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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

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W.P.(C) 10651/2016

Between: -

SH. PRAVESH KUMAR,
S/O SH. VIJAY MASIH,
AGED ABOUT 36 YEARS

....PETITIONER NO.1

SMT. RASHMI

W/O SH. PRAVESH KUMAR,
AGED ABOUT 36 YEARS

BOTH R/O A-2/58, HIMGIRI ENCLAVE, BURARI,
DELHI-110084

.....PETITIONER NO.2

(Through: Ms. Aruna Mehta, Adv.)

AND

DELHI JAL BOARD

THROUGH ITS CHAIRMAN

HEAD OFFICE AT: ROOM NO. 306, VARUNALAYA
PHASE-II, JANDEWALAN, KAROL BAGH,
NEW DELHI-110005

.....RESPONDENT NO.1

COMMISSIONER OF POLICE,

I.P. ESTATE, NEW DELHI.

.....RESPONDENT NO.2

TATA POWER DELHI DISTRIBUTION PVT. LTD.

TROUGH ITS INCHARGE HUDSON LANE KINGSWAY CAMP,
DELHI

.....RESPONDENT NO.3

(Through: Mr. Karunesh Tandon, Mr. Rahul Chauhan and Mr. Abhishek Singh, Adv. for R-1

Mr. Manish Kumar Srivastava, Mr. Moksh Arora, Mr. Santosh Ramdurg, Mr. Yash Srivastava, Advs for R-2

Mr. Kirtiman Singh, CGSC with Mr. Waize Ali Noor, Mr. Varun Pratap, Mr. Maulik and Mr. Rajeev, Advs. with Mr. Summonu SI, PS Burari for R-3)

% Reserved on: 21.10.2024
Pronounced on: 18.11.2024

J U D G M E N T

The instant petition is filed under Article 226 of the Constitution of India, seeking compensation for the untimely and tragic death of the petitioners' nine-year-old son, namely Master Justin/ Joy (hereinafter referred as 'deceased'), who fell into a pit and died allegedly due to the gross negligence and dereliction of duty on the part of the official respondents.

2. Petitioner No.1, i.e., father of the deceased, is stated to be working in Sun City restaurant, Netaji Subhash Place, Delhi as a Supervisor and petitioner No.2, i.e., mother of the deceased, is an Assistant Teacher in recognized St. Mother Teresa Public School, Burari, Delhi. The petitioners also have an eleven-year-old daughter, namely, Navya and both the children of the petitioners were studying in the same school where their mother was teaching.

3. On the fateful day i.e., 20.07.2016, the deceased and some other children were flying kites on the roof of their respective houses. While chasing a cut-off kite, the deceased was running towards the vacant ground owned by respondent No.1-Delhi Jal Board (hereinafter

referred as 'DJB'), when unfortunately, he slipped and fell down in a pit dug in the vacant land.

4. Petitioner No.2, after anxiously waiting for the deceased who failed to return home, began a search for him but his whereabouts could not be traced. She, therefore, made a call to petitioner No.1, informing him about their missing son. After petitioner No.1 reached home, both the petitioners made inquiries from the neighbours and during the said course, a few children of the locality informed them that the deceased was following the cut off kite towards the vacant land.

5. Thereafter, both the petitioners along with the neighbours rushed to the said ground and found a pit filled up with rainwater. One of the neighbours, namely Premchand, immediately jumped in the pit and found the body of the deceased lying in the same. The PCR van also reached the site and the deceased was taken to Aruna Asaf Ali Hospital, where he was declared as dead on arrival. Thereafter, a post-mortem was conducted and on the statement of petitioner No.1, FIR No. 351 /2016 dated 22.07.2016, under Section 304A of Indian Penal Code, 1860 (hereinafter referred as 'IPC') was registered against the officials of DJB. Subsequently, the dead body of the deceased was handed over to the father of the deceased for performing the last rites and rituals.

6. Being aggrieved by the alleged negligence of the official respondents, the petitioners have knocked on the doors of this Court seeking compensation of Rs. 30,00,000/- on account of the tragic death of their son.

7. Ms. Aruna Mehta, learned counsel appearing on behalf of the petitioners, submitted that in the present case, the unfortunate incident which had occurred on 20.07.2016 was a result of gross negligence of

the official respondents in maintaining the vacant land. She contended that the facts of the case at hand evidently establish that the deceased died due to drowning after falling in a pit dug up at the vacant land owned by the official respondent. While relying upon the post-mortem report and the copy of the aforementioned FIR registered against DJB, she asserted that the said documents are adequate to establish the negligence of the respondents in the present case. She submitted that the post-mortem report clearly records the reason of death as *ante-mortem* to drowning and the copy of the FIR states that the case under Section 304A of IPC has been registered against the officials of DJB.

8. In addition, she states that neither DJB nor TATA Power Delhi Distribution Pvt. Ltd. (hereinafter referred as 'TPDDL') has explicitly denied the very factum of the incident being death by drowning in an uncovered pit on the vacant land, as is necessary under Order VIII Rule 5 of Civil Procedure Code, 1908. She submitted that the only ground taken to controvert the stand of the petitioners is the *inter se* dispute between DJB and TPDDL with regard to the ownership of the vacant land, where, the incident had occurred. She further contended that a vague attempt has subsequently been made by DJB on the pretext that there is a dispute in relation to the existence of a pit, and the land was a flat piece of land. According to the learned counsel, such a submission cannot be accepted as DJB has been unsuccessful in proving that there was no pit dug up in the aforesaid land, rather, all the material on record clearly indicates towards the existence of the pit.

9. Ms. Mehta, while outrightly refusing any assertion of contributory negligence on the part of the deceased, contended that a minor child cannot be held to be a contributor to negligence that allegedly caused him/her injury, as has been established by numerous

judicial precedents. Learned counsel further submitted that the petitioners have gone through immense mental trauma of losing a young child and no amount of monetary compensation can be enough to ameliorate such pain and suffering. She relied upon the decision of the Supreme Court in *Nilabati Behara v. State of Orissa*¹ and the decisions of this Court in *Darshan v. Union of India*², *Gopalpur Victim Association v. Delhi Jal Board & Ors.*³, *Subramanium v. DMRC*⁴, *Kishan Lal v. Govt. NCT of Delhi*⁵, *Varinder Prasad v. BSES Rajdhani Power Limited*⁶, *Rajeev Singhal v. MCD*⁷, *Delhi Sharafat v. Northern Railway*⁸, *Lakhan & Anr v. DDA & Ors.*⁹ and *Iqbal Singh Marwah v. Meenakshi Marwah*¹⁰.

10. *Per contra*, Mr. Karunesh Tandon, learned counsel appearing on behalf of DJB vehemently denied all the assertions made by the petitioners, herein. He submitted that while he does not dispute the factum of the death of the petitioners' son, however, no negligence can be attributed to DJB. At the outset, it was submitted that the vacant land where the incident had allegedly occurred was handed over to TPDDL *vide* a handing over report dated 14.01.2015 and at the time of handing over, the land had a boundary wall/barricading and was free from any encroachment. He further averred that the said land was in possession of TPDDL at the time of the incident. He also alleged that the unfortunate incident was a consequence of negligence on the part of TPDDL and contributory negligence of the deceased.

¹ (1993) 2 SCC 746

² 1999 SCC OnLine Del 358

³ 2011 SCC Online Del 554

⁴ 2013 SCC OnLine Del 2363

⁵ 2007:DHC:692

⁶ 2012 SCC OnLine Del 339

⁷ 2018 SCC OnLine Del 11518

⁸ 2023: DHC :4108-DB

⁹ 2024: DHC: 1088

¹⁰ (2005) 4 SCC 370

11. He further asserted that there was no dereliction of duty on the part of DJB as it had erected a boundary wall around the land to prevent encroachment. It was then averred that the local residents had broken the wall to get illegal access to the ground. It was also stated by the learned counsel that the statements made before the Sub-District Magistrate (Civil Lines) (SDM) while conducting an inquiry into the said incident make it discernible that TPDDL and the sub-contractors hired therein, were carrying out work and TPDDL was in possession of the said land. Apart from the aforesaid, he also submitted that the law is well settled that in order to successfully claim compensation on account of negligence, the party claiming compensation has to prove the exclusive negligence on the part of the respective party. He submitted that from the aforesaid facts, it can easily be construed that DJB took sufficient steps to avoid any accident on their land and it was in fact the negligence of the deceased and/or TPDDL or its sub-contractors who used a JCB to dig out a pit at the site of the incident.

12. Mr. Manish Kumar Srivastava, learned counsel appearing on behalf of TPDDL submitted that the instant petition is not maintainable against TPDDL. He submitted that the petition is liable to be dismissed as it involves disputed questions of facts. He contends that the petitioners have neither made any allegations against TPDDL nor specifically averred any negligence on its part. He asserted that the land at which the unfortunate incident took place is neither owned nor possessed by TPDDL. It was submitted that the piece of land which was handed over to TPDDL *vide* report dated 14.01.2015, to build a substation which was approximately 100 feet (23.7 meters) away from the alleged pit, where, the deceased fell and subsequently,

drowned. He submits that the aforesaid submission is duly supported by the site plan placed on record by TPDDL.

13. It was further contended that the said layout plan and earmarked areas were duly verified by competent officials of the Revenue Department, Government of NCT of Delhi and it was confirmed that the site of the accident, where, the drowning took place is away from the earmarked site for TPDDL. According to him, the aforesaid submission is supported by the SDM's report dated 14.10.2016. Besides the aforesaid, it was also submitted that the land handed over to TPDDL for setting up 66/11 KV grid sub-station had numerous pre-cast pipes lying and the same was not a vacant land, which was duly intimated to the DJB, and requests were made to clear the said pre-cast pipes.

14. Mr. Srivastava, further, submitted that an inquiry was ordered by Deputy Chief Minister of National Capital of Delhi after media reports of drowning of the deceased were published and the SDM was directed to conduct the inquiry. He then drew the attention of the Court to the report dated 14.10.2016 submitted by SDM to conclude that the land, where, the accident took place belongs to DJB as the sketch plan has also been verified by revenue officials at the site and it has been confirmed that the site of accident, where, drowning took place is away from the earmarked site for TPDDL. The said report also states that the responsibility of maintaining the said land can be attributed to both DJB and TPDDL, as after handing over/taking over the land on 14.01.2015 both DJB and TPDDL failed to physically demarcate their respective areas and protect their land/boundary wall.

15. Respondent No.2, Delhi Police, has also filed the status report dated 14.02.2017 and relevant paragraph Nos. 6 and 7 are reproduced as under:-

“5. Notice was served to Delhi Jal Board officials to fix the responsibility but the DJB replied that the land in question didn't belong to DJB as the land in question was given on rent to TPDDL for constructing a Power Station by Tata Power. After that a notice was served to the TPDDL asking the status of the land in question. In reply TPDDL told that the land in question does not lie in the area that was taken on leased from the DJB and the land in question actually belongs to DJB.

6. After that another notice was served to the DJB asking the actual owner of the land in question but DJB told that the land in question belongs to TPDDL. After that demarcation of the land in question conducted and it was found that the land in question actually belongs to Delhi Jal Board. Later concerned DJB officer of land in question was arrested and released on bail as the offence is bailable.

7. It is humbly submitted that the investigation into the matter is still ongoing and sincere effort is being made to conclude the same at the earliest, so that the charge-sheet can be filled against the Officer responsible for the site.”

16. Another status report dated 19.12.2019 has been filed by the Delhi Police and the same reads as under :-

“It is further submitted that during the course of investigation on 23.07.16 a notice u/s 91 Cr.PC was issued to Executive Engineer, Delhi Jal Board, Mukherjee Nagar to provide the details of the in-charge/caretaker of the land in question. On dated 27.07.16 reply of the said notice was received and it was revealed that the said land in question i.e. DJB Land was handed over to Tata Power Delhi Distribution Ltd on 14.01.15 by Executive Engineer SDW-VII N.S.T.P. Coronation Pillar, Delhi. During further course of investigation on 1.08.16 a notice u/s 91 Cr.PC was served upon Sh. Anil Meena, HOG, EHV (Civil), TPDDL, 2/9, Sub-station, sector-9, Delhi to provide the details of the charge/caretaker of the land in question. On 3.08.16 reply was received in compliance of notice dated 1.08.16, wherein it was mentioned that the said site was visited by the officials of the TPD DL and DJB on 2.08.16 and said land was demarcated by official of both departments. From the site visit was amply clear that the said land where incident took place, fall outside the land which has been allotted through TPDDL. The accident site at the distance of 30.07 meter away

from the site allotted to TPDDL. It is further submitted that during the course of further investigation on 9.08.16, a notice u/s 91 Cr.PC was again served to Asst. Commissioner (L&E) Delhi Jal Board to provide information (i) whether the said land in question belong to DJB or not (ii) Name & designation of person was care taker of the land 'in question on 20.07.16. On 12.08.16 reply was received in compliance of notice dated 9.08.16, wherein it was mentioned that DJB is the largest utility in the world which is providing facilities of water and sewer and its possession approx 4000 acres of land in all over Delhi. DJB has designated its Ex. Engineer as Estate Manager for looking after the land/installation etc. It is further submitted that during further course of investigations. Which fall under their jurisdiction. Some of the pieces of land are kept vacant by Delhi Jal Board for further plan for extension of Plant/SPS/SPP/WTP etc. In order to protect such land, DJB construct a boundary wall for the protection and same was done for the land in question at Burari, which was also kept vacant for the purpose of construction of STP. Whenever, any STP is constructed by DJB, it requires separate Sub- Station for its power need and same has been done in the case also. From the above facts it is clear that the land in question is not a public land and no person of public is supposed to enter it. Regarding point No.(ii) that on 20.07.16 the concerned EE(SDW-VII) namely Sher Singh was the estate Manager of the said land in question. On 18.08.16, Sher Singh the estate Manager of the said land was interrogated and arrested in the present case. During further course of investigation draft challan of the present case was prepared and a letter was sent to Asstt. Commissioner, L&D/DJB, Varunalay, Phase-II, Jhandewalan, Delhi for obtaining prosecution sanction u/s 197 Cr.PC. On 21.03.18 a letter from Sunil Kumar Singh, Suptd. Engineer (Vig) Delhi Jal Board, GNCT of Delhi was received vide letter No.DJB/Vig.(02/2018)/2059 dated 14.03.18 at PS-Burari, Delhi in which he stated that (regarding sanction for prosecution against Sh Sher Singh, EE (E & M), DJB u/s 197 Cr.PC in the case FIRNo.351/16 dated 22.07.16 (ii) the case was placed before the Chief Executive Officer (DJB) being the Competent Authority, for his perusal and taking a view in the matter. CEO/DJB after going through the material on record i.e. the investigation report and other facts of the case, was, however not inclined to grant sanction for prosecution against Sh. Sher Singh the then EE/SDW-VII for the reasons recorded his order dated 9.03.18.

It is further submitted that in view of the letter No.DJB/Vig.(02/2018)/2059 dated 14.03.18, a fresh letter for obtaining the requisite sanction u/s 197 Cr.PC was again sent to GNCT Delhi vide Daily No.6079/ACP/CL/ Dated 26.07.18, the said file was inadvertently misplaced due to transfer of previous I.Os. On 25.11.19 the request for obtaining the requisite

sanction u/s 197 Cr.PC has again been sent to competent authority.”

17. I have considered the rival submissions advanced by learned counsel appearing for the parties and have perused the record.

18. Before adjudicating the controversy at hand on merits, it is beneficial to briefly traverse through the settled position of law regarding grant of compensation in writ proceedings, which emanates out of the various judicial pronouncements.

19. Recently, in *Shagufta Ali v. Govt. of NCT Delhi & Ors.*¹¹, this Court, while adjudicating a case regarding compensation on account of death due to electrocution, surveyed various decisions, besides the decisions of the Supreme Court in *Nilabati Behara, D.K. Basu v. State of West Bengal*¹² and *MCD v. Uphaar Tragedy Victims Assn*¹³ and held that “*public law remedy can be resorted to and monetary compensation can also be awarded in cases of violation of Article 21 of the Constitution of India.*”

20. *Vide* other decisions in the cases of *Munna & Anr v. MCD & Anr*¹⁴, *Geeta Devi v. Govt. of NCT of Delhi & Ors.*¹⁵ and *Devasia Thomas & Anr v. BSES, Yamuna Power Limited & Ors*¹⁶, this Court, while lending credence to the dictum laid down in *Shagufta Ali*, held that undoubtedly, in instances where Article 21 of the Constitution of India is violated, individuals can resort to writ proceedings to redress their plight and consequently, monetary compensation may also be granted in appropriate cases.

¹¹ 2024 SCC OnLine Del 6250

¹² (1997) 1 SCC 416

¹³ (2011) 14 SCC 481

¹⁴ 2024: DHC: 7060

¹⁵ 2024: DHC: 7468

¹⁶ 2024: DHC: 7817

21. Therefore, it is a settled law that the writ jurisdiction can be invoked by the aggrieved persons in cases of violation of the right to life at the hands of the State, as such a remedy is fundamental to public law.

22. Thus, the principal issue which stands posed before the Court is the applicability of the maxim *res ipsa loquitur* and the requisite standard of proof in upholding the petitioners' right to receive monetary compensation under the public law remedy.

23. In *Shagufta Ali*, the Court, while referring to the enunciation of law in various judicial precedents, laid down the essential conditions for the applicability of the legal maxim *res ipsa loquitur* in exercise of its discretionary powers under Article 226 of the Constitution of India to grant compensation. It was categorically held that when the State instrumentalities are directly and solely responsible for an incident, and the cause and fact of death are undisputed, the maxim *res ipsa loquitur* would be applicable. This principle allows for the presumption of negligence, strictly based on the facts of each case.

24. This Court in the case of *Munna* reiterated the findings in *Shagufta Ali* and held that it is a settled law that where the negligence and breach of duty by the State are writ large and duty of care is found to be specifically of the public authorities, the maxim *res ipsa loquitur* shall apply. When the State is under a statutory duty of care and fails to fulfil such duty, the presumption of liability without proof will also be attracted.

25. The Division Bench of this Court in another case of *Rajeev Singhal* was considering a claim of compensation on account of death due to electrocution, where, a fourteen-year-old boy got in contact with an electric cable which was lying on the ground. The Court considered various decisions and held that once it is established that

the incident actually resulted into the death of the child and the same was a consequence of negligence, the Writ Court would be well within its jurisdiction to award necessary compensation irrespective of the dispute, if any, between the respondents therein.

26. In the case of *Subramaniam*, this Court was considering a case of the death of eight-year-old child who died while playing with his friends on account of asphyxia caused by drowning in a stormwater drain. The Court held that the rigour of conservatism has been relaxed, not only in the field of civil wrongs, termed as torts, but also in the area of contracts where the State or its instrumentalities are parties. The pertinent observations in the said decision are reproduced as under:-

“11....As a matter of fact, the courts have gone to the extent of saying that it would be incorrect to state that where facts are disputed, a writ court would not have jurisdiction to entertain a petition under Article 226 of the Constitution. It is one thing to say that the court in its discretion may not entertain a petition in which disputed questions of fact arise for consideration, it is another thing to contend that a court does not have jurisdiction to entertain a petition which raises disputed questions of fact. The latter proposition is now discarded by the Supreme Court. [See. Smt. Gunwant Kaur v. Municipal Committee Bhatinda (1969) 3 SCC 769 and ABL International Ltd. v. Export Credit Guarantee Corporation of India Ltd. (2004) 3 SCC 553

11.1 The approach, with regard to civil wrongs committed by officers of the State or the instrumentalities of the State are on no different footing where claims are based on strict liability. While there is no gainsaying that, an affected person could vindicate his right qua a civil wrong committed on him, by instituting a civil suit, a claim in public law for compensation, for unconstitutional deprivation of the fundamental right to life, would also be available to him. This claim would be in addition to the claim available in private law for damages caused on account of tortious acts of the public servants. Compensation, if any, would be paid by constitutional courts for ‘established infringement of rights granted under Article 21 of the Constitution’.

11.3 Most of the aforementioned cases were reviewed by the Supreme Court in the case of MCD v. Association of Victims of Uphar Tragedy; AIR 2012 SC 100, where the court sustained the grant of compensation, with some modification, to the families of the victims and those who were injured in the fire, which occurred in the Uphar Cinema Theatre at Delhi. A Division Bench of the Supreme Court after reviewing its own previous precedents pushed the envelope a little further by observing that: - "...what can be awarded as compensation by way of public law remedy need not only be nominal palliative 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...

27. In the case of *Gopalpur Victim Association*, this Court was dealing with the tragic drowning of four children, namely Narender, Atul, Vikas, and Nitesh, in a water-filled pit on the land owned by the Flood and Irrigation Department. The said land, handed over to DJB for pipeline work, was not properly secured, resulting in the children accessing the dangerous area and losing their lives. The parents, represented by the Gopalpur Victim Association, filed a writ petition seeking compensation for the negligence in safety measures by the authorities.

28. The primary issue in the said case was whether the respondents, therein, namely DJB and Government of NCT of Delhi, were responsible for the deaths of the children. The respondents argued that the area was not meant to be protected like a restricted zone and speculated that the children might have entered the pit either to swim or due to mischief. They also contended that since the facts were disputed, the matter should not be adjudicated under Article 226, where the Court generally addresses legal rather than factual issues. However, the Court rejected this argument stating that the children had drowned at twilight, and that the claim that they entered the pit to swim was speculative and unconvincing. The Court held that both the

DJB and the State authorities were negligent in their duty to secure the area and prevent unauthorized access. The lack of fencing and safety measures directly contributed to the tragic deaths of the children. The Court referenced several precedents to clarify that the presence of factual disputes does not bar the Court from entertaining a writ petition under Article 226 of the Constitution of India.

29. The Court further emphasized that in cases where the facts are straightforward and clearly established, the High Courts have the authority to adjudicate both legal and factual issues without relegating the matter to a civil suit. With respect to quantum of compensation, the Court awarded Rs. 3.5 lakhs to each of the victims' families, which included Rs. 1 lakh that had already been paid as ex-gratia by DJB. The remaining Rs. 2.5 lakhs was ordered to be paid within four weeks. Additionally, the Court allowed DJB to recover this amount from any responsible parties, including contractors or staff, after conducting a proper inquiry.

30. In the case of *Kishan Lal*, a seven-year-old boy had died after falling into an open manhole due to the negligence of the respondents, therein, who failed to ensure that the manhole was covered. The Court held that children cannot generally be imputed with contributory negligence and thereby, a compensation amounting to Rs. 5,13,801/- was granted to the parents of the deceased therein, holding Sulabh International Social Service Organization responsible for toilet complex maintenance to be negligent in performing its duties. The Court, while relying upon *Kamla Devi v. Government of NCT of Delhi & Anr.*¹⁷, awarded the aforesaid compensation, comprising

¹⁷ 2004 SCC OnLine Del 721

Rs.1,53,801/- as standard compensation and Rs.3,60,000/- for pecuniary loss of dependency.

31. In another case of *Darshan*, the petitioners, who were the widow and minor children of the deceased, sought compensation for his death after he fell into an open manhole and drowned. The case revolved around the negligence by the Government authorities responsible for maintaining the manhole. The respondents, therein, including the Public Works Department (PWD) and the Municipal Corporation of Delhi (MCD), disputed their liability, each claiming the manhole did not fall under their jurisdiction. However, the Court rejected these arguments, holding that such a dispute between departments should not delay relief to the victims. While citing judicial precedents on State liability for breach of fundamental rights under Article 21 of the Constitution of India, the Court held that a writ petition was an appropriate remedy for compensation in cases involving negligence by Government agencies. The Court awarded the petitioners Rs. 2,00,000 as compensation alongwith interest, and directed that the amount be divided among the widow and minor children. The Court further clarified that, if necessary, the PWD could recover the compensation from the MCD after further inquiry.

32. In view of the aforementioned precedents, it is unequivocal that in cases where the factum surrounding the incident leading to the death of the deceased is undisputed, but the issue of negligence and liability may be contested, the petitioner would still be entitled to seek compensation while resorting to public law remedy. The facts established by the pleadings provide the basis for a pecuniary claim, regardless of any *inter se* disputes *qua* liability for the alleged negligence. It is also observed that the said right is not contingent upon the determination of liability, rather on the recognition of the

incident's occurrence. In such cases, the facts as established by the record speak for themselves and shall attract the maxim *res ipsa loquitur*.

33. In light of the established legal principles discussed hereinabove, what needs to be considered in the present case is whether the parties have effectively demonstrated the factual circumstances surrounding the incident in question or there exist disputed facts that require further examination by a competent Civil Court.

34. The examination of the FIR and subsequent status reports filed by the Delhi Police reveals critical details surrounding the tragic drowning of the deceased. The charge-sheet and the investigation conducted by concerned officers also confirm that the deceased fell into a water-filled pit situated on land owned by DJB, which ultimately led to his death. In addition, the post-mortem report unequivocally establishes that the cause of death was *ante-mortem* drowning. The ownership of the land, where, the incident had occurred has also been corroborated by an inquiry conducted by the SDM. The SDM report indicates that, although the land had been earmarked for construction by TPDDL, it remained under the primary ownership of DJB at the time of the incident. More importantly, the respondents have not contested or disputed the very occurrence of the incident. The SDM report also highlights that the land was initially enclosed by a boundary wall, however, this wall had been damaged, allowing access to local children of the area.

35. Additionally, the said report also reveals that a contractor had excavated a pit measuring approximately 15x15x15 feet, a few days before the incident. The evidence and statements of the parties establish a clear link between the ruined condition of the land and the

unfortunate death of the deceased. The undisputed facts presented in the pleadings outline the responsibility of DJB as the owner of the land, in maintaining a safe environment and preventing such tragic occurrences.

36. It is also noteworthy that learned counsel for DJB has submitted that due measures for maintaining the land in question were taken by its officials and there was no dereliction of duty on its part as the pit was dug up when the land was under the possession of TPDDL. The aforesaid submission falls short as the duty to maintain the said land remained cast on DJB as the principle owner of the land even after handing over a part of the land to TPDDL for construction of the sub-station. Learned counsel for TPDDL has also pointed out that even before the handing over of land took place, there were already some pre-cast pipes and despite TPDDL making multiple requests to remove the same, DJB did not pay any heed or take steps. The mere assertion by DJB that the said land had a boundary wall and was maintained, prior to the handing over is unconvincing as the responsibility was still subsisting as only the possession of the said land was handed over not the ownership. Nowhere, in its submissions, has DJB averred that any action was taken by it against the encroachers, TPDDL, or the contractors/ sub-contractors even after being aware of the fact that the condition of the said land was not proper. The aforesaid submission by DJB merely seems to be an attempt to obfuscate liability.

37. It is also clear from the record that the criminal proceedings have been initiated against an official of the DJB though no sanction for prosecution has been given by DJB. The letter from the Deputy Commissioner of Police, North District, Delhi to the Assistant Commissioner, DJB, seeking sanction of prosecution and detailing the

facts ascertaining the liability of the incident on DJB is reproduced herein:-

“In this regard it is stated that on 20/07/16, Sh. Parvesh Kumar S/o Sh. Vijay Mash R/o H:No. A-2/58, Himgiri Enclave, Burari, Delhi-84 came to Police Station Burari and alleged that he was on his duty at Suncity Restaurant, Netaji Subash Place, Delhi at about 8-8.30 his wife called him and told that younger son Justin @ Joy had not been came back to home since 6 PM. He reached home and enquired about his son Justin @ Joy. On local enquiry he found that he was seen at land of Delhi Jal Board, Near Burari Authority. He alongwith neighbours reached there. There he saw a dip of size 15x15x15 which was filed with rain water. With the help of neigbours he searched his son in that and Justin @ Joy was found drowned in the dip. He was rushed to Aruna Asaf Ali Hospital where Justin @ Joy was declared brought dead vide MLC No. 4522/16, dt. 20.07.16. On the statement of Complainant, a case vide FIR No. 351/16, dt. 22.07.2016 us 304A IPC was registered against the Delhi Jal Board Officials.

During the course of investigation, on 24.07.16 a notice u/s 91 Cr.P.C was served to Executive Engineer, Mukherjee Nagar, Delhi Jal Board with request to provide the details of incharge who has possession and responsibility to take care/maintenance of said land where incident was took place. At the same time it was replied "The said land is not in my possession under EE(N)".

Thereafter during the further course of action on 25.07.16 a notice u/s 91 Cr.P.C was served to Assistant Commissioner (L&E), Delhi Jal Board. Smt. Alka Sharma, Asstt. Commissioner (L&E), DJB vide letter No. DJB/AC(L&E)/2016/1122, dt. 27.0716 replied that "as per record the said land has been handed over to Tata Power Delhi Distribution Ltd (TPDDL). On 14.01.2015 by Executive Engineer, SDW-VII, N.S. T.P. Coronation Pillar, Delhi.

Thereafter, on 01.08.16 a notice u/s 91 Cr.P.C was served to Sh. Anil Meena, HOG, EHV(Civil), TPDDL, 2/9, Sub-Station Building, Rohini, Sec-9 to provide the details. On 03.08.16, Sh. Anjul Sharma, Manager, EHV civil Department, TPDDL, vide letter No. TPDDL/EM & Civil/37, dt. 03.08.2016 replied that "the said site was visited by official of TPDDL and Delhi Jal Board on 02.08.16 and said land was demarcated by official of both departments. From the site visit was amply clear that the said land where the incident took place fall outside the land which has been allotted to TPDDL. The accident site is at the

distance of 23.7 meter away from the site allotted to TPDDL, Delhi.

Thereafter, on 09.08.16 again a notice u/s 91 Cr.P.C was served to Assistant Commissioner (L&E), Delhi Jal Board to provide the details:- (1) Whether the land in question belongs to Delhi Jal Board or not. (2) Name & Designation of person who was care take of the land in question on 20.07.16. On 12.08.16, Smt. Alka Sharma, Asstt. Commissioner (L&E), DJB vide letter No. DJB/AC(L&E)/2016/1219, dt. 12.0816 replied regarding point (1) that DJIB is the largest utility in the world which is providing facilities of water and sewer and it possesses approx. 4000 acres of land in all over Delhi. DJB has designated its Ex. Engineers as Estate Manage for looking after the land/installation etc. which fall under their jurisdiction. Some of the pieces of land are kept vacant by DJB for further plan for extension of plant/SPS/STP/WTP etc. In order to protect such land, DJB construct a boundary wall for the protection and same was done for the land in question at Burari which was also kept constructed by DJB, it requires separate Sub Station for its power need, and same has been done in this case also. From the above facts it is clear that the land in question is not a public land and no person of public is supposed to enter it. Regarding point No. (2) that on 20.07.16 the concerned Executive Engineers (SDW-VII namely Mr. Sher Singh is the Estate Manager of the said land in question.

Thereafter, on 18.08.16 Mr. Sher Singh, Ex. Engineers (SDW-VII), Estate Manage, DJB was arrested after proper interrogation. Mr. Sher Singh Executive Engineers (SW-VII), Estate Manager did not discharge his duty properly and could not supervise the said land and could not watch the broken boundary wall and his this negligent work cause the death of a child of age 9 years.

It is therefore, requested that necessary prosecution sanction u/s 197 Cr.P.C. to prosecute Mr. Sher Singh, Ex. Engineers (SDW-VII), Estate Manage, DJB may be provided to this office at the earliest for conclusion of investigation. Photocopies of all relevant documents are enclosed herewith.”

38. Besides the aforesaid, it is also evident from the record that the demarcated map of the said land, as authenticated by the Revenue Department and relied upon by the SDM in its report, indicates that the specific area of land, where, the pit was dug up was not earmarked to TPDDL but remained under DJB possession. Even if it is presumed

that the land was earmarked to TPDDL, DJB cannot escape from its liability being the principal owner of the said land.

39. Therefore, it was the primary responsibility of DJB to maintain safe conditions and take due precautions in and around the said land, which it failed to do. Furthermore, if as per DJB, TPDDL was negligent in maintaining the said land, DJB is at liberty to initiate legal action against TPDDL or its contractors for any negligent acts concerning the land, in accordance with the law.

40. Having established the negligence on the part of DJB, the next issue which needs adjudication is the quantum of compensation payable to the petitioners.

41. The Supreme Court in the case of *Lata Wadhwa v. State of Bihar*¹⁸, while laying down the principle of quantification of compensation in the case of death of children, held as under:-

“11. So far as the award of compensation in case of children is concerned, Shri Justice Chandrachud has divided them into two groups, the first group between the age group of 5 to 10 years and the second group between the age group of 10 to 15 years. In case of children between the age group of 5 to 10 years, a uniform sum of Rs 50,000 has been held to be payable by way of compensation, to which the conventional figure of Rs 25,000 has been added and as such to the heirs of the 14 children, a consolidated sum of Rs 75,000 each, has been awarded. So far as the children in the age group of 10 to 15 years, there are 10 such children who died on the fateful day and having found their contribution to the family at Rs 12,000 per annum, 11 multiplier has been applied, particularly, depending upon the age of the father and then the conventional compensation of Rs 25,000 has been added to each case and consequently, the heirs of each of the deceased above 10 years of age, have been granted compensation to the tune of Rs 1,57,000 each. In case of the death of an infant, there may have been no actual pecuniary benefit derived by its parents during the child's lifetime. But this will not necessarily bar the parents' claim and prospective loss will found a valid claim provided that the parents establish that they had a reasonable expectation of pecuniary benefit if the child had lived. This principle was laid down by the House of

¹⁸ (2001) 8 SCC 197

Lords in the famous case of *Taff Vale Rly. v. Jenkins* [1913 AC 1 : 82 LJKB 49 : 107 LT 564] and Lord Atkinson said thus:

“... all that is necessary is that a reasonable expectation of pecuniary benefit should be entertained by the person who sues. It is quite true that the existence of this expectation is an inference of fact — there must be a basis of fact from which the inference can reasonably be drawn; but I wish to express my emphatic dissent from the proposition that it is necessary that two of the facts without which the inference cannot be drawn are, first, that the deceased earned money in the past, and, second, that he or she contributed to the support of the plaintiff. These are, no doubt, pregnant pieces of evidence, but they are only pieces of evidence; and the necessary inference can, I think, be drawn from circumstances other than and different from them.”

At the same time, it must be held that a mere speculative possibility of benefit is not sufficient. Question whether there exists a reasonable expectation of pecuniary advantage is always a mixed question of fact and law. There are several decided cases on this point, providing the guidelines for determination of compensation in such cases but we do not think it necessary for us to advert, as the claimants had not adduced any materials on the reasonable expectation of pecuniary benefits, which the parents expected. In case of a bright and healthy boy, his performances in the school, it would be easier for the authority to arrive at the compensation amount, which may be different from another sickly, unhealthy, rickety child and bad student, but as has been stated earlier, not an iota of material was produced before Shri Justice Chandrachud to enable him to arrive at a just compensation in such cases and, therefore, he has determined the same on an approximation. Mr Nariman, appearing for TISCO on his own, submitted that the compensation determined for the children of all age groups could be doubled, as in his views also, the determination made is grossly inadequate. Loss of a child to the parents is irreparable, and no amount of money could compensate the parents. Having regard to the environment from which these children were brought, their parents being reasonably well-placed officials of Tata Iron and Steel Company, and on considering the submission of Mr Nariman, we would direct that the compensation amount for the children between the age group of 5 to 10 years should be three times. In other words, it should be Rs 1.5 lakhs, to which the conventional figure of Rs 50,000 should be added and thus the total amount in each case would be Rs 2.00 lakhs. So far as the children between the age group of 10 to 15 years, they are all students of Class VI to Class X and are children of employees of TISCO. TISCO itself has a tradition that every employee can get one of his children employed in the Company. Having regard to these facts, in their

case, the contribution of Rs 12,000 per annum appears to us to be on the lower side and in our considered opinion, the contribution should be Rs 24,000 and instead of 11 multiplier, the appropriate multiplier would be 15. Therefore, the compensation, so calculated on the aforesaid basis should be worked out to Rs 3.60 lakhs, to which an additional sum of Rs 50,000 has to be added, thus making the total amount payable at Rs 4.10 lakhs for each of the claimants of the aforesaid deceased children.”

42. A Coordinate Bench of this Court in **Varinder Prasad** was considering a case of compensation under Article 226 of the Constitution of India for death of a ten -year-old boy, due to the falling of the *chajja* present in the respondent’s premises. The Court, while granting compensation to the deceased’s parents, calculated the amount that was payable as compensation and made the following observation:-

“As far as pecuniary compensation is concerned, as already explained in Kamla Devi (supra) the income of the parents can be taken as a standard measure for arriving at the expected annual income of the children. The method of calculating the compensation for pecuniary loss of dependency depends upon the potential earning capacity of the deceased Ajay Kumar, had he attained adulthood. As per the affidavit of the petitioner no. 1 dated 15.12.2011, his monthly salary at the time of this incident was Rs. 10,000. At the time of filing of the affidavit, the earnings of petitioner no. 1 were Rs. 30,000/- per month approximately. The petitioners have applied a multiplication factor of 1.5 to counter inflation and erosion of the value of money. Considering the fact that in a span of about four years, there has been a threefold increase in the earnings of petitioner no. 1 from Rs. 10,000/- p.m. to Rs. 30,000/- p.m., in my view, the multiplicand factor of 1.5, to off set the effects of inflation and erosion of the value of money should be adopted. It can be assumed that Ajay Kumar would have, at least, earned what his father was earning, if not more. Therefore, the multiplicand would be the expected annual income, less what he required for himself. As Ajay would have grown up, his personal expenses would have only risen. The contribution to the household would not have exceeded half of the income. Thus the multiplicand work out to be Rs. 90,000/- i.e. (1,80,000/2). This multiplicand is to be multiplied by the multiplier of 15, in terms of the second Schedule to the Motor Vehicles Act, 1988. This comes out to be a figure of Rs. 13,50,000.”

43. This Court, in the case of ***Kamla Devi*** laid down the principle for calculation of monetary compensation in cases of Constitutional torts. The above principle of quantification has been applied by this Court in subsequent decisions in ***Kishan Lal***, ***Subramanium***, and ***Varinder Prasad***. The relevant paragraphs of the decision in ***Kamla Devi*** are reproduced hereunder as:-

“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”

44. Thus, taking into account the aforesaid decisions, an attempt is being made herein to compute the compensation in accordance with the principles laid down in *Kamla Devi*. The said determination of the amount of compensation payable to the petitioners can be made while classifying the compensation into following two heads:-

A) Standard Compensation

As per the guidelines, the standard compensation is stated to be 50,000/- in the year 1989 and is to be revised from time to time to counter inflation and the consequential erosion of the value of the Indian National Rupee and the amount 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. In *Kamla Devi*, the (CPI-IW) with respect to the base year 1982 was 171.

As per the website and annual report of the Labour Bureau, Government of India, in July 2016 (the month when the petitioners' son died) the CPI (IW) was 280 (with respect to Base Year 2001).

This number must be reworked with regard to the Base Year 1982 using the linking factor. As per the said report, the *All India Linking factor between New Series of Consumer Price Index Numbers for Industrial Workers on base 2001 = 100 and the previous series on base 1982=100 (General Index)* linking factor is 4.63.

Therefore, the CPI (IW) in July 2016 with respect to Base Year 1982, would be calculated as:

$$280 \times 4.63 = 1296 \text{ (approx)}$$

The standard compensation for the present case would be worked out in the following manner:

$$(50,000 \times 1296) / 171 = 3,78,947 \text{ approx}$$

Therefore, the estimated standard compensation after rounding off is

worked out to be Rs.3,78,947/-

B) Loss of Dependency and Pecuniary Losses.

As per **Kamla Devi**, the product of the multiplicand and the multiplier results in the figure of annual loss of dependency. The age of the deceased was nine years and the multiplier for it, according to the Schedule II of the Motor Vehicles Act, 1988, is 15. The multiplicand is calculated by dividing the family into units - 2 for each adult member and 1 for each minor. Then annual income is 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.

In **Kishan Lal**, while the Court relied upon **Kamla Devi** to calculate the standard compensation, it also opined that there is a need to adopt a different approach while calculating the pecuniary losses. It was observed that the Court in **Kamla Devi** was adjudicating a prayer for compensation involving an earning adult whose death had an immediate financial impact on his family, whereas, in contrast, the prayer for compensation in **Kishan Lal** concerns the death of a small child who was not contributing to the household income. Consequently, the Court, relying on the principles laid down in **M.S. Grewal v Deep Chand Sood & Ors**¹⁹ evolved the following methodology for calculating compensation for the death of a minor, which reads as under:-

“ 31. Calculating the compensation for pecuniary loss of dependency is somewhat more complicated, Whereas Kamla Devi (supra) involved an earning adult whose death had an immediate financial impact on his family, the present petition involves the death of a small child who was not contributing to the household income and who would have been unable to do so

¹⁹ (2001) 8 SCC 151

for many more years. A somewhat different approach would be needed.

32. *In Smt Kumari v State of Tamil Nadu & Others: 1992 AC) 283*, the six-year old son of the appellant died as a result of falling in an open manhole. The appellant filed a petition under Article 226 of the Constitution seeking a writ of mandamus directing the respondents to pay Rs.50,000/- as compensation. The Madras High Court dismissed the writ petition on the ground that in a writ petition it was not possible to determine which respondent was negligent in leaving the sewerage tank uncovered. The Supreme Court set aside the judgment of the High Court and awarded the appellant the sum of Rs.50,000 with interest at 12% per annum from the date of the accident until the date of payment. The Supreme Court further held that the State of Tamil Nadu may take appropriate proceedings to claim the said amount from any of the respondents who might have been responsible for leaving the manhole uncovered. Thus, one method of calculating the compensation of pecuniary loss of dependency is to bring the above compensation given in *Kumari (supra)* up to date based on India's inflation rate between 1992, when the case was decided, and 2005, when Puran died, and to subtract from it what the standard compensation would have been in 1992.

33. However, the approach in *M.S. Grewal (supra)* appears to be the better and more rational approach. In *M.S. Grewal (supra)* fourteen children drowned in a river during a school picnic as a result of the school's negligence. The Supreme Court awarded Rs.5 lakhs to each family, partly on the basis that the school was one of the most affluent in the country and the deceased children's earning potential was significant. Therefore, the method of calculating the compensation for pecuniary loss of dependency entails the examination of Puran's potential earning capacity had he lived to adulthood. The petitioner No.1, Puran's father, was working in a market as a Security Guard and was earning approximately Rs 4,000/- per month. The late Puran, who was in the 3rd Standard, when he passed away, was an excellent student. **In the previous academic year, he was ranked First in his class. Therefore, we can safely assume that Puran as an adult would have earned at least as much as his father, if not more. So, as evidenced by his academic skills, Puran's father's salary can be used as a starting base for calculating the compensation for pecuniary loss of dependency. The multiplicand would be the expected annual income less what he required for himself. Since, this expected income would only arise when Puran grew up to be an adult, it would be safe to assume that his personal expenditure would be higher. True, he would be contributing to the household, but his contribution in my view would definitely not exceed half of his**

income. It must be remembered that here we are concerned with compensation for pecuniary loss of depending of Puran's parents. For some stretch of time Puran's father would be earning and his dependency would not be much. Furthermore, Puran would have married and would have had to support his wife and children. So, the assumption that, in the maximum, Puran's parents would have lost only half of Puran's expected annual. income, would not, be an unreasonable one. Thus, the multiplicand would work out to Rs.24,000/- (4000 x 12 x 1/2). The multiplicand and is to be multiplied by the multiplier of 15 as derived from the Second Schedule to the Motor Vehicles Act, 1988 in respect of victim in the age group of upto 15 years. Therefore, Puran's parents would be entitled to a sum of Rs.3,60,000/- (24000x15) for compensation for pecuniary loss of dependency. 34. Accordingly, the petitioners are entitled to a total compensation of Rs.5,13,801/-. The standard compensation or conventional sum being Rs. 1,53,801/- and the compensation for pecuniary loss of dependency being an amount of Rs.3,60,000/- as computed above."

(emphasis supplied)

Therefore, adhering to the same principle as laid down in ***Kishan Lal***, the multiplicand can be calculated by considering the father's monthly salary as the assumed monthly income of the deceased. This amount is multiplied by 12 to arrive at the annual income and then halved. Subsequently, this multiplicand amount is multiplied by the appropriate multiplier as prescribed. In the instant case, the monthly salary of the father, as indicated in the rejoinder affidavit filed by the petitioners, is approximately Rs. 20,000. Consequently, the annual income would be Rs. 2,40,000, and the annual loss of dependency is calculated accordingly, as under: -

$$(2,40,000/2) \text{ (multiplicand)} \times 15 \text{ (multiplier)} = \text{Rs. } 18,00,000/-$$

The total compensation is, thus, computed to be:

$$18,00,000 \text{ (pecuniary loss of dependency)} + 3,78,947 \text{ (standard compensation)} = \text{Rs. } 21,78,947/-$$

38. In view of the aforesaid, DJB is directed to pay a lump sum amount of Rs 22,00,000/- alongwith simple interest at the rate of 6% per annum from the date of incident i.e., till the date of

realisation, as compensation to the petitioners for the death of their son within a period of three months from the passing of this judgment. Any failure to comply with the aforesaid direction shall result in the petitioners being entitled for payment of additional simple interest at the rate of 10% per annum, till the payment is made.

39. With the above directions, the present writ petition stands disposed of.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

NOVEMBER 18, 2024