A.F.R.

Neutral Citation No. - 2023:AHC:231163-DB

Court No. - 39

Case :- WRIT - C No. - 30866 of 2011

Petitioner :- Smt. Shakuntala Devi
Respondent :- State of U.P. and Others
Counsel for Petitioner :- K.K. Singh,C.L. Chaudhary,Indra Dev,Kanchan Chaudhary,V.C. Dixit
Counsel for Respondent :- C.S.C.

Hon'ble Saumitra Dayal Singh,J.
Hon'ble Shiv Shanker Prasad,J.

1. Heard Ms. Kanchan Chaudhary, learned counsel for the petitioner and learned Additional Chief Standing Counsel for the State.

2. Present writ petition has been filed seeking payment of compensation of Rs. 6 crores for the accidental death of the husband of the petitioner namely, Dr. Ravindra Mohan Prasad, who died of burn injuries on 22.07.2010.

3. Pleadings have been exchanged.

4. On 31.10.2023, we passed the below quoted order:-

> *"1. On 20.07.2023 we have passed the below quoted order:-*
>
> *"1. Learned Additional Chief Standing Counsel prays for further time to take instructions, in compliance of the earlier order dated 20th April, 2023.*
>
> *2. At present, it appears that act of gross negligence was committed as had resulted in the death of Dr. Ravindra Mohan Prasad. He died of severe burn injuries suffered from flow of molten bitumen into his official residential accommodation from a nearby pit, where such molten bitumen had been stored, without due care taken.*
>
> *3. Payment of terminal dues to the heirs of the said deceased and grant of compassionate appointment may not be described as compensation for the tortious liability that otherwise arose on the State respondents.*

4. Also, it is not clear, if appropriate criminal prosecution has arisen, occasioned by the gross negligent act, noted above. Here, it may be noted, the FIR was registered on the complaint made by the Secretary of the State Government.

5. Prima facie, we find, the facts of the case would commend deeper enquiry unless all remedial and consequential measures are shown to have been taken and appropriate relief by way of compensation etc. granted.

6. Shri Arimandan Singh Rajpoot, learned Additional Chief Standing Counsel prays for and is granted two weeks' time to comply with the earlier order and to obtain the written instructions in terms of the facts, noted above.

7. Accordingly, put up on 17th August, 2023 in top ten cases.
8. It is expected that the instructions would contain the stand of respondent nos. 1 and 2, in writing. They will also make full disclosure of the prosecution proceedings arising from the FIR (Annexure No. 2) as also proceedings that may have been initiated against the negligent. The instructions would also disclose existence or otherwise of the policy to grant ex-gratia and other compensation in the event of such occurrences that may be attributed to negligence on the part of State functionaries and their agents and actual compensation paid, if any."

2. Three months have passed since then. However, instructions are still awaited. At the same time, today learned Additional Chief Standing Counsel has placed on record the copy of undated instructions received by him.

3. The claim which State agency seeks to escape liability arises from a most unfortunate and shocking occurrence, wherein the government official died of serious burn injuries suffered by him as molten bitumen seeped into his government residential accommodation, from the nearby open pit dug out up government agency.

4. The written instructions issued under the signature of the Executive Engineer, Rural Engineering Department, Mirzapur are wholly evasive and irresponsible. Basic facts as to the occurrence being undisputed and the cause being man made we fail to understand how force majeure has been attributed in a cavalier manner. Also in face of disciplinary proceedings disclosed to have been initiated and warnings issued, prima facie case of negligence stands made out.

5. We do not consider it desirable to adjudicate on the dispute at this stage as it appears that the attention of highest administrative authority of the State may first examine the present facts as may lead to a just solution at the hands of the State Government itself.
6. While the Court may not dither to adjudicate the dispute, at the same time we consider it desirable that the matter may first be examined by the appropriate authority functionary of the State Government as may be nominated by the Chief Secretary of the Government of U.P. Be it a committee or a proper officer empowered to take the appropriate decision.

7. Accordingly, let a copy of this order be communicated to the Chief Secretary, Government of U.P. for appropriate consideration and action in accordance with the existing policy of the State Government. For that purpose, let a copy of this order be supplied to Sri. Dr. D.K. Tiwari, learned Additional Chief Standing Counsel, by tomorrow.

8. Put up on 05.12.2023 in top ten cases, by which date, it is expected that the final stand of the State Government would be disclosed i.e. whether there exists any policy of the State Government to provide for ex-gratia compensation in the facts of the present case. If not, that fact may also be

clearly indicated so that the adjudication process may not be delayed any further.

9. It is further expected that if policy exists, appropriate decision would be taken and communicated to the petitioner so that the issue may not remain pending any more."

5. In compliance to the above, learned Additional Chief Standing Counsel placed on record (yesterday) a copy of the written instructions received by him dated 4.12.2023. Those are marked as X.

6. Undisputedly, at the relevant time Dr. Ravindra Mohan Prasad was posted as Deputy Director, Animal Husbandry, Mirzapur Division, Mirzapur. In connection with that posting, he had been allotted official accommodation. While asleep at that official accommodation, on 17.07.2010 at about 5:40 a.m. a blast occurred at the storage facility of the Rural Engineering Services, Mirzapur in the adjoining premise. Resultantly, Maxphalt/Bitumen seeped into the residential premises of the deceased causing 70% burn injuries. He was hospitalized at the SIPS Super Speciality Hospital Burn and Trauma Center, Lucknow on 18.07.2010, where he died during treatment, on 27.07.2010. At the relevant time, the Chief Veterinary Officer, Mirzapur lodged F.I.R. in Case Crime No. 786 of 2010 at P.S. Katra, District Mirzapur under Section 337 and 338 I.P.C. against Sri J. N. Prasad, Assistant Engineer, Store and Sri R. N. Singh, Junior Engineer, Store. We are not aware of the outcome of the criminal prosecution thus lodged. However, for the purposes of relief claimed, that fact may not be relevant as such an occurrence gave rise to both civil and criminal consequences.

7. For the consideration of the claim made in the present proceeding, it is undisputed, both on the test of pleadings made in the counter affidavit as also on the strength of the written instructions (X) now placed on record that the fact narration made above is admitted to the respondent. Therefore, the cause of the blast at the storage facility of the Rural Engineering Services may remain untested in these proceedings. At the same time, the occurrence of blast is admitted. It is also admitted that as a direct result of that blast, molten Maxphalt/Bitumen flowed out and seeped into the official residence of the deceased and caused deep burn injuries to him while he was asleep. It

is in such unfortunate circumstances that he suffered 70% burn injuries, to which he succumbed.

8. In the first place, such tortious act is liable to be compensated by the wrong doer under the Fatal Accidents Act, 1855 (hereinafter referred to as 'the Act'). For the purpose of the present case, the provisions of Section 1A of the said Act reads as below:-

> *[1A] Suit for compensation to the family of a person for loss occasioned to it by his death by actionable wrong.- Whenever the death of a person shall be caused by wrongful act, neglect or default, and the act, neglect or default is such as would (if death had not ensured) have entitled the party injured to maintain an action and recover damages in respect thereof, the party who would have been liable if death had not ensued, shall be liable to an action or suit for damages, notwithstanding the death of the person injured and although the death shall have been caused under such circumstances as amount in law to felony or other crime.*
>
> *Every such action or suit shall be for the benefit of the wife, husband, parent and child, if any, of the person whose death shall have been so caused, and shall be brought by and in the name of the executor, administrator or representative of the person deceased;*
>
> *and in every such action, the Court may give such damages as it may think proportioned to the loss resulting from such death to the parties respectively, for whom and for whose benefit such action shall be brought, and the amount so recovered, after deducting all costs and expenses, including the costs not recovered from the defendant, shall be divided amongst the before-mentioned parties, or any of them, in such shares as the Court by its judgment or decree shall direct.*

9. In **Shyam Sunder v. State of Rajasthan, (1974) 1 SCC 690,** an issue arose if a claim for tortious liability could arise where death was caused to the victim as a result of injuries suffered as he jumped from a moving truck that caught fire while plying. It was answered in the affirmative. Applying the principle *res ipsa loquitur* the claim made was sustained by the Supreme Court and High Court decision to the contrary was reversed. The following useful discussion emerged:-

> *"4. The plaintiff alleged that it was on account of the negligence of the driver of the truck that a truck which was not road-worthy was put on the road and that it caught fire which led to the death of Navneetlal and that the State was liable for the negligence of its employee in the course of his employment. The plaint also alleged that the deceased had left behind him his widow, namely, the plaintiff, two minor sons, one minor daughter and his parents. The plaintiff claimed damages to the tune of Rs 20,000 and prayed for a decree for that amount.*
>
> *….*

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 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 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 Transo [(1950) 1 All ER 392, 399]).

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.

12. The answer needed by the defendant to meet the plaintiff's case may take alternative forms. Firstly, it may consist in a positive explanation by the defendant of how the accident did in fact occur, of such a kind as to exonerate the defendant from any charge of negligence.

13. It should be noticed that the defendant does not advance his case by inventing fanciful theories, unsupported by evidence, of how the event might have occurred. The whole inquiry is concerned with probabilities, and facts are required, not mere conjecture unsupported by facts. As Lord

Macmillan said in his dissenting judgment in Jones v. Great Western [(1930) 47 PLR 39] :

> *"The dividing line between conjecture and inference is often a very difficult one to draw. A conjecture may be plausible, but it is of no legal value, for its essence is that it is a mere guess. An inference, in the legal sense, on the other hand, is a deduction from the evidence, and if it is a reasonable deduction it may have the validity of legal proof. The attribution, of an occurrence to a cause is, I take it, always a matter of inference. The cogency of a legal inference of causation may vary in degree between practical certainty and reasonable probability. Where the coincidence of cause and effect is not a matter of actual observation there is necessarily a hiatus in the direct evidence, but this may be legitimately bridged by an inference from the facts actually observed and proved."*

In other words, an inference is a deduction from established facts and an assumption or a guess is something quite different but not necessarily related to established facts.

14. Alternatively, in those instances where the defendant is unable to explain the accident, it is incumbent upon him to advance positive proof that he had taken all reasonable steps to avert foreseeable harm.

15.Res ipsa loquitur is an immensely important vehicle for importing strict liability into negligence cases. In practice, there are many cases where res ipsa loquitur is properly invoked in which the defendant is unable to show affirmatively either that he took all reasonable precautions to avoid injury or that the particular cause of the injury was not associated with negligence on his part. Industrial and traffic accidents and injuries caused by defective merchandise are so frequently of this type that the theoretical limitations of the maxim are quite overshadowed by its practical significance [Millner: "Negligence in Modern Law", 92] .

16. Over the years, the general trend in the application of the maxim has undoubtedly become more sympathetic to plaintiffs. Concomitant with the rise in safety standards and expanding knowledge of the mechanical devices of our age, less hesitation is felt in concluding that the miscarriage of a familiar activity is so unusual that it is most probably the result of some fault on the part of whoever is responsible for its safe performance (see John G. Fleming, The Law of Torts, 4th Edn., p.260).

17. We are inclined to think the learned District Judge was correct in inferring negligence on the part of the driver. Generally speaking, an ordinary road-worthy vehicle would not catch fire. We think that the driver was negligent in putting the vehicle on the road. From the evidence it is clear that the radiator was getting heated frequently and that the driver was pouring water in the radiator after every 6 or 7 miles of the journey. The vehicle took 9 hours to cover the distance of 70 miles between Chittorgarh and Pratapgarh. The fact that normally a motor vehicle would not catch fire if its mechanism is in order would indicate that there was some defect in it. The District Judge found on the basis of the evidence of the witnesses that the driver knew about this defective condition of the truck when he started from Bhilwara.

18. It is clear that the driver was in the management of the vehicle and the accident is such that it does not happen in the ordinary course of things. There is no evidence as to how the truck caught fire. There was no explanation by the defendant about it. It was a matter within the exclusive

knowledge of the defendant. It was not possible for the plaintiff to give any evidence as to the cause of the accident."

Later in **Gujarat State Road Transport Corpn. Vs. Ramanbhai Prabhatbhai, (1987) 3 SCC 234**, the Supreme Court traced the need and origin of the Fatal Accidents Act, 1855 to similar development of statutory law in England. Thus, an action in tort was found maintainable to claim compensation for death arising from a tortious act, by specified legal representatives of the deceased. It would be useful for our discussion to extract the following passage of that report:-

> *"4. On account of the close association which came to be established between India and Great Britain owing to the British rule which lasted for over two centuries, in the High Courts established in India the English Common Law which was based on principles of justice, equity and good conscience came to be applied wherever they were called upon to award damages or compensation for civil wrongs committed by the defendants in the suits. The application of the English Common Law, however, had to conform to Indian cir*cumstances and conditions which necessarily involved a selective application of the English Law in India. "The adoption of the rules of English Law by the Indian Courts", observes M.C. Setalvad in his Common Law in India (The Hamlyn Lectures, Twelfth Series, p. 53), "was neither automatic nor uncritical. Although they started with a presumption that a rule of English Law would be in accordance with the principles of justice, equity and good conscience, they bore in mind the reservation which was later expressed by the Privy Council in the words 'if found applicable to Indian society and circumstances.". In the course of the application of the principles of the English Law of Torts in India the Indian courts came to recognise and apply the maxim actio personalis moritur *cum persona- a personal action dies with the parties to the cause of action. An action for a tort had to be begun in the joint lifetime of the wrongdoer and the person injured. The development of railways in England, led to a great upsurge in the number of accidents, many of which were fatal. When it was realised that the cause of action for recovery of damages for the death of a person caused by the wrongful act of another person did not survive on the death of the person to his legal representatives in England as a measure of law reform the Fatal Accidents Act, 1855 was passed for compensating the families of persons killed in accidents. That Act provided that "whensoever the death of a person shall be caused by wrongful act, neglect, or default, and the act, neglect, or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, then and in every such case the person who would have been liable if death had not ensued shall be liable to an action for damages, notwithstanding the death of the person injured". The said Act further provided that "every such action shall be for the benefit of the wife, husband, parent, and child of the person whose death shall have been so caused, and shall be brought by and in the name of the executor or administrator of the person deceased; and in every such action the jury may give such damages as they may think proportioned to the injury resulting from such death to the parties respectively for whom and for whose benefit such action shall be brought; and the amount so recovered, after deducting the costs not recovered from the defendant, shall be*

> *divided amongst the before mentioned parties in such shares as the jury by their verdict shall find and direct." Within a few years after the passing of the said English Fatal Accidents Act, 1846, the Fatal Accidents Act, 1855 came to be passed on March 27, 1855 in India. This Act contains in all five sections. Its preamble runs thus:*
>
> > *"Whereas no action or suit is now maintainable in any Court against a person who, by his wrongful act, neglect or default, may have caused the death of another person, and it is oftentimes right and expedient that the wrong-doer in such case should be answerable in damages for the injury so caused by him; it is enacted as follows:"*

10. Thus as to substantive right existing in favour of the petitioner, who is the wife of the deceased to be compensated for the wrongful act, neglect or default on part of the functionaries of the State Government specifically the Rural Engineering Services, is undeniable. Prima facie Rural Engineering Services involved discharge of statutory obligation.

11. We have no doubt as to the sustainability of the same as the tortious event is attributable to the conduct of the employees/servants of the State who stored the molten Maxphalt/Bitumen in the tank that suffered a blast leading to its seepage into the official residence of the deceased causing the injuries and his death. Earlier, in **Kasturilal Ralia Ram Jain vs The State Of Uttar Pradesh, AIR 1965 SC 1039**, the Supreme Court opined, the answer to the question would depend upon the nature of duty discharged by the offending State employees and linked it to sovereign duty. However, that view was later departed in **Shyam Sunder Vs. State of Rajasthan (supra)**. The pragmatic and thus easily enforceable rule of tortious liability existing viz-a-viz the sovereign, proprietary or commercial function was enforced. It was thus observed:-

> *20. It was, however, argued on behalf of the respondent that the State was engaged in performing a function appertaining to its character as sovereign as the driver was acting in the course of his employment in connection with famine relief work and therefore, even if the driver was negligent, the State would not be liable for damages. Reliance was placed on the ruling of this Court in Kasturilal Ralia Ram Jain v. State of Uttar Pradesh [(1965) 1 SCR 375 : AIR 1965 SC 1039 : (1965) 2 SCJ 318] where this Court said that the liability of the State for a tort committed by its servant in the course of his employment would depend upon the question whether the employment was of the category which could claim the special characteristic of sovereign power. We do not pause to consider the question whether the immunity of the State for injuries on its citizens committed in the exercise of what are called sovereign functions has any moral justification today. Its historic and jurisprudential support lies in the*

oft-quoted words of Blackstone: [Blackstone, Commentaries (10th Edn. 1887)]

> *"The king can do no wrong ... The king, moreover, is not only incapable of doing wrong, but even of thinking wrong; he can never mean to do an improper thing; in him is no folly or weakness."*

In modern times, the chief proponent of the sovereign immunity doctrine has been Mr Justice Holmes who, in 1907, declared for a unanimous Supreme Court [Kawananakoa v. Polyblank, 205 US 349, 353.] :

> *"A sovereign is exempt from suit, not because of any formal conception or obsolete theory, but on the logical and practical ground that there can be no legal right as against the authority that makes the law on which the right depends."*

Today, hardly anyone agrees that the stated ground for exempting the sovereign from suit is either logical or practical. We do not also think it necessary to consider whether there is any rational dividing line between the so-called sovereign and proprietory or commercial functions for determining the liability of the State.

21. We are of the view that, as the law stands today, it is not possible to say that famine relief work is a sovereign function of the State as it has been traditionally understood. It is a work which can be and is being undertaken by private individuals. There is nothing peculiar about it so that it might be predicated that the State alone can legitimately undertake the work.

12. It cannot be disputed that at the relevant time the deceased was posted as Deputy Director, Animal Husbandry, Mirzapur Division, Mirzapur. It is also not disputed that at that time he was serving at Mirzapur. Occasioned by this posting and work, he had been allotted government accommodation under the relevant rules. Therefore, he was present at the place and time of occurrence. The establishment where Maxphalt/Bitumen had been stored belonged to the Government of Uttar Pradesh being maintained and managed by the Rural Engineering Services.

13. The act of wrongful neglect or default that may have caused the blast at the storage facility that led to the Maxphalt/Bitumen to flow out from the storage facility, to the residence of the deceased, may remain to be examined in criminal and/or departmental proceeding. It may also remain a matter between the principal and its agent i.e. the State and the actual offender and/ or the employer and his employees. At the same time, since the deceased was the unsuspecting and non-contributory victim of that tortious act, the claim to compensation does arise. Insofar as the petitioner is the wife of the deceased, she is entitled to to claim such compensation.

14. We are mindful, under the Act, such action may normally be brought by filing a proper civil suit. In face of that remedy available under the common law, this Court may not be readily exercise its extraordinary jurisdiction under Article 226 of the Constitution of India in each and every matter involving claim for such compensation. By nature, such claims if made against private parties or involving disputed facts may never be entertained in exercise of jurisdiction under Article 226 of the Constitution of India.

15. However, in the present facts we note that the tortious act is attributable to the State and its agents only. Second, the victim of tortious act was none other than a government employee. For that reason, we required the higher functionaries of the State Government to give the claim due consideration and resolve the same. By means of the written instructions (X), it has been first disclosed that the Chief Secretary of the Government of Uttar Pradesh formed a twelve member Committee to look into the matter. It involved not less than four Additional Chief Secretaries, Secretary Finance, three Special Secretaries, the Director, the Chief Engineer, and an Executive Engineer of the Rural Engineering Department.

16. That Committee appears to have applied its mind to the claim but found itself unable to take a decision to pay any compensation etc. The consideration made by the Committee is contained in the communication dated 4.12.2023. We consider it appropriate to place on record that consideration offered by the said Committee. It is quoted below:-

> "2. प्रश्नगत प्रकरण में संक्षेप में उल्लेखनीय है कि ग्रामीण अभियंत्रण विभाग प्रखण्ड – मिर्जापुर में स्थित प्रखण्डीय स्टोर में लूट मैक्सफाल्ट (बिटुमिनस) रखे जाने हेतु पूर्व में ही तीन टैंक बनवाये गये थे। उक्त टैंक से सटे ही उपनिदेशक पशुपालन विभाग, मिर्जापुर के आवास की बाउण्ड्रीवाल भी थी। दिनांक 17.07.2010 को सुबह अचानक टैंक की दीवार टूट गयी और मैक्सफाल्ट उपनिदेशक के आवास तक फैल गया, जिससे आवास में उपस्थित उपनिदेशक, पशुपालन विभाग, मिर्जापुर गम्भीर रूप से झुलस गये एवं कुछ दिनों बाद इलाज के दौरान उनकी मृत्यु हो गयी थी। इस संबंध में ग्रामीण अभियंत्रण विभाग के स्तर से प्रखण्डीय स्टोर के चौकीदार श्री सोनू यादव, अवर अभियंता (स्टोर) श्री आर एन सिंह एवं सहायक अभियंता (स्टोर) श्री जे. एन. प्रसाद को निलम्बित किया गया। जाँच अधिकारी अधीक्षण अभियंता, ग्रामीण अभियंत्रण

विभाग परिमण्डल– प्रयागराज द्वारा प्रकरण की जाँच की गयी, जिसमें अवर अभियंता (स्टोर) एवं सहायक अभियंता (स्टोर) पर आरोप सिद्ध नहीं पाया गया तथा पशुपालन विभाग द्वारा भी अवर अभियंता (स्टोर) एवं सहायक अभियंता (स्टोर) के विरुद्ध प्राथमिकी दर्ज करायी गयी। पुलिस विवेचना में भी अपराध स्थापित नहीं पाया गया।

3. मा० उच्च न्यायालय के उपर्युक्त आदेशों के अनुपालन में प्रश्नगत प्रकरण के संभावित समस्त पहलुओं पर विचार–विमर्श करते हुये उक्त दुर्भाग्यपूर्ण घटना हेतु समिति द्वारा शोक व्यक्त किया गया। बैठक में सम्यक विचारोपरांत यह पाया गया कि शासन द्वारा ऐसी कोई नीति निर्धारित नहीं की गयी है जिसके अंतर्गत प्रश्नगत प्रकरण में हुये दुर्घटना के कारण याची को एक्स–ग्रेसिया (अनुग्रह भुगतान) की धनराशि दी जा सके। प्रश्नगत दुर्घटना के उपरांत मृतक डा० प्रसाद के पुत्र श्री आशुतोष मोहन को कार्यालय निदेशक पशुपालन विभाग, उत्तर प्रदेश लखनऊ के कार्यालय आदेश दिनांक 19.02.2015 द्वारा मृतक आश्रित के रूप में अनुकम्पा के आधार पर कनिष्ठ सहायक के पद पर सेवायोजित किया जा चुका है और अन्य समस्त विभागीय देयकों का भुगतान डा० प्रसाद के आश्रितों को किया जा चुका है।

4. यद्यपि वित्त (सामान्य) अनुभाग–3, उत्तर प्रदेश शासन के कार्यालय ज्ञाप संख्या–सा–3–1508/दस–2008–308–97 दिनांक 08.12.2008 के प्रस्तर–9 के अनुसार "जिन सरकारी सेवकों की मृत्यु सरकारी कार्य के दायित्वों के निर्वहन के फलस्वरूप हो जाती है, उन्हें राज्य सरकार द्वारा एक्स–ग्रेसिया की धनराशि का एक मुश्त भुगतान किया जाता है", किन्तु बैठक में विचारोपरांत यह पाया गया कि डा० रवीन्द्र मोहन प्रसाद, उप निदेशक की मृत्यु सरकारी कार्य के दायित्वों के निर्वहन के दौरान नहीं हुई थी, अतः उक्त व्यवस्था, प्रश्नगत प्रकरण में लागू नहीं हो सकती है।"

17. Perusal of the same reaffirms that the occurrence of blast at the storage facility where molten Maxphalt/Bitument had been stored. It is also not disputed that as a result of that blast Maxphalt/Bitumen flowed into the official residential premise of the deceased, causing serious burn injuries to him. He succumbed to those injuries after a few days. As to the F.I.R. lodged with respect to that occurrence, it has been noted, none was found guilty. Besides noting grant of compassionate appointment to the son of the deceased and payment of terminal dues, as to reason to deny payment of compensation, it has been noted, there does not exist any policy whereunder such payment may be made and the case of the deceased it not covered under the existing policy as he was not on duty at the time of occurrence.

18. We may only reiterate, in the first place, occurrence of blast at the storage facility of such hazardous material was not a normal or predictable act. On no principle of law and on no test of prudence it may ever be accepted by any Court that occurrence of the blast of the Maxphalt/Bitumen

tank was a normal or predictable event. It was accidental. Alternatively, if it may be assumed (for the sake of it), that such occurrence was normal or predictable even then the neglect on part of the State functionaries would stand absolutely established as it is undisputed to them that the storage facility for such hazardous material had been located dangerously near the official residential accommodation of the deceased. In that event, it would remain an inescapable conclusion that it was known from before that hazardous material may seep out from the storage facility into the adjoining residential premises and cause severe injuries, including death. Thus the principle of r*es ipsa loquitor* wholly applies to the present facts.

19. Therefore, whichever way the occurrence may be looked at, the accidental occurrence remains a wrongful act arising from neglect. To that extent that tortious liability stands fully established. The fact that the State authorities have chosen not to proceed against the negligent agent is a matter of policy or inaction. While good governance may have compelled the administrators to take decisive, prompt and adequate action in real time to ensure that due remedy was made available to the victim and also to ensure that such occurrences do not reoccur**,** that has not been done. The grief expressed at the occurrence is no compensation for their tortious act.

20. Thus the conduct of the State authorities may not detain us for a moment. We only record, the State authorities have failed to address/ remedy the wrong. Coming back to the claim made by the petitioner, the Committee constituted by the Chief Secretary appears to have offered its consideration to the State Policy dated 08th December, 2008 (hereinafter referred to as 'the Policy'). Relevant extract of the said policy being Clause 9 reads as below:-

> 9– **एक्स–ग्रेसिया एक मुश्त कम्पेन्सेशन–**
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> वर्तमान व्यवस्था के अधीन जिन सरकारी सेवकों की मृत्यु सरकारी कार्य के दायित्वों के निर्वहन के फलस्वरूप हो जाती है उन्हें राज्य सरकार द्वारा एक्स–ग्रेसिया की धनराशि का एक मुश्त भुगतान किया जाता है। इस कार्यालय–ज्ञाप के निर्गत होने की तिथि से पूर्व निर्धारित दरों में निम्नलिखित संशोधन किया जाता हैः–
>
> रूपया

(क)	यदि कर्तव्य पालन की अवधि में दुर्घटना में मृत्यु हो जाती है	10.00 लाख

(ख)	कर्तव्य पालन के समय आतंकवादी/अराजक तत्वों की गतिविधियों में हुयी हिंसा के फलस्वरूप हुयी मृत्यु	10.00 लाख
(ग)	देश की सीमा पर अन्तर्राष्ट्रीय युद्ध या सीमा पर छुटपुट घटनाओं/अथवा लड़ाकू/आतंकवादियों, अथवा अतिवादी आदि की गतिविधियों के फलस्वरूप मृत्यु होने पर	15.00 लाख
(घ)	अति दुर्लभ पहाड़ी ऊँचाईयों /दुर्लभ सीमा तथा प्राकृतिक विपदाओं अथवा अति खराब मौसम में कर्तव्य पालन करते हुए मृत्यु होने पर	15.00 लाख

संगत नियम उक्त सीमा तक संशोधित समझे जायेंगे।

21. While considering the above, the Committee constituted by the Chief Secretary has practically rejected the claim on the reasoning that the occurrence was purely accidental and that the deceased was not on Government duty at that time. The said decision of the Committee is wholly unacceptable. For the present purposes we note that the same arises on erroneous consideration. In the first place accidental occurrences by very nature do involve commission of tortious act as may expose the wrong doer to a civil liability of compensation. Therefore, merely because the occurrence was accidental, would make no difference to the liability to which the State and its functionaries stood exposed.

22. Second, to say that the deceased was not on Government duty is to rub salt to injury. It is not the case of the State that the deceased was abstaining from work or that he was residing in a non-approved private accommodation. At the time of occurrence, the deceased was posted as Deputy Director, Animal Husbandary at Mirzapur and was residing at his official accommodation for reason of that posting. It may be true that he was resting at his official residence after his work hours but it cannot be denied that the occurrence took place while the deceased was resting at his official residence for reason of his posting.

23 By virtue of clear language of the Act and by very nature of a tortious liability it is not dependent on whether the deceased was on active government duty or whether the occurrence (whether accidental or

otherwise) took place while he was performing such government duty. As noted above that liability arose upon commission of the accidental occurrence. To the extent the policy Clause 9(क) seeks to limit the statutory liability under the Act, the same would remain unenforceable. Therefore, we find that the State remains liable to first compensate the petitioner for the tortious act committed by the actual tort feasor.

24. In any case, compensation for a tortious liability, may never be examined and/or quantified on the test of an *ex-gratia* payment. That is an entirely different concept where the payment arises from the grace shown by the payer and not from the entitlement of the payee. It is not applicable to tortious liabilities. Then, compensation for the tortious liability thus incurred may not be defeated occasioned by grant of compassionate appointment to the son of the deceased and/or upon payment of terminal dues, to his wife. Those relief are traceable directly and only to the terms of service of the deceased and/or grace shown by the payer and not to compensation for the liability for tortious injury suffered.

25. In view of above noted admitted facts, no useful purpose would be served in relegating the petitioner to the forum of alternative remedy, or filing a suit proceeding. Again as noted above, the tort feasor were government agencies and servants accountable to the respondents themselves. Therefore, the matter should have been best addressed by the respondents, internally. In any case, we gave that opportunity to the highest administrative functionaries of the State to ensure that justice is meted out expeditiously. Unfortunately that could not be done. Hence we have proceeded to deal with the matter, ourselves.

26. Coming to the issue of the quantification, under the Act, wide discretion is vested with the Court to award such damages as it may think proportionate to the loss. Since these are writ proceedings and no evidence has yet been led by the parties, we seek to adopt a rough and ready method to compute the compensation to bring a quick end to this avoidable litigation

that has already suffered a procedural delay of 12 years, the writ petition having been filed within a year of the occurrence.

27. In **Lata Wadhwa Vs. State of Bihar (2001) 8 SCC 197**, amongst others issue arose as to quantification of compensation for death of minor children arising from a tortious act of accidental fire caused at a 'Pandal' set up by a corporation to celebrate the birth anniversary of its founder. The learned arbitrator entrusted to deal with the same, relied on the principle of multiplier, by them firmly entrenched in the context of determination of compensation arising from motor accidents (see **General Manager, Kerala S.R.T.C vs Susamma Thomas (1994) 2 SCC 176**). Unlike the Motor Vehicles Act, though no statutory basis was pre-existing under the Act, yet that principle was found to be most reliable to be applied of the act as well. The Supreme Court negated the challenge laid thereto and made the following pertinent observations:-

> *"8. So far as the determination of compensation in death cases are concerned, apart from the three decisions of Andhra Pradesh High Court, which had been mentioned in the order of this Court dated 115-12-1993, this Court in the case of G.M., Kerala SRTC v. Susamma thomas [(1994) 2 SCC 176: 1994 SCC (Cri) 335] exhaustively dealt with the question. It has been held in the aforesaid case that for assessment of damages to compensate the dependants, it has to take into account many imponderables, as to the life expectancy of the deceased and the dependants, the amount that the deceased would have earned during the remainder of his life, the amount that he would have contributed to the dependants during that period, the chances that the deceased may not have lived or the dependants may not live up to the estimated remaining period of their life expectancy, the chances that the deceased might have got better employment or income or might have lost his employment or income altogether. The Court further observed that the manner of arriving at the damages is to ascertain the net income of the deceased available for the support of himself and his dependants, and to deduct therefrom such part of his income as the deceased was accustomed to spend upon himself, as regards both self-maintenance and pleasure, and to ascertain what part of his net income the deceased was accustomed to spend for the benefit of the dependants, and thereafter, it should be capitalised by multiplying it by a figure representing the proper number of years' purchase. It was also stated that much of the calculation necessarily remains in the realm of hypothesis and in that region, arithmetic is a good servant but a bad master, since there are so often many imponderables. In every case, "it is the overall picture that matters", and the court must try to assess as best as it can, the loss suffered. On the acceptability of the multiplier method, the Court observed:*
>
> > *"The multiplier method is logically sound and legally well-established method of ensuring a 'just' compensation which will make for uniformity and certainty of the awards. A departure from*

this method can only be justified in rare and extraordinary circumstances and very exceptional cases."

The Court also further observed that the proper method of computation is the multiplier method and any departure, except in exceptional and extraordinary cases, would introduce inconsistency of principle, lack of uniformity and an element of unpredictability in the assessment of compensation. The Court disapproved the contrary views taken by some of the High Courts and explained away the earlier view of the Supreme Court on the point. After considering a series of English decisions, it was held that the multiplier method involves the ascertainment of the loss of dependency or the multiplicand having regard to the circumstances of the case and capitalizing the multiplicand by an appropriate multiplier. The choice of the multiplier is determined by the age of the deceased (or that of the claimants, whichever is higher) and by the calculation as to what capital sum, if invested at a rate of interest appropriate to a stable economy, would yield the multiplicand by way of annual interest. In ascertaining this, regard should also be had to the fact that ultimately the capital sum should also be consumed up over the period for which the dependency is expected to last. In view of the aforesaid authoritative pronouncement of this Court and having regard to the determination made in the Report by Shri Justice Chandrachud, on the basis of the aforesaid multiplier method, it is difficult for us to accept the contention of Ms Rani Jethmalani that the settled principle for determination of compensation has not been followed in the present case. The further submission of the learned counsel that the determination made is arbitrary, is devoid of any substance, as Shri Justice Chandrachud has correctly applied the multiplier, on consideration of all the relevant factors. Damages are awarded on the basis of financial loss and the financial loss is assessed in the same way as prospective loss of earnings. The basic figure, instead of being the net earnings, is the net contribution to the support of the defendants, which would have been derived from the future income of the deceased. When the basic figure is fixed, then an estimate has to be made of the probable length of time for which the earnings or contribution would have continued and then a suitable multiple has to be determined (a number of years' purchase), which will reduce the total loss to its present value, taking into account the proved risks of rise or fall in the income. In the case of Mallett v. McMonagle [1970 AC 166:(1969) 2 All ER 178 (HL) Lord Diplock gave a full analysis of the uncertainties, which arise at various stages in the estimate and the practical ways of dealing with them. In the case of Davies v. Taylor [1974 AC 207 : (1972) 3 All ER 836 (HL)], it was held that the Court, in looking at future uncertain events, does not decide whether on balance one thing is more likely to happen than another, but merely puts a value on the chances. A possibility may be ignored if it is slight and remote. Any method of calculation is subordinate to the necessity for compensating the real loss. But a practical approach to the calculation of the damages has been stated by Lord Wright, in a passage which is frequently quoted, in Davies v. Powell Duffryn Associated Collieries Ltd. [(1942)] 1 All ER 657 (HL)], to the following effect: (All ER p.665A-B)

The starting point is the amount of wages which the deceased was earning, the ascertainment of which to some extent may depend on the regularity of his employment. Then there is an estimate of how much was required or expended for his own personal and living expenses. The balance will give a datum or basic figure which will generally be turned into a lump sum by taking a certain number of years' purchase."

That rule was reiterated in **M.S. Grewal & Anr vs Deep Chand Sood & Ors, (2001) 8 SCC 151.** In that case, the dispute involved was amongst others as to computation of compensation for death caused to minor children, from drowning at a school excursion trip.

28. Thus we recognise, standardised formula exist under two other enactments, to provide for compensation for tortious liability. First, under the Motor Vehicle Act, 1988 a schedule exists with respect to which law is fairly well settled in view of **Sarla Verma & Ors. v. Delhi Tranpsort Corporation & Anr. (2009) 6 SCC 121** and **National Insurance Company Limited. vs. Pranay Sethi and others (2017) 16 SCC 680**. Also, another structured formula exists under the Employees Compensation Act, 1923. If the schedule under the Motor Vehicle Act, 1988 were to be considered/applied to such facts, compensation not less than 53 Lakhs (plus interest) would be payable. In contrast, under the Employees Compensation Act, that amount may be computed around Rs. 34 Lakhs (plus interest). These estimates have been made on the undisputed facts that the deceased was about 52 years of age on the date of his death. He was gainfully employed as a Government servant earning about INR 46,100/- per month by way of salary and had four dependents being three children and a wife.

29. Accordingly, we award compensation- Rs. 50 Lakh to be paid to the petitioner by respondent no.1 within a period of three months from today together with interest on that amount @ 6 % per annum from the date of occurrence till the date of actual payment.

30. The petition is accordingly **allowed.** No order as to costs.

Order Date :- 6.12.2023
Abhishek Singh

(S. S. Prasad, J.) **(S. D. Singh, J.)**