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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP-12894-2023
Date of decision: 09.05.2024

DEEPAK SHARMA AND ANOTHER .....Petitioner

VERSUS

STATE OF HARYANA AND OTHERS .....Respondents

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

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Present: - Mr. J.S. Sohal, Advocate for
Mr. Vipan Pal Yadav, Advocate
for the petitioner.

Mr. Vivek Chauhan, Addl. A.G. Haryana
for respondent No.1.

Mr. R.D. Bawa, Advocate with
Mr. Randhir Bawa, Advocate and
Mr. Samuel Gill, Advocate
for respondents No. 2 to 6.

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VINOD S. BHARDWAJ, J. (Oral)

1. Challenge in the present writ petition is to the impugned order dated 06.01.2023 passed by the respondent No.3-Chief Engineer/Operation, DHBVNL, Delhi whereby the claim of the petitioner to grant compensation on account of death of their son namely Arav Sharma has been rejected and a further prayer to direct the respondents to pay the compensation to the tune of Rs. 25 lacs to the petitioner alongwith 18% per annum w.e.f. 30.01.2020.

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2. Learned counsel appearing on behalf of the petitioners contends that on 30.01.2020, Arav Sharma aged 03 years, the son of the petitioners was playing on the terrace and all of a sudden, the heavy electricity line of 11000 KV passing abutting the roof of the petitioner struck the child leading to an immediate death. The matter was reported to the District Administration immediately and a postmortem was conducted on 31.01.2020. A FIR No. 0017 dated 01.02.2020 was also registered qua the incident for commission of offence under Section 304/34 of the Indian Penal Code. He points out that a representation had been submitted by the petitioners on 06.02.2020 to the Executive Engineer-City, OP-Division, DHBVN, Mehrauli Road, Gurugram for grant of compensation which is appended as Annexure P-3.

3. Earlier, the petitioner has approached this Court by way of filing of CWP-177 of 2022 which was disposed of vide order dated 10.10.2022 with a direction to the respondent-authorities to treat the said writ petition as a representation on behalf of the petitioners and to pass a reasoned and speaking order within a period of three months of receipt of certified copy of this order after granting an opportunity of hearing to the respective parties. The petitioner No.1 was initially called upon by the Executive Engineer (Op.) Division City, DHBVN, Gurugram for personal hearing with supporting documents to redress the compensation. However, vide order dated 06.01.2023, the respondent-authorities declined the claim of the petitioner on the ground that the said incident occurred due to the

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negligence of the petitioners as the petitioners had done illegal construction on the house.

4. Upon issuance of notice, written statement on behalf of respondents No.2 to 6 through Avinash Yadav, Executive Engineer, "Operation" City Division, Dakshin Haryana Bijli Vitran Nigam Ltd. was filed, wherein it was averred that the accident in question had not occurred as a result of carelessness or negligence of the distribution licensee. It has been averred that the petitioners have illegally extended his house almost beneath the 11 KV line. The illegal construction has been extended horizontally as well as vertically. Further, the bathroom is constructed with temporary structure just under 11 KV line. The respondent-authorities also dispute the fact that any representation was submitted by the residents of the area under Sub Division Kadipur to shift the line from the boundary line of the houses. It is also averred that no complaint was lodged regarding this incident.

5. In response thereto, replication has been filed by the petitioner who has denied the allegations leveled and the plea raised by the respondent-distribution licensee.

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

7. The Apex Court in the matter of ***"Sanjay Gupta and others versus State of Uttar Pradesh and others"*** reported as ***(2022) 7 SCC 203***

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has observed 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.*

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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*

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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 made 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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14. An appeal against the said order was partly allowed in ***MCD v. Uphaar Tragedy Victims Assn.*** *reported as* ***(2011) 14 SCC 481*** *wherein this Court held as under: (SCC pp. 528-31 & 536. paras 60, 64, 67 & 76)*

> *"60. The contention of the licensee is what could be awarded as a public law remedy is only a nominal interim or palliative compensation and if any claimants (legal heirs of the deceased or any injured) wanted a higher compensation, they should file a suit for recovery thereof. It was contended that as what was awarded was an interim or palliative compensation, the High Court could not have assumed the monthly income of each adult who died as being not less than Rs 15,000 and then determining the compensation by applying the multiplier of 15 was improper. This*

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gives rise to the following question: whether the income and multiplier method adopted to finally determine compensation can be arrived at while awarding tentative or palliative compensation by way of a public law remedy under Article 226 or 32 of the Constitution?

64. Therefore, what can be awarded as compensation by way of public law remedy need not only be a nominal palliative amount, but something more. It can be by way of making monetary amounts for the wrong done or by way of exemplary damages, exclusive of any amount recoverable in a civil action based on tortious liability..

67. Insofar as death cases are concerned the principle of determining compensation is streamlined by several decisions of this Court. (See for example ***Sarla Verma v. DTC*** *reported as (2009) 6 SCC 121) If three factors are available the compensation can be determined. The first is the age of the deceased, the second is the income of the deceased and the third is number of dependants (to determine the percentage of deduction for personal expenses). For convenience the third factor can also be excluded by adopting a standard deduction of one-third towards personal expenses. Therefore just two factors are required to be ascertained to determine the compensation in 59 individual cases. First is the annual income of the deceased, two- thirds of which becomes the annual loss of dependency; and second, the age of the deceased which will furnish the multiplier in terms*

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*of **Sarla Verma.** The annual loss of dependency multiplied by the multiplier will give the compensation. As this is a comparatively simple exercise, we direct the Registrar General of the Delhi High Court to receive applications in regard to death cases, from the claimants (legal heirs of the deceased) who want a compensation in excess of what has been awarded, that is, Rs 10 lakhs/Rs 7.5 lakhs. Such applications should be filed within three months from today. He shall hold a summary inquiry and determine the compensation. Any amount awarded in excess of what is hereby awarded as compensation shall be borne exclusively by the theatre owner. To expedite the process the claimants concerned and the licensee with their respective counsel shall appear before the Registrar without further notice. For this purpose the claimants and the theatre owner may appear before the Registrar on 10-1-2012 and take further orders in the matter. The hearing and determination of compensation may be assigned to any Registrar or other Senior Judge nominated by the learned Chief Justice/Acting Chief Justice of the Delhi High Court.*

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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', as also the

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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*

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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*

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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 commonsense 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

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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, 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 it 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

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happened in a manner which did not connote negligence on his part."

8. It is thus evident from a perusal of the above that a writ Court may award compensation to a person aggrieved and against the wrongdoer, on account of breach of its public duty, in addition to the independent right of the aggrieved party to claim compensation under the private law in a civil action based on tort, by way of a suit instituted before a Court of competent jurisdiction. The award of compensation in the public law jurisdiction is thus without prejudice to any other action like suit for damages etc. which may be lawfully available to the victim or the heirs of the deceased qua the same matter. The quantum of compensation however would depend upon the peculiar facts of each case and no straight jacket formula can be evolved in that behalf.

9. This Court, further held, in the matter of **"*Jagir versus State of Haryana*"** bearing CWP-2648 of 2014 decided on 19.10.2015 that writ Court has the power and discretion to assess a fair and proper compensation, even in the absence of proper and impeccable pleadings or evidence. Further, this Court in the matter of ***"Purshotam Parkash and others versus Dakshin Haryana Bijli Vitran Nigam Ltd. and others"*** bearing CWP-15780 of 2016 decided on 03.09.2019 held that even though the principles laid down in claim cases under the Motor Vehicles Act are not to be strictly applied to compute quantum of compensation in electrocution cases, however, the same may be a guiding factor for awarding compensation.

10. After noticing the above facts, I am of the view that a writ Court may, in a given circumstance, award compensation to a person aggrieved,

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where a person has suffered injuries/loss of life as a result of a danger brought around by the respondent (the distribution licensee being the respondent in the present case). The element of compensation is granted against the breach of public duty 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. Even though, the principles of Motor Vehicles Act are not applicable per se, however, they may be regarded as guiding principles by a Court of competent jurisdiction to ascertain the compensation payable to a person aggrieved.

11. A disputed question of fact would however emerge in the present case as to whether the injury in question was sustained purely as a result of fault of the petitioner or is attributable to the default of the respondent-distribution licensee. Even in an eventuality of contributory negligence, the petitioner would nonetheless be entitled to some compensation. Although a construction was allegedly being raised in violation of law, however, the respondent failed to take appropriate steps to stop construction raised in violation of law and chose to look the other way, thus contributing in the occurrence due to a *prima facie* lapse.

12. 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 contributory negligence, lest it may prejudice the case of the respective parties, the present case is being disposed of at this stage as it raises disputed questions of facts which cannot be ascertained in writ jurisdiction.

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13. However, in order to meet the financial hardship of the petitioners, **an interim compensation of Rs. 5 lakhs** 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 Motors Vehicles Act, 1988 as it may deem fit and proper.

14. The interim compensation shall be disbursed to the petitioners within a period of **two months** from the date of receipt of certified copy of this order. The respondent-Department shall however be entitled to seek a set-off of the amount ordered above but there shall be no recovery in case compensation assessed is less than the interim compensation ordered above.

15. 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 from computing the limitation for institution of such proceedings.

16. The present petition is accordingly disposed of with liberties as aforesaid.

(VINOD S. BHARDWAJ)
JUDGE

MAY 09, 2024
Vishal Sharma

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No