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

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*Reserved on: 13th April, 2023**Decided on: 26th May, 2023*+ **LPA 615/2019****SHARAFAT KHAN & ANOTHER APPELLANTS**

Through: Ms. Aruna Mehta, Advocate

V**NORTHERN RAILWAY & ANOTHER****..... RESPONDENTS**Through: Mr. Vikrant N. Goyal with Ms. Tesu Gupta and Ms. Ayushi Garg, Advocates for R-1
Ms. Rani Tiwari and Mr. S.K. Mishra, Advocates for R-2.**CORAM****HON'BLE MR. JUSTICE NAJMI WAZIRI****HON'BLE MR. JUSTICE SUDHIR KUMAR JAIN****J U D G M E N T****SUDHIR KUMAR JAIN, J.**

1. This appeal impugns the order dated 29.10.2018 dismissing their writ petition (W.P.(C) bearing no.2507/2014) in which they had



claimed damages and compensation for the drowning of their 12 year old son, in a water filled ditch dug-up by R-2 for work being carried out for R-1. The appellants had claimed Rs.15,00,000/- on the methodology adopted for award of compensation in motor-vehicular accidents claims. The appellants pleaded that they were residing at Jhuggi no.107, Street No.9, Chanderpuri, Kailash Nagar, Delhi-110031 and Faizan (hereinafter referred to as **“the deceased”**) was one of their children. There was a vacant land in between *Pilli Mitti* Railway line and Metro line (hereinafter referred to as **“the site”**) which was used by the children of the locality as a playground.

2.1 The respondent no.1 engaged the respondent no.2 to dig up a rainy well at the site. The appellants also came to know through concerned J.E., Railway, Shakur Basti, Rohtak Road, Delhi that the construction of the well was assigned to the respondent no.2. The digging work was continued for many days and the entire area had become slippery due to filling up of water in the pit/trench. The officials of the respondents did not take due precautions while digging up the said well/pit/trench. In particular respondent no.2 neither deputed any safety guard nor



secured the place by a fence to ward-off an innocent person or animal from straying towards it and/or suffering any harm or injury. Children of the locality used to play on the said land. The deceased child while playing in the said area fell into the water-filled pit/trench, on 11.05.2013 and died. A FIR (bearing no.187/2013) was registered at P.S. Gandhi Nagar under sections 290/304A IPC wherein the respondent no.2 was implicated. The incident had happened due to negligence on part of the officials of the respondents. The appellants prayed that the respondents be directed to pay Rs. 15,00,000/- along with 12% interest from the date of filing of the petition till its realization.

3. R-1 contends that it had allotted a contract (bearing no. 74-W/13/96/WA/SSB dated 24.02.2011) to respondent no. 2 for construction of a rainy well, where the alleged incident had taken place. FIR bearing no.187/2013 pertaining to the incident was registered under sections 290/304A IPC at P.S. Gandhi Nagar. Respondent no.2 was implicated and arrested. R-1 denies any negligence and liability. It says that the appellants have already received a compensation of Rs.3,10,000/- under an agreement with



R-2. The writ petition is not maintainable.

3.1 The respondent no. 2, who was impleaded subsequently in terms of order dated 20.04.2015, in his counter affidavit stated that FIR bearing no.187/2013 was registered at P.S. Gandhi Nagar under sections 290/304A IPC on the allegations that the deceased had fallen in the temporary well which was filled with water at the site located between *Peeli Mitti* Railway line and Metro line. The alleged accident took place due to the negligence of the contractor who was carrying out the work at the site. The respondent no. 2 filed a Crl.M.C. bearing no. 2644/2015 before this court for quashing of FIR bearing no.187/2013 along with consequential proceedings which was allowed vide order dated 06.07.2015 and FIR bearing no. 187/2013 along with consequential proceedings was ordered to be quashed. R-2 says that it has already paid a compensation of Rs.3,10,000/- to the appellants on account of death of their minor son at the time of quashing of FIR bearing no.187/2013.

4. The “**impugned order**” held:-

“1. The petitioners have filed the present petition, inter alia, praying that directions be given to respondents to pay a sum of Rs.15,00,000/- along with interest as compensation for the unfortunate incident whereby their minor son lost his life by



falling in the pit/trench, which was dug in connection to a project undertaken by the respondents.

2. It is pointed out that the petitioners have not disclosed that the petitioners had already entered into a settlement with respondent no.2 (who is a contractor engaged for the construction work) and had already accepted a sum of Rs.3,10,000/- towards compensation on account of death of their minor child.

3. The learned counsel appearing for respondent no.2 has filed an affidavit affirming that they had paid a sum of Rs.1,10,000/- on 03.06.2013 and the balance was to be paid at the time of the disposal of the FIR. The learned counsel appearing for respondent no.2 states that the said amount of Rs.2,00,000/- was also paid through a demand draft. He shall file an affidavit to this effect enclosing therewith the proof of the payment.

4. In view of the above, this Court finds no reason to pass further orders.

5. The petition is disposed of. The pending application is also disposed of.”

5. The appellants contend that the impugned order has not considered the various decisions delivered by the Supreme Court as detailed in the LPA and section 357 of the Code of Criminal Procedure, 1973, they seek that the respondents be directed to pay an additional compensation of Rs.20,23,771/- along with 9% interest from the date of filing of the appeal till its realisation.



6. The learned respective counsel for the appellants and the respondent no.2 advanced oral arguments and submitted written submissions as well. The learned counsel for the respondent no.1 also advanced oral arguments.

6.1 The learned counsel for the appellants argued that the respondent no.2 paid the compensation for quashing of FIR bearing no.187/2013 and the learned Single Judge was required to award just and reasonable compensation as per the law without considering compensation paid by the respondent no.2 at the time of quashing of FIR bearing no.187/2013. The dismissal of the writ petition only on the ground that the appellants had already received Rs.3,10,000/- as compensation at the time of quashing of FIR bearing no. 187/2013 was not justified. The appellants never gave any undertaking at the time of quashing of criminal case against the respondent no.2 to withdraw the writ petition filed against respondents under public law. The appellants are entitled to the standard compensation of Rs.50,000/- as per the law laid down in *Kamla Devi vs. Government*



of NCT of Delhi and Another, 114 (2004) DLT 57 and Rs.20,25,000/- as pecuniary compensation after applying the multiplier method.

6.2 The counsel for the respondents argued that sufficient compensation had already been paid to the appellants at the time of quashing of FIR bearing no.187/2013 registered under sections 290/304A which was quashed vide order dated 06.07.2015 passed by the learned Single Judge of this court in CrI.M.C no.2644/ 2015. Therefore, this appeal is liable to be dismissed.

7. Respondent no.1 floated a tender for the construction of a rainy-well. R-2 was allotted the site through its proprietor for the work, vide Contract Agreement bearing no.74-W/13/96/WA/SSB dated 24.02.2011. R-2 made a temporary well at the site, water was filled in it. The deceased an innocent boy of 12 years fell in it and drowned. The site belonged to the respondent no.1 and the respondent no. 2 came into permissive possession of the site. The location of place of incident i.e. the site is also not in dispute. R-2 was implicated in the aforementioned FIR.

7.1 FIR under sections 290/304A was quashed vide order dated 06.07.2015 passed in CrI.M.C. bearing no.2644/2015 in view of an



agreement dated 03.06.2013 between the appellants and R-2; the appellants received Rs.3,10,000/- as compensation from respondent no.2. R-1 did not pay any compensation to the appellants.

8. The issues which need judicial consideration are: i) whether the respondents are liable to pay any compensation ii) whether they can be said to be absolved from their liability to pay compensation to the appellants merely on the ground that the appellants have received compensation of Rs.3,10,000/- from the respondent no.2 at the time of quashing of FIR bearing no.187/2013 and iii) whether the learned Single Judge was legally justified in dismissing the writ petition.

8.1 Admittedly, the appellants received compensation of Rs.3,10,000/- from the respondent no.2 only towards discharge of criminal liability arising out of FIR bearing no.187/2013 wherein the respondent no.2 was implicated as an accused, however, it does not disentitle the appellants to claim further compensation from the respondents for commission of a civil wrong. The liability to pay compensation for a civil wrong and a criminal wrong are independent to each other and mutually exclusive. The appellants cannot be denied to claim compensation from the respondents for the civil wrong pertaining to



death of their minor son. The acceptance of the said compensation by the appellants is not good enough to defeat their legitimate claim of further compensation from the respondents. The respondents are liable to pay compensation to the appellants irrespective of receipt of Rs.3,10,000/- as compensation from the respondent no.2. The Supreme Court in *Jacob Mathew V State of Punjab and another*, (2005) 6 SCC 1 differentiated between civil and criminal negligence. It was also observed that civil negligence primarily raises two issues which are: i) was the defendant negligent? ii) If so, should the defendant bear the loss in this particular set of circumstances?

8.2 The arguments advanced by the learned counsel for the respondents that sufficient compensation had already been paid to the appellants at the time of quashing of FIR bearing no.187/2013 and as such the appellants are not entitled to claim further compensation are without any legal basis and are misconceived. We are convinced by the arguments advanced by the learned counsel for the appellants that the learned Single Judge was required to pass just and reasonable compensation as per the law without considering compensation paid



by the respondent no.2 at the time of quashing of FIR bearing no.187/2013. The learned Single Judge was not justified in dismissing the writ petition merely on the ground that the appellants had already received Rs.3,10,000/- as compensation at the time of quashing of FIR bearing no.187/2013 and the learned Single Judge should have considered entitlement of the appellants to claim compensation independent of receipt of Rs.3,10,000/- from the respondent no.2 by the appellants as compensation. The impugned judgment is liable to be set aside being legally unsustainable.

9. Another issue which needs judicial consideration is whether the respondents were negligent and consequently, are the respondents liable to pay further compensation to the appellants on account of death of their son i.e. the deceased, if yes, then amount of compensation.

10. Negligence is not statutorily defined. In *Governor-General in Council vs. Mt. Saliman*, (1948) ILR 27 Pat 207 and *State vs. Hari Singh*, (2015) 219 DLT (CN B) 15, 'negligence' is defined as breach of a duty caused by the omission to do something which a reasonable person guided by those considerations which ordinarily regulate the



conduct of human affairs would do, or doing something which a prudent and reasonable person would not do. Winfield (*Winfield and Jolowicz Tort, 12th edition. P.69*) defines negligence as breach of a legal duty to take care which results in undesired damage by the defendant to the plaintiff. The said definition was also referred in *Jay Laxmi Salt works (P) Ltd. V State of Gujarat*, (1994) 4 SCC 1, *Poonam Sharma V Union of India and others*, AIR 2003 Del 50. Negligence, in its ambit, comprises three constituents which are: i) a legal duty on the part of the party complained of to exercise due care towards the party complaining of the former's conduct; ii) breach of the said duty, and iii) consequential damage. The duty to take care is essential before a person can be held liable for negligence. The person concerned is obliged to take reasonable care to avoid acts or omissions which she/he could reasonably foresee, would likely injure other persons.

11. R-1 awarded a contract for the construction of a rainy-well at the site to M/s Kedar Nath Khandelwal through its proprietor i.e. the respondent no.2. The site was under control of the respondent no.1 and the respondent no.1 allowed the respondent no.2 to take permissive



control of the site. At the time of incident, the site was in use, occupation and possession of the respondent no.2 but it belonged to the respondent no.1. R-2 made a temporary well at the site in which the deceased fell and died. It is also apparent and not disputed by either of the respondents in their respective affidavits, that digging work at site continued for many days and the respondent no.2 neither deputed any safety guard at site nor placed any fencing around the pit/trench to prevent any living being from wandering towards it, lest any harm could be caused to such unsuspecting person. This site annexed to the petition shows one large contiguous land. Children used to play in the open unhindered area. Nothing has been brought on record to show that the children were cautioned or restrained or forewarned from playing in the open filed. A young boy of about 12 years does not know the difference between a railways land or land of other civic agency. For children all open areas, lands and fields are for games, for running, fun and frolic. The petitioner says the young boy died when he slipped into the well. Now any reasonable person would foresee such fatal mishaps, if the dug-up trench/well was not secured/fenced-off/guarded to prevent such mishaps. This was the



duty of the respondents to the public. They failed in their duty to care. Their negligence led to the loss of life of an innocent boy. The children of the locality used to play on said open land in which the unsecured rainy well was dug up; while playing in the said area the boy of 12 years fell into the pit/trench and lost his life. Evidently, neither of the respondents had taken appropriate care and erected/installed safety measures at the site, to prevent any unwanted and unfortunate incident, like the one which resulted in death of the deceased. The respondents were neither vigilant nor sensitive in taking appropriate safety measures at the site to avoid any unfortunate accident. It was the duty of the respondents to take proper diligence and care at the site to avoid any accident. The respondents were negligent in taking safety measures at the site to prevent any accident. The respondent no.1 cannot be absolved from its responsibility of taking proper safety measures at the site even after award of contract to the respondent no.2. The respondents are jointly and severally liable for their act of negligence and to pay compensation to the appellants.

12. The appellants have received Rs.3,10,000/- as compensation from the respondent no.2 at time of quashing of FIR bearing no.187/2013.



The appellants being parents of the deceased have claimed compensation from the respondents by filing a writ petition. No one else has come forward to claim compensation from the respondents. There is nothing on record to reflect that apart from the appellants, someone else, being legal heir of the deceased, is entitled to claim compensation from the respondents. The entitlement of the appellants being legal heirs of the deceased to claim compensation from the respondents is also not disputed.

13. The appellants are entitled to claim “Standard Compensation or Conventional Amount” and “Pecuniary Compensation” from the respondents. The Standard Compensation is awarded for the fatal injury caused to the son of the appellants i.e. the deceased and the appellants are also entitled to receive additional compensation for loss of dependency. The decisions of this court in *Kamla Devi Vs. Govt. of NCT of Delhi*, 114 (2004) DLT 57, *Varinder Prasad Vs. B.S.E.S. Rajdhani Power Ltd. &Others*, 190 (2012) DLT 293, *Court on its Motion Vs. Govt. of NCT of Delhi & others*, 2018 SCC OnLine Del 10283 and *Rajeev Singhal and Another Vs. MCD (East Delhi Municipal Corporation) and Another* 2018 (172) DRJ 373 have laid



down certain principles for assessment of compensation to be awarded to the claimants. *Kamla Devi* followed in *Varinder Prasad* and subsequent decisions held as under:-

“21. ...

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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.”

14. The next issue which is to be determined is assessment of compensation to be awarded to the appellants. As observed in ***Kamla Devi***, the Standard Compensation is awarded for non-pecuniary losses such as pain, suffering and loss of amenities. The Supreme Court in ***Lata Wadhwa V State of Bihar***, (2001) 8 SCC 197 assessed the Standard Compensation at Rs. 50,000/- for fatal accident happened in 1989. It was observed in ***Kamla Devi*** that the Standard Compensation for subsequent years has to be determined after considering rising inflation and continuous decline in the value of the rupee and should be enhanced further for subsequent years based on Consumer Price



Index for Industrial Workers [CPI(IW)] brought out by the Labour Bureau, Government of India. The Consumer Price Index (CPI) is stated to be an economic measure that determines the average alternation in prices of goods and services bought by households over a period of time.

14.1 The standard compensation as mentioned in *Kamla Devi* was stated to be Rs.50,000/- in the year 1989. The average CPI(IW) for the year 1989 with respect to base year 1982=100 was 171. The Standard Compensation to be awarded to the appellants is required to be enhanced for May, 2013 when the deceased had died, on basis of the New Series of CPI(IW) with base year 2001=100. The CPI(IW) for May, 2013 with the base year 2001 is 228 as per data of Labour Bureau, Government of India. The linking factor between the New Series of CPI(IW) for base year 2001=100 and the previous series for base year 1982=100 is 4.63. The CPI(IW) in May 2013, with respect to base year 1982 would be calculated as $228 \times 4.63 = 1055.64$. Accordingly, the Standard Compensation for May 2013 as per corrected value comes to $\text{Rs.}50,000 \times 1055.64/171 = \text{Rs.}3,08,666/-$.



15. The compensation under the head of pecuniary loss caused to the appellants is calculated on the principle of loss of earnings and can be assessed on basis of the method discussed in *Kamla Devi, Varinder Prasad* etc. As observed in *Varinder Prasad*, on the basis of *Kamla Devi*, i) for assessment of the pecuniary loss of dependency, the income of parents can be taken as a standard measure for arriving at the expected annual income of the children and ii) the method of calculating the compensation for pecuniary loss of dependency depends upon the potential earning capacity of the deceased, had she/he attained adulthood. The appellant no.1, who is father of the deceased, was stated to be earning Rs.700-800 per day on the day of incident, by plying a battery-operated rickshaw and after deducting his expenses, the net monthly income of the appellant no.1 could be assessed at Rs.15,000/-. The appellant no.2, who is mother of the deceased, had no earnings. The deceased was aged about 12 years at the time of his death. The income of the appellant no.1 for calculating the compensation would be taken as income of the child i.e. the deceased. It is presumed that the deceased would have earned at least what



the appellant no.1 was earning. Accordingly, the multiplicand would be the expected annual income of the deceased less what he needed for himself. It would be appropriate after considering future increase in income of the appellant no.1, to apply and adopt the multiplicand factor of 1.5 to set off the effects of inflation and erosion of the value of the money. As the deceased would have grown up, his personal expenses would have risen. The contribution to the household would not have exceeded half of his income.

16. The assessed income of the child i.e. the deceased is required to be multiplied by 1.5 which comes as $\text{Rs.}15,000 \times 1.5 = \text{Rs.} 22,500/-$ per month and after deducting 50% as the personal expenses of the deceased, the monthly income would be $\text{Rs.}11,250/;$ and the annual loss of dependency would be $\text{Rs.}11,250 \times 12 = 1,35,000/-$. The deceased was less than 15 years of age, therefore, the multiplier of 15 would be applicable as per Second Schedule appended to the Motor Vehicles Act, 1988 on basis of *Kamla Devi*. The pecuniary loss as such would be $\text{Rs.}1,35,000 \times 15 = \text{Rs.}20,25,000/-$.

17. The total compensation which the respondents are liable to pay jointly and severally to the



appellants is Rs.20,25,000/- under head of pecuniary loss and Rs.3,08,666/- under the head of Standard Compensation. The appellants are as such entitled for compensation of Rs.23,33,666/- (Rs.20,25,000 + Rs.3,08,666) from the respondents and the respondents are jointly and severally liable to pay the said compensation to the appellants.

18. The present appeal is accordingly allowed and the respondents are directed to pay an amount of Rs.23,33,666/- as compensation along with simple interest @ 6% from date of filing of writ petition till realization of compensation within three months from the date of passing of the present judgment.

19. The present appeal, along with pending applications, if any, is disposed-off.

(SUDHIR KUMAR JAIN)
JUDGE

(NAJMI WAZIRI)
JUDGE

MAY 26, 2023
sk/am/sd