

Suraj Verma Vs. Delhi Development Authority and Others

Suraj Verma Vs. Delhi Development Authority and Others

SooperKanoon Citation : sooperkanoon.com/60007

Court : Delhi

Decided On : Jul-08-2015

Judge : J.R. Midha

Appellant : Suraj Verma

Respondent : Delhi Development Authority and Others

Advocate for Def. : Mr. Arjun Pant

Advocate for Pet/Ap. : Mr. Pankaj Sinha, Ms. Noopur Dubey, Mr. Arjun Pant

Judgement :

\$~ *IN THE HIGH COURT OF DELHI AT NEW DELHI + % RFA No.299/2011
Date of Decision :

8. h July, 2015 SURAJ VERMA Through : Appellant Mr. Pankaj Sinha and Ms. Noopur Dubey, Advocates versus DELHI DEVELOPMENT AUTHORITY & OTHERS Respondent Through : Mr. Arjun Pant, Advocate + % RFA No.307/2011 Date of Decision : DELHI DEVELOPMENT AUTHORITY & OTHERS Appellant Through : Mr. Arjun Pant, Advocate versus SURAJ VERMA & ANOTHERRespondent Through : Mr. Pankaj Sinha and Ms. Noopur Dubey, Advocates CORAM :HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT

1 The learned Trial Court has passed a decree of Rs.8,00,000/- along with interest @ 6% per annum which is under challenge in his appeal by both the parties. The appellant in RFA No.299/2011 is seeking enhancement of the compensation awarded by the learned Trial Court whereas the appellant in RFA No.307/2011 is seeking reduction of the compensation amount. For the sake of convenience, the appellant in RFA No.299/2011 is referred to as plaintiff whereas the appellant in appeal No.307/2011 is referred to as the defendant as per their ranks before the learned Trial Court.

2. On 15th August, 1993, the plaintiffs minor son, Master Merka Verma aged about six years suddenly disappeared. The plaintiff reported the matter to the Police whereupon a DD entry was registered and efforts were made to search the plaintiffs son.

3. On 17th August, 1993, the dead body of plaintiffs son was found floating in the water accumulated in the pit around the manhole built by the defendant. On 17th August, 1993, the Police registered FIR No.193/93 against the Executive Engineer of the respondent who was incharge of the construction work of the sewerage line in the area.

4. The plaintiff instituted a suit for recovery of compensation of Rs.14,00,000/- against the defendant. The plaintiff also impleaded the Executive Engineer and Assistant Engineer of DDA as defendants No.2 and 3 and Municipal Corporation of Delhi as defendant no.4. However, Municipal Corporation of Delhi was deleted by the learned Trial Court vide order dated 21st February, 2009.

5. The defendant contested the suit on the ground that the District Park where the incident occurred was properly fenced and the boards were put up therein indicating that the area was dangerous for entry of children as the area was low lying. It was averred that the plaintiffs son expired on account of negligence by not taking care and allowing the children to go into the under-developed park which was fenced and boards put therein indicated that the area was dangerous for entering of children.

6. The plaintiff appeared in the witness box as PW-1 and deposed that on 15th August, 1993, his minor son had disappeared while playing with the boys in the Sainik Vihar area in close proximity to the sewerage line whereupon he reported the matter to the local Police. On 17 th August, 1993, the dead body of the plaintiffs minor son was found floating in the pit around the manhole. He further deposed that the manhole did not have the lid and there was a ditch of 10-15 feet depth and the rain water and long grass around it obscured its visibility. According to the plaintiff, the accident occurred due to the negligence of the defendant and his officers. PW-2, Fire Officer, proved the register containing the entry dated 17 th August, 1993 regarding the incident as Ex.PW2/1. PW-3, Contractor who constructed the manhole of the defendant deposed that he had constructed the manhole and there was a ditch of about 18-20 feet depth adjoining the manhole for which the work was not awarded to him and therefore, it was left unattended by him. He further deposed that no notice or no board of precaution was put near the ditch of park. PW-4, Constable from Police Station Saraswati Vihar proved the copy of FIR No.422/1993 as Ex.PW4/1. PW-5 deposed that the work of the manhole was awarded to Dulari Construction Company and there was a pit more than 15 feet deep.

7. The defendant examined its Executive Engineer as DW-1 who deposed that sewerage work was completed before 1990. However, there were certain defects in the work and the rectification work was awarded on 17th April, 1993 which work was completed before the incident in question. He further deposed that the District Park where the incident occurred was properly fenced and there were boards to indicate that the area was dangerous for entry of children. However, DW-1 admitted in cross examination, that in the order of rectification work given to Dulari Construction Company, the work of filling of pit with earth/soil was not awarded. The witness produced the schedule of work as Ex.DW1/X. The witness could not produce any record to show that the filling of pit work was done by Dulari Construction Company.

8. The learned Trial Court held that there was a ditch of more than 15 feet at the place of accident and there was no fencing or board of precaution near the said ditch. The learned Trial Court further held that the defendant was negligent in not

carrying out the filling of the said pit. The learned Trial Court further held that there was no fencing or board of precaution at the site of the accident and therefore, the death of Master Merka Verma occurred due to the negligence of the defendant. The learned Trial Court awarded compensation of Rs.8,00,000/- to the plaintiff along with interest @ 6% per annum to the plaintiff. However, the learned Trial Court has not given any reason for computation of compensation of Rs.8,00,000/-.

9. Vide order dated 07th May, 2015, this Court in exercise of power under Order XLI Rule 27(1)(b) of Code of Civil Procedure permitted additional evidence to be led by the plaintiff in pursuance to which plaintiff has led evidence by way of affidavit dated 06th May, 2015. The plaintiff deposed that he had three children, two sons, Paras and Merka and one daughter, Shiny. He deposed that his son, Merka was a bright student of New Era Public School and was actively participating in extra-curricular activities. Prior to his death, Master Merka participated in Janmashtami Celebration in school and performed the role of Sudama, photographs whereof were proved as Ex.CW1/1. He further deposed that his other two children namely Paras and Shiny completed schooling from New Era Public School. Paras passed out from school in 2003 and left for Australia to pursue higher education on study visa and is working in Australia as a Manager with K-Mart Company. The plaintiff proved the statement of marks of senior secondary certificate, passport and visa of Paras as Ex.CW1/3. The plaintiff deposed that Paras settled in Australia, is green card holder and his income in 2012 was 1.25 lakh Australian Dollars. The plaintiff further deposed that his daughter Shiny passed out the school in 2007, she studied in Rajdhani College and completed BBA from ITM College and MBA from IILM College from 2011 to 2013. The plaintiff proved the certificates of his daughter as Ex.CW1/2. The plaintiff met with an accident in 1996 resulting in 100% disability and he has become quadriplegic with permanent paralysis of all four limbs and incurs Rs.3,50,000/- to Rs.4,00,000/- per annum on his treatment. He proved his disability certificate and the expenditure record as Ex.CW1/4 and Ex.CW1/5. The plaintiff is seeking enhancement of compensation from Rs.8,00,000/- to Rs.10,00,000/- along with interest @ 9% per annum.

10. Mr. Vinay Kumar Garg, learned Senior Counsel submitted that the plaintiff is seeking enhancement of compensation from Rs.8,00,000/- to Rs.10,00,000/- along with interest @ 9% per annum relying on judgements of this Court in United India Assurance Co. Ltd. vs. Kanwar Lal MANU/DE/2871/2012 and National Insurance Company vs. Gaje Singh & Ors. 2012 ACJ2346 The learned senior counsel has also relied upon Municipal Corporation of Delhi v. Association of Victims of Uphaar Tragedy AIR 2012 SC100 11. Mr. Arjun Pant, learned counsel for the defendant, on the other hand, seeks reduction of the compensation amount. According to the Mr. Arjun Pant, learned counsel for the defendant, no case of enhancement of compensation is made out.

12. This Court has carefully considered the rival contentions of the parties. Master Merka Verma died due to the negligence of the defendants and its officers in not filling up more than 15 feet deep pit in the park in Sainik Vihar area and there was no fencing or precaution board at the site. There is no infirmity in the finding of defendants negligence by the learned Trial Court. The only question arisen for consideration in these appeals is the amount of compensation to which the plaintiff is entitled.

13. The plaintiff is entitled to just compensation under Sections 1A and 2 of the Fatal Accidents Act, 1885 which has to be computed according to the multiplier method. Reference may be made to Gobald Motor Service Ltd. v. Veluswami, 1962 (1) SCR929 Dr. Laxman Balkrishna Joshi v. Dr. Trimbak Bapu Godbole, AIR 1969 SC128 Ishwar Devi Malik. v. Union of India, ILR (1968) 1 Delhi 59, Lachman Singh v. Gurmit Kaur, AIR1979P&H50 Bir Singh v. Hashi Rashi Banerjee, AIR1956 Cal.

555. The multiplier method has been accepted as legally sound method for determining compensation in death cases by the Supreme Court in Lata Wadhwa v. State of Bihar, (2001) 8 SCC197 Municipal Corporation of Delhi v. Association of Victims of Uphaar Tragedy, AIR 2012 SC100 and Delhi High Court in Jaipur Golden Gas Victims Association v. Union of India, 164 (2009) DLT346 Nagrik Sangarsh Samiti v. Union of India, ILR (2010) 4 Delhi 293; Ram Kishore v. MCD, 2007 (97) DRJ445 Ashok Sharma v. Union of India, 2009 ACJ1063 14. In Lata

Wadhwa v. State of Bihar (supra), a fire broke out in a factory in which sixty people died and one hundred and thirteen got injured. The Supreme Court awarded compensation to the victims on the basis of the multiplier method.

15. In Jaipur Golden Gas Victims Association v. Union of India (supra), the Division Bench of this Court awarded compensation to the victims of Jaipur Golden Fire Tragedy by applying the multiplier method.

16. In Ashok Sharma v. Union of India (supra), six children lost their lives by drowning during an annual training camp of NCC on account of negligence on the part of respondents. The compensation was awarded by applying the multiplier method.

17. The compensation in death cases according to the multiplier method is based on the pecuniary loss caused to the dependants by the death of the victim of the road accident. The dependency of the dependants is determined by taking the annual earning of the deceased at the time of the accident. Thereafter, effect is given to the future prospects of the deceased. After the income of the deceased is established, the deduction is made towards the personal expenses of the deceased which he would have spent on himself. If the deceased was unmarried, normally 50% of the income is deducted towards his personal expenses. If the deceased was married and leaves behind two to three dependents, 1/3rd deduction is made; if the deceased has left behind four to six family members, deduction of 1/4th of his income is made and where the number of dependent family members exceeds six, the deduction of 1/5th of the income is made. The remaining amount of income after deduction of personal expenses is taken to be the loss of dependency to the family members which is multiplied by 12 to determine the annual loss of dependency. The annual loss of dependency of the dependants of the deceased is multiplied by the multiplier according to the age of the deceased or claimant whichever is higher. A table of multiplier is given in Schedule-II of the Motor Vehicle Act, 1988 but there was some error in the said table which has been corrected by the Supreme Court in the judgment of Sarla Verma v. DTC, 2009 ACJ1298 18. The principles relating to computation of compensation by multiplier method are summarized as under:

18.1 Multiplier Age

of the deceased (in years) Upto 15 15 - 20 21 - 25 26 - 30 31 - 35 36 - 40 41 - 45
46 - 50 51 - 55 56 - 60 61 - 65 Above 65 Multiplier approved by the Supreme Court
18 18 17 16 15 14 13 11 09 07 05 18.2 Deduction for Personal and Living
Expenses 18.2.1 Deceased - unmarried (i) Deduction towards personal expenses.
:

1. 2 (50%) (ii) Deduction where the family of the :

1. 3rd (33.33%) bachelor is large and dependent on the income of the deceased.
18.2.2 Deceased - married (i) 2 to 3 dependent family members. :

1. 3rd deduction personal expenses. towards (ii) 4 to 6 dependent family
members. :

1. 4th deduction personal expenses. towards (iii) More than 6 family members
Subject to the evidence to the contrary. :

1. 5th deduction towards personal expenses. Father, brother and sisters will not be
considered as dependents. (iv) 18.3 Future Prospects (i) Below 40 years of age
(ii). : Between 40 - 50 years (iii). More than 50 years 19. : :

50. towards future prospects. 30% towards future prospects. No addition for future
prospects. In Association of Victims of Uphaar Tragedy & Ors. v. UOI, 104 (2003)
DLT234(DB), the Division Bench of this Court applied the multiplier method and
the Second Schedule of the Motor Vehicles Act, 1988 to compute the
compensation payable to the victims of the Uphaar Tragedy. The Division Bench
held that the victims of the fire incident belonged to reasonably well-placed
families and presumed that the average income of the victims above age of 20
years to be not less than Rs.15,000/- per month, 1/3rd was deducted towards the
personal expenses and the multiplier of 15 was applied to compute the
compensation as Rs.18,00,000/-. With respect to the children, Rs.15,00,000/-. the
Division Bench awarded compensation of The Division Bench also awarded
interest @ 9% per annum. The Municipal Corporation of Delhi challenged the
aforesaid judgment of the Division Bench before the Supreme Court. The
Supreme Court in Municipal Corporation of Delhi v. Association of Victims of

Uphaar Tragedy (supra) reduced the compensation from Rs.18,00,000/- to Rs.10,00,000/- in respect of victims aged more than 20 years and from Rs.15,00,000/- to Rs.7,50,000/- lakhs in respect of the victims aged less than 20 years. The findings of the Supreme Court are reproduced hereunder :

38. 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. But in such a case it is improper to assume admittedly without any basis, that every person who visits a cinema theatre and purchases a balcony ticket should be of a high income group person. In the year 1997, Rs. 15,000 per month was rather a high income. The movie was a new movie with patriotic undertones. It is known that zealous movie goers, even from low income groups, would not mind purchasing a balcony ticket to enjoy the film on the first day itself. To make a sweeping assumption that every person who purchased a balcony class ticket in 1997 should have had a monthly income of Rs. 15,000 and on that basis apply high multiplier of 15 to determine the compensation at a uniform rate of Rs. 18 lakhs in the case of persons above the age of 20 years and Rs. 15 lakhs for persons below that age, as a public law remedy, may not be proper. While awarding compensation to a large group of persons, by way of public law remedy, it will be unsafe to use a high income as the determinative factor. The reliance upon Neelabati Behera (AIR 1993 SC1960:

1993. AIR SCW2366 in this behalf is of no assistance as that case related to a single individual and there was specific evidence available in regard to the income. Therefore, the proper course would be to award a uniform amount keeping in view the principles relating to award of compensation in public law remedy cases reserving liberty to the legal heirs of deceased victims to claim additional amount wherever they were not satisfied with the amount awarded. Taking note of the facts and circumstances, the amount of compensation awarded in public law remedy cases, and the need to provide a deterrent, we are of the view that award of Rs. 10 lakhs in the case of persons aged above 20 years and Rs. 7.5 lakhs in regard to those who were 20 years or below as on the date of the incident, would be appropriate. We do not propose to disturb the award of Rs. 1 lakh each in the case of injured. The amount awarded as compensation will carry interest at the

rate of 9% per annum from the date of writ petition as ordered by the High Court, reserve liberty to the victims or the LRs. of the victims as the case may be to seek higher remedy wherever they are not satisfied with the compensation. Any increase shall be borne by the Licensee (theatre owner) exclusively.

39. Normally we would have let the matter rest there. But having regard to the special facts and circumstances of the case we propose to proceed a step further to do complete justice. The calamity resulted in the death of 59 persons and injury to 103 persons. The matter related to a ghastly fire incident of 1997. The victims association has been fighting the cause of victims for more than 14 years. If at this stage, we require the victims to individually approach the civil court and claim compensation, it will cause hardship, apart from involving huge delay, as the matter will be fought in a hierarchy of courts. The incident is not disputed. The names and identity of the 59 persons who died and 103 persons who were injured are available and is not disputed. Insofar as death cases are concerned the principle of determining compensation is streamlined by several decisions of this Court. (See for example *Sarla Verma v. Delhi Transport Corporation* (2009) 6 SCC121(AIR 2009 SC31042009 AIR SCW4992. If three factors are available the compensation can be determined. The first is the age of the deceased, the second is the income of the deceased and the third is number of dependants (to determine the percentage of deduction for personal expenses). For convenience the third factor can also be excluded by adopting a standard deduction of one-third towards personal expenses. Therefore, just two factors are required to be ascertained to determine the compensation in 59 individual cases. First is the annual income of the deceased, two-third of which becomes the annual loss of dependency the age of the deceased which will furnish the multiplier in terms of *Sarla Verma* (supra). The annual loss of dependency multiplied by the multiplier will give the compensation.

Conclusions 46. In view of the foregoing, we dispose of the appeals as follows: xxx (v) CA No.6748 of 2004 is allowed in part and the judgment of the High Court is modified as under: (a) The compensation awarded by the High Court in the case of death is reduced from Rs. 18 lacs to Rs. 10 lacs (in the case of those aged more than 20 years) and Rs. 15 lacs to Rs. 7.5 lacs (in the case of those aged 20

years and less). The said sum is payable to legal representatives of the deceased to be determined by a brief and summary enquiry by the Registrar General (or nominee of learned Chief Justice/Acting Chief Justice of the Delhi High Court). (b) The compensation of Rs. One lakh awarded by the High Court in the case of each of the 103 injured persons is affirmed. (c) The interest awarded from the date of the writ petition on the aforesaid sums at the rate of 9% per annum is affirmed. (d) If the legal representatives of any deceased victim are not satisfied with the compensation awarded, they are permitted to file an application for compensation with supporting documentary proof (to show the age and the income), before the Registrar General, Delhi High Court. If such an application is filed within three months, it shall not be rejected on the ground of delay. The Registrar General or such other Member of Higher Judiciary nominated by the learned Chief Justice/Acting Chief Justice of the High Court shall decide those applications in accordance with paras above and place the matter before the Division Bench of the Delhi High Court for consequential formal orders determining the final compensation payable to them.

(Emphasis Supplied) 20. In *MCD v. Association of Victims of Uphaar Tragedy* AIR 2012 SC100 the Supreme Court has awarded Rs. 10 lakhs to the victims aged more than 20 years and Rs. 7.5 lakhs to the victims aged less than 20 years. In that case, the multiplier of 15 was applied and 1/3rd was deducted towards the personal expenses which means that the Court has assumed the income of the victims aged more than 20 years to be Rs. 8,333/- per month and that of victims aged less than 20 years to be Rs. 6,249/- per month. The calculation of the compensation would be as under :For victims aged more than 20 years:(Rs. 8,333/- less 1/3rd)x 12 x 15 = Rs. 10 lakhs. For victims aged less than 20 years:(Rs. 6249/- less 1/3rd) x 15 = Rs. 7.5 lakhs.

21. It is relevant to note that the Uphaar Tragedy took place on 13 th June, 1997 and the minimum wages at the relevant time ranged from Rs. 1677/- for unskilled workers to Rs. 2437/- for graduates. It is thus clear that although there was no proof of the income of the victims, the Supreme Court did not find it proper to apply the minimum wages.

22. In National Insurance Company Limited Vs. Gaje Singh (supra), accident resulted in death of 11 years old child who was a student of 5th standard. The deceased was a brilliant student of 5th standard of D.L.D.A.V. Model School, Shalimar Bagh, Delhi. The deceased had secured 78.9% marks in 3rd standard and 80.9% marks in 4th standard. The deceased had also participated in various competitions. The deceased had secured 1st position in English and Hindi rhyme competition in LKG. The deceased had also participated in the Intra School Bournvita Quiz Contest. The deceased had also participated voluntarily in Cancer Awareness Campaign of Cancer Aid Society. PW-1, father of the deceased was working as a teacher in a government school and his wife was working with Allahabad Bank. The deceased was ambitious to become an Engineer. The elder brother of the deceased was an Engineering student. This Court, following the principles laid down by the Supreme Court in MCD Vs. Association of Victims of Uphaar Tragedy (supra) awarded compensation of Rs.9,35,200/- to the legal representatives of deceased.

23. In United India Insurance Company Vs. Kanwar Lal (supra), the accident resulted in death of an 18 years old student of 12th standard. The deceased was an outstanding/brilliant student of 12th standard in Mount St. Marys School, Delhi Cantt. and was awarded many certificates by the school. The deceased was interested to do C.A and M.B.A and had a very bright future. The school certificate of the deceased was proved. The younger brother of the deceased had completed the engineering course. This Court, following MCD Vs. Association of Victims of Uphaar Tragedy (supra), awarded compensation of Rs.10,00,000/- to the legal representatives of the deceased child.

24. This case is squarely covered by the principles laid down in the aforesaid judgements. Following the aforesaid judgements, this Court assumes that deceased, who was a brilliant student of a school and his brother and sister were well educated and doing well in life, would have earned Rs.10,800/- per month after completing his education. The father of the deceased was aged 39 years at the time of the accident. As per the judgement of the Supreme Court in Sarla Verma v. Delhi Transport Corporation, (2009) 6 SCC121 the appropriate multiplier according to the age of the father is 15 and the appropriate deduction towards

personal expenses is 1/2. Deducting 1/2 towards personal expenses and applying the multiplier of 15, the loss of dependency is computed to be Rs.9,72,000/-. Rs.10,000/- is awarded towards loss of love and affection, Rs.10,000/towards loss of estate and Rs.8,000/- towards funeral expenses. The total compensation is computed to be Rs.10,00,000/-.

25. The Trial Court has awarded interest @ 6% per annum which is on a lower side. The Supreme Court consistently awarded 9% interest in MCD v. Association of Victims of Uphaar Tragedy AIR 2012 SC100 Amresh Kumar v. Niranjana Lal Jagdish Parshad Jain (2015) 4 SCC433 Mohinder Kaur v. Hira Nand Sindhi (2015) 4 SCC434 and Jitendra Khimshankar Trivedi & Others v. Kasam Daud Kumbhar and Others (2015) 4 SCC237 Following the aforesaid judgements, the rate of interest is enhanced from 6% per annum to 9% per annum.

26. RFA No.299/2011 is allowed and the decree for Rs.10,00,000/- along with interest @ 9% per annum from the date of filing of suit till realization is passed in favour of the plaintiff and against the defendant. RFA No.307/2011 of the defendant is hereby dismissed.

27. The defendant has deposited the amount in terms of the decree passed by the learned Trial Court with this Court. Let the enhanced decretal amount in terms of this judgement be deposited by the defendant with UCO Bank Delhi High Court Branch by himself by a cheque drawn in the name of UCO Bank A/c Suraj Verma within a period of 30 days.

28. The order with respect to the disbursement of the enhanced amount shall be passed after hearing the parties.

30. Copy of this judgment be given dasti to counsel for both the parties. J.R. MIDHA, J.

JULY8 2015 ak

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com