The Municipal Corporation Of Delhi vs Smt. Sushila Devi & Ors on 7 May, 1999

Equivalent citations: AIR 1999 SUPREME COURT 1929, 1999 AIR SCW 1603, (1999) 2 GUJ LH 559, (1999) 2 CAL HN 9, (1999) 3 RAJ LW 373, (1999) 3 TAC 1, 1999 UJ(SC) 2 1078, (1999) 2 ACJ 801, (1999) 3 ALL WC 2294, (1999) 3 LANDLR 300, (1999) 2 MAD LW 583, 1999 (4) SCC 317, (1999) 5 SUPREME 35, (1999) 3 SCALE 226, (1999) 2 ACC 1, 1999 ALL CJ 2 1445, (1999) 36 ALL LR 587, (1999) 2 CURLJ(CCR) 265, (1999) 3 JT 567 (SC), 1999 (2) KLT SN 72 (SC)

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Bench: A.P.Misra, R.C.Lahoti

PETITIONER:
THE MUNICIPAL CORPORATION OF DELHI

Vs.

RESPONDENT:
SMT. SUSHILA DEVI & ORS.

DATE OF JUDGMENT: 07/05/1999

BENCH:
A.P.Misra, R.C.Lahoti

JUDGMENT:

R.C. LAHOTI,J.

On 18th August, 1964, in the evening, late Suresh Chander and his brother Ramesh Chander were going on a scooter from their office to their residence. The deceased was driving the scooter and his brother was riding his pillion. When they were passing against Sant Permanand Blind Relief Mission Building situated at 20, Alipur Road, a branch of the neem tree standing there suddenly broke down and fell on the head of the deceased. His head was crushed. He was rushed to Irvin Hospital where in spite of medical care and attendance, he died the next day at about 10 a.m. A piece of wood was found embedded into his brain for which a surgery had also to be performed on the deceased.

The deceased was survived by a widow, three minor sons and a minor daughter and his mother. All the six brought a suit for damages claiming Rs.3 lacs. A learned Single Judge sitting on the Original side of the High Court held the Municipal Corporation of Delhi liable for damages in torts and

granted a decree of Rs.90,000/- by way of compensation payable to the widow and the children of the deceased. Two Letters Patent Appeals were preferred. The Municipal Corporation sought for the suit being dismissed while the claimants sought for enhancement in the amount of compensation. The Division Bench dismissed the appeal filed by the Corporation but at the same time partly allowed the appeal preferred by the claimants enhancing the amount of compensation to Rs.1,44,000/- payable with interest calculated at the rate of 6 per cent per annum from the date of suit, i.e., 5.8.1966 till 17.9.1970 when the amount was deposited by the Corporation in the Court for payment to the successful claimants. The Division Bench also allowed interest at the rate of 3 per cent per annum on Rs.90,000/- from the date of deposit in the Court till the date of actual withdrawal of the amount by the claimants and interest at the rate of 6 per cent per annum on Rs.54,000/- from 17.9.1970 till payment. The reasons for the award of additional interest calculated at the rate of 3 per cent per annum on Rs.90,000/- and the legality thereof we shall deal with separately.

Both the parties have preferred further appeals to this Court. However, after hearing the learned counsel for the parties, we have found only three contentions worth being dealt with and the same are noted and disposed of hereinafter. The incident took place on 18.8.1964 in consequence whereof late Suresh Chander died on 19.8.1964. Suit for compensation was filed on 5.8.1966 after issuing a legal notice in April, 1966. The learned counsel for the Municipal Corporation has submitted that Municipal Corporation is an authority governed by the Delhi Municipal Corporation Act, 1957 (hereinafter the Act, for short) and inasmuch as it was sought to be held liable for failure to perform its duty to take care resulting into an accident, it was necessary for the claimants to have served a legal notice of two months' duration under sub-section (1) of Section 478 of the Act and the suit should have been instituted within a period of six months from the date of accrual of cause of action which having not been done, the suit was barred by time.

Section 478 reads as under :-

> "478. Notice to be given of suit - (1) No suit shall be instituted against the Corporation or against any municipal authority or against any municipal officer or other municipal employee or against any person acting under the order or direction of any municipal authority or any municipal officer or other municipal employee, in respect of any act done, or purporting to have been done, in pursuance of this Act or any rule, regulation or bye-law made thereunder until the expiration of two months after notice in writing has been left at the municipal officer and in the case of such officer employee or person, unless notice in writing has also been delivered to him or left at his office or place of residence, and unless such notice states explicitly the cause of action, the nature of the relief sought, the amount of compensation claimed and the name and places of residence of the intending plaintiff, and unless the plain contains a statement that such notice has been so left or delivered.
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> (2) No suit, such as is described in sub-section (1) shall unless it is a suit for the recovery of immovable property or for a declaration of title thereto, be instituted after the expiry of six months from the date on which the cause of action arises.

> (3) Nothing in sub-section (1) shall be deemed to apply to a suit in which the only relief claimed is an injunction of which the object would be defeated by the giving of the notice or the postponement of the institution of the suit."

A bare reading of Section 478 (1) shows that its applicability is attracted to a suit filed `in respect of any act done or purporting to have been done' in pursuance of the Act or Rules, Regulations or Bye-laws made thereunder. The learned counsel for the Corporation submitted that an act includes an omission as well. The Court has found an omission on the part of the Municipal Corporation in discharging its duty to take care and therefore under sub-Section (2) the limitation for filing the suit was six months from the date of accrual of cause of action, i.e., 18th and 19th August, 1964.

The contention has to be rejected forthwith. The bundle of facts constituting the cause of action which has accrued to the claimants are -the ownership and possession of the tree vesting in the Corporation, its maintenance by the Corporation, fall of the branch of the tree over the deceased and the death consequent to the injury sustained. The causa proxima, i.e., the immediate cause of action is the fall of the branch of the tree over the head of the deceased. The fall of the branch of the tree cannot be attributed to any act done or purporting to have been done in pursuance of the Act etc. by the Municipal Corporation or any officer or employee thereof. The liability has arisen and has been sought to be enforced by the claimants under the law of torts. The finding recorded in the suit and in the Letters Patent Appeal is one of negligence on the part of the Municipal Corporation. To such an action Section 478 does not apply at all. The suit filed within a period of two years from the date of accrual of cause of action was governed by Article 82 of the Limitation Act, 1963 and was well within limitation. The plaintiffs' action was founded in tort. The plaintiffs have not rested their case on any statutory duty on the part of the Corporation and failure or negligence in performing such duty.

One of the findings recorded in the suit and upheld in the Letters Patent Appeal by the Division Bench is that the tree in question was a dead tree. It had no bark, foliage or buts. On behalf of the plaintiffs, a Botany Professor was examined as an expert witness who testified that a tree which had no bark was dried up and dying. From the testimony of the Garden Superintendent examined on behalf of the Corporation also it was found that the tree was dead, dried and dangerous. The Deputy Commissioner, Horticulture examined on behalf of the Corporation admitted that the tree looked like a partly worn out tree. The Division Bench has upheld the finding recorded by the learned Trial Judge that the Horticulture Department of the Corporation should have carried out periodical inspections of the trees and should have taken safety precaution to see that the road was safe for its users and such adjoining trees as were dried and dead and/or had projecting branches which could prove to be dangerous to the passers-by were removed. This having not been done, the Municipal Corporation has been negligent in discharging such duty as is owed to the road users by the adjoining property owners, especially the Municipal Corporation. The finding has been arrived at on appreciation of evidence by the learned Trial Judge as also by the Division Bench and we find ourselves in entire agreement with the said finding.

The law is stated in Winfield and Jolowicz on Tort (13th, 1989 ed., p.415) in these words :

> "If damage is done owing to the collapse of the projection on the highway or by some other mischief traceable to it, the occupier of the premises on which it stood is liable if he knew of the defect or ought, on investigation, to have known of it. At any rate this is the rule with respect to a thing that is naturally on the premises e.g. a tree."

In Clerk and Lindsell on Torts (16th, 1989 ed., at pages 546-547 para 10.122) the law on trees is summarised as follows :

> "The fall of trees, branches and other forms of natural growth is governed by the rules of negligence. When trees on land adjoining a public highway fall upon it, the owner is liable if he knew or ought to have known that the falling tree was dangerous. He is not bound to call in an expert to examine the trees, but he is bound to keep a look out and to take notice of such signs as would indicate to a prudent landowner that there was a danger of a tree falling.....the land-owner was held liable when the tree which fell had been dying for some years before and had become a danger which should have been apparent to an ordinary landowner."

In Charlesworth & Percy on Negligence (8th, 1990 ed., at page 668) the law is stated in these terms : .lm20 ".....when a tree, which had been dying for some years and should have been known to be dangerous by an ordinary landowner, fell and caused damage, the owner was held liable. (Brown V. Harrison (1947) W.N.191).

In Hale vs. Hants 1947 (2) All England Reports 628, which is a case of branches of a tree having struck the windows of an omnibus and a piece of glass having struck the plaintiff in the eye, it was held that in the absence of any reason to suspect danger from an overhanging tree or some similar obstruction a driver who is driving close to the kerb when his vehicle is struck by the branch of the tree is not making an unreasonable use of the highway. It was further held that the county council should have known that trees grow and throw out their branches and therefore it was their obligation to see that the tree in its natural growth was curbed in such a way as not to hinder the reasonable use of the highway .

By a catena of decisions, the law is well settled that if there is a tree standing on the defendant's land which is dried or dead and for that reason may fall and the defect is one which is either known or should have been known to the defendant, then the defendant is liable for any injury caused by the fall of the tree (see Brown Vs. Harrison (1947) 63 Law Times Reports 484; Quinn Vs. Scott (1965) 1 W.L.R. 1004, Mackie Vs. Dumbartonshire County Council, (1927) W.N. 247. The duty of the owner/occupier of the premises by the side of the road whereon persons lawfully pass by, extends to guarding against what may happen just by the side of the premises on account of anything dangerous on the premises. The premises must be maintained in a safe state of repair. The owner/occupier cannot escape the liability for injury caused by any dangerous thing existing on the premises by pleading that he had employed a competent person to keep the premises in safe repairs. In Municipal Corporation of Delhi Vs. Subhagwanti and Ors. AIR 1966 SC 1750 a clock tower which was 80 years old collapsed in Chandni Chowk Delhi causing the death of a number of persons. Their Lordships held that the owner could not be permitted to take a defence that he neither knew nor

ought to have known the danger. "The owner is legally responsible irrespective of whether the damage is caused by a patent or a latent defect," - said their Lordships. In our opinion the same principle is applicable to the owner of a tree standing by the side of a road. If the tree is dangerous in the sense that on account of any disease or being dead the tree or its branch is likely to fall and thereby injure any passer-by then such tree or branch must be removed so as to avert the danger to life. It is pertinent to note that it is not the defence of the Municipal Corporation that vis major or an act of God such as storm, tempest, lightning or extraordinary heavy rain had occurred causing the fall of the branch of the tree and hence the Corporation was not liable.

In our opinion the High Court was right in holding the Municipal Corporation negligent in performing its duty under the common law and therefore liable in damages to the plaintiffs for the injury caused to the deceased by fall of the branch of the tree and the consequences flowing therefrom.

The deceased was aged 30. He was employed in a family business wherefrom he was drawing a salary of Rs.650 per month. The learned Trial Judge deducted an amount of Rs.150 per month for expenses incurred on the self and assessed the dependency at Rs.500 per month. The Division Bench found that apart from salary the deceased was also getting commission on sales. The net income of the deceased was arrived at Rs.1,000/- per month wherefrom Rs.200 were deducted as expenses on the self. The dependency was assessed at Rs.800 per month. The learned Trial Judge as well as the Division Bench have adopted a multiplier of 15. Thus, the Division Bench has assessed the quantum of compensation at Rs.1,44,000/- in supersession of Rs.90,000/- assessed by the learned Trial Judge. Though, the learned counsel for the Municipal Corporation has assailed the assessment to be on higher side and the learned counsel for the claimants has submitted that keeping in view the better future prospects of the deceased in the family business, coupled with the youth of the deceased, the monthly income should have been taken at Rs.1826/- but we are of the opinion that the figure of compensation arrived at by the Division Bench is a very reasonable figure and calls for no interference. The multiplier has also been correctly adopted. In the leading case of Susamma Thomas (1994) 2 SCC 176 this Court adopted a multiplier of 12 when the deceased was aged 39. We do not find any fault with the figure of compensation having been arrived at Rs.1,44,000/-. The same is upheld.

The last point of controversy centres around the award of interest. The suit having been decreed by the learned Trial Judge, the Division Bench directed the decretal amount to be deposited by the Municipal Corporation in the Court which was done on 17.9.1970. The amount so deposited was available to be withdrawn by the claimants subject to furnishing security to the satisfaction of the executing court. The claimants could not furnish the security and hence could not withdraw the amount. The Division Bench in the backdrop of such facts directed the amount to be deposited in fixed deposit so as to earn interest. However, the Registry omitted to comply with the order and therefore the amount continued to remain in deposit with the Court. The Division Bench observed that liability for default on the part of the Registry in carrying out the order of the Court could not be fastened on the judgment-debtor Municipal Corporation. Still the Division Bench has directed 3 per cent per annum additional interest to be paid by the Municipal Corporation to the claimants and thereby made an effort at adjusting the equities. It cannot be lost sight of that partly the delay in

release of the amount to the claimants is attributable to their failure to furnish the security as directed by the Division Bench. The claimants have been allowed interest on the decretal amount from the date of the decree though the amount of compensation was quantified only from the date of the passing of the decree. In such circumstances, the direction of the Division Bench in the matter of award of interest is also not liable to be interfered with on consideration of totality of the circumstances.

For the foregoing reasons both the appeals are held liable to be dismissed. Civil Appeal No.687/86 filed by the Municipal Corporation of Delhi is dismissed with costs payable by the appellant-Municipal Corporation to the respondent-claimants. Civil Appeal No.4242/86 filed by the claimants is dismissed without any order as to costs.