defendants to say that they have taken precaution and care. In the instant case, the plaintiff had discharged the burden of proving the accident and had duly proved on record that the accident in question had taken place due to the negligence on the part of the defendants. Therefore, it was for the defendants to prove by leading cogent and satisfactory evidence on record that the accident had not taken place due to their negligence. It was also for the defendants to prove that the accident was the result of negligence on the part of the deceased himself as contended by them. However, the defendants had miserably failed to prove that the accident was the result of negligence on the part of the deceased himself. As rightly observed by the learned Trial Court, there is no satisfactory evidence on

record to prove that the defendants (appellants herein) had taken due care by providing safety measures on the spot. Lack of duty to take reasonable care on the part of the defendants is apparent. Obviously, the defendants have failed to take necessary action and have been negligent in their duty to take care of the safety of others. Even otherwise, if the statements of witnesses examined by the defendants are taken to be as it is, the same are not liable to be taken into consideration as whatsoever work was being executed by defendant No.3, the same was required to be recorded in the measurement book (MB), which was to be filled in by the Junior Engineer, who used to inspect the spot and thereafter the same was to be verified by the SDO concerned. However, the said important document has not been produced on record by the defendants. Preparation of sign boards as well as putting the guide stones require expenditure of amount and the said fact must have been mentioned in the measurement book, had something been done by the defendants on the spot. However, for the reasons best known to the defendants, the measurement book was not produced. Perusal of photograph Ext.PX reveals that no precautionary measures had been taken by the defendants and they only put stones of difference sizes and those stones have not shown to be white washed. In the photograph, stones are shown to be put up at the middle of the road as central strip is also visible in the

photograph Ext. PX.

18. In ***Rajkot Municipal Corporation Vs. Manjulben Jayantilal Nakum and others (1997) 9 SCC 552,*** the Hon'ble Supreme Court has held that the defendants would only be liable in case it has been proved that they have a duty of care. Para-12 of the judgment reads as under:-

> *"12. Negligence and tort have been viewed without elaborately embarking upon the definition of "tort" applicable to varied circumstances and the scope of negligence in its wider perspective. Let us proceed to consider the meaning of "negligence in the context of tort liability arising in this case. In every case giving rise to tortious liability, tort consists of injury and damage due to negligence. Claim for injury and damage may be founded on breach of contract or tort. We are concerned in this case with tort. The liability in tort may be strict liability absolute liability or special liability. The degree of liability depends on degree of mental element. The elements of tort of negligence consist in (a) duty of care; (b) duty is owed to the plaintiff; (c) the duty has been carelessly breached. Negligence does not entail liability unless the law exacts a duty in the given circumstances to observe care. Duty is an obligation recognized by law to avoid conduct fraught with unreasonable risk of damage to others. The question whether duty exists in a particular situation involves determination of law, Negligence would in such acts and omissions involve an unreasonable risk of harm to others. The breach of duty causes damage and how much is the damage should be comprehended by the defendant. Remoteness is relevant and compensation on proof thereof requires consideration. The element of carelessness in the breach of the duty and those duties towards the plaintiff are important components in the tort of negligence. Negligence would mean careless conduct in commission or omission of an act connoting duty, breach and the damage thereby suffered by the person to whom the plaintiff owes. Duty of care is, therefore, crucial to understand the nature and scope of the tort of negligence."*

19. In the case on hand, as observed earlier, it was duty of the defendants to put sign board as well as to take safety measures to caution the road user regarding damaged condition of the road. The defendants owed a duty to put precautionary sign board to avoid

any untoward incident. Perusal of the record reveals that the accident in question had taken place on NH-20 and it is a matter of common knowledge that on the National Highway, people used to drive their vehicles in a high speed under the impression that the condition of the road would be better than any other road. Since it was duty of the defendants to put sign board as well as to take safety measures to caution the road users regarding damaged condition of the road as such, the learned Trial Court has rightly held that son of the plaintiff died as a result of the accident on account of the negligence of the defendants and also held the plaintiff entitled for damages to the tune of Rs.3,33,000/-

20. No other point was urged before me.

21. Hence, in view of what has been discussed hereinabove, the instant appeal, being devoid of any merits, is dismissed. Consequently, the impugned judgment and decree dated 17.12.2012, passed by learned District Judge, Mandi, District Mandi, HP, are upheld.

Pending application(s), if any, shall also stand disposed of.

(Sushil Kukreja)
Judge

April 27, 2026
(V.Himalvi)