02.09.2026
Court No. 12
Item No.05
Cp

F.M.A. 1457 of 2025

Gobinda Chandra Debnath
Vs.
The State of West Bengal & Ors.

Ms. Jhuma Sen,
Mr. Yuvraj Chatterjee,
Mr. Samsul Laskar
.....for the appellant.

Mr. D. N. Roy, Ld. GP
Ms. Susmita Saha Dutta, Ld. AGP
Ms. Madhu Jana
Ms. Tanushree Ghosh

....for the State.

1. The appeal arises out of an order dated July 24, 2025, passed in WPA 4217 of 2025.
2. By the order impugned, the learned Single Judge recorded that the Director of the Regional Institute of Ophthalmology, Kolkata had admitted that the unfortunate incident with regard to serious complications in the eye sight of several patients who had undergone surgery at the Gardenreach SDH/SSH, Metiabruz (Nadial Hospital) South 24-Parganas, was either due to contamination and presence of micro-organisms in the operative devices or in the solutions or for a faulty method of sterilization of the instruments. However, Her

Lordship directed that the writ petitioner should approach the appropriate forum seeking compensation/damages.

3. Hence the appeal.
4. Learned advocate for the appellant submits that victim compensation is a part of the constitutional framework. State does not enjoy any immunity. For acts of medical negligence during the course of treatment of citizens at government hospitals, State is bound by the principle of strict liability. It is submitted that the constitutional court, in exercise of power under Article 226 of the Constitution of India, can direct compensation to be paid on account of such gross negligence by the instrumentalities of the State.
5. Reliance has been placed on several victim compensation schemes and the decisions of the Hon'ble Apex Court through which the concept of constitutional tort has been developed.
6. Reliance is placed on the enquiry report of the medical board as also the written opinion of the Director, RIO, MCH Campus, Kolkata.
7. The learned Additional Government Pleader submits that the unfortunate incident took place some time ago and the recommendation of the medical board with regard to remedial measures are being strictly followed by the present regime.

She submits that the incident took place under the erstwhile dispensation.

8. We have considered the rival contentions of the parties. The liability of the state cannot be avoided.

9. The Ministry of Health and Family Welfare, Government of India has implemented several programmes for promotion of eye health and prevention of visual impairment. The State Government had also adopted similar schemes. Undoubtedly, right to eye sight flows from the right to life guaranteed under Article 21 of the Constitution of India. The appellant was an electrician by profession. He was self-employed and the sole earning member of his family. He availed of the treatment at a government hospital. Apart from the appellant, other similar victims underwent the same fate. The cataract surgery led to complications, infections and series of treatments. The Director, RIO, MCH, Campus opined that the unfortunate incident took place due to contamination of micro-organisms in the operative devices or in the solutions/fluids and/or for faulty method of sterilization of the instruments. Contemporaneous documents annexed to the writ petition indicate the extensive treatment which the appellant had to undergo

after the surgery at Gardenreach State General Hospital and Metiabruz Super-Speciality Hospital. We think it apposite to set out the relevant portion of the report of the Director, RIO, MCH Campus.

> "At present (04/07/2024) total 16 (sixteen) patients are admitted in RIO, MCH campus, Kolkata, Pars Plana Vitrectomy was done in seven (07) patients and others are on standard management protocol. All the patients have received Intravitreal antibiotics and are periodically evaluated by the respective units and progression noted accordingly
> 5 Regarding OT at Gardenreach SDH/SSH:-
> a) Before those days of surgery swabs from OT were sent for culture and sensitivity to SSKM hospital, Kolkata on 24/06/2024 and report received was "no growth" on 01/07/2024
> b) Hospital authority has sent swabs from eye ward, OT, with consumables (of the same batch) used in the operation theatre on above mentioned days to SSKM hospital on 01/07/2024 and STMH, Kolkata on 02/07/2024-waiting for the reports.
> In my opinion, this unfortunate Incident has taken place may be due to contamination of micro-organisms in the operative devices / solution Including fluids and/or faulty method of sterilisation of the Instruments."

10. We find a contradictory report with regard to the issue of medical negligence prepared by the medical board-cum-enquiry committee. The eye surgery (cataract) took place on June 28, 2024 and we find from the report of the medical board that the OT in the Gardenreach State General Hospital and Metiabruz Super-Speciality Hospital

was closed since July, 2024. We also find from the report that the medical board recommended various changes in the OT area with regard to the entrance, placement of the wash basin and closure of one utility room inside the OT chamber. The said recommendations had been made earlier as well and reiterated. Thus, the placement of the OT entrance, wash basin etc. had been found to be improper or inadequate for carrying out surgeries of like nature. We also find that the said OT which was used to conduct the surgeries on the patients, did not have trained and dedicated nursing staff and OT attendants. The board recommended training sessions for the nursing staff etc. They were also required to undergo a one week orientation session at RIO, Kolkata followed by a three days' exposure visit at SSKM eye OT. Recommendation was also made to ensure sterilization and autoclaving of the OT items on a daily basis. Foot wash and foot cover to the patients were also recommended.

11. After all these recommendations, we are surprised to find that the board was of the view that no medical negligence had taken place. This observation is not only contrary to the findings of the Director, but also to the medical history/treatment sheets of the patient. The

nature of the recommendations clearly indicate that the hospital was neither ready nor equipped to treat any surgical case for the eye. Whereas 44 people of the locality had undergone treatment in the said hospital, out of which 22, suffered visual impairment.

12. Under such circumstances, we do not accept the casual observation of the medical board that there was no medical negligence. The said observation is bereft of any reason and not supported by any contemporaneous documents. It is strange that the same medical board which advised autoclaving, sterilization, foot wash, foot cover, orientation programme for the staff and placement of dedicated staff and nurses at the OT, held that there was no negligence in the treatment had been undertaken in the hospital, which did not have trained OT staff, nurses and necessary infrastructure. There is no explanation as to why the hospital was closed. There was sheer negligence on the part of the hospital authorities and also the state government, in allowing surgery without proper check and measure.

13. In any event, the learned Single Judge has gone through the records and come to a specific finding with regard to the report of the Director, RIO that, the injury caused to the eye sight of the appellant

and similarly situated patients, were due to contamination by microorganisms and faulty sterilization. We also find that the hospital in which the appellant had undergone treatment had, thereafter, sent the appellant for treatment to RIO and there are records which would show that the appellant had suffered loss of vision which had rendered him partially blind.

14. Thus, considering the surrounding circumstances, records etc., we are of the considered opinion that the loss of vision has caused serious monetary loss to the appellant and has negated any future prospect. He cannot sustain himself and his family, with a steady income.

15. The principle on which we can award compensation without referring the appellant to the civil forum is based on a public law remedy. The principle of strict liability for violation of the fundamental right of the appellant is applicable. Right to life and livelihood includes right to live with dignity and enjoy good health. Good quality of life is embedded in right to life. Loss of eye sight has affected the quality of the life of the appellant. The State has a vicarious liability for the actions of the hospital. The report of the medical board clearly indicates infrastructural gaps and we are of the opinion that the risks which the hospital had

taken to perform the surgeries on the poor citizens demonstrates rash and negligent actions. The State hospitals are to be run with the basic infrastructural facilities and in this case, the lack of supervision as also the callousness with which the surgery was performed without ensuring proper infrastructure, had put the lives of the citizens at stake. This is an act of constitutional tort. State is duty bound to provide all infrastructural facilities to run the State hospitals.

16. Constitutional courts have an obligation to protect and uphold the fundamental rights of citizens. The courts have a duty to do complete justice and on such principle, we are empowered to award monetary compensation as a mode of redressal and a balm to the wound.

17. In ***D.K. Basu v. State of W.B.*** reported in ***AIR 1997 SC 610***, the Apex Court indicated that claim for compensation for the wrong committed was on account of the principle of strict liability and as such, the principle of sovereign immunity was not available in such cases. The relevant observation would read thus:

> "55. Thus, to sum up, it is now a well accepted proposition in most of the jurisdictions, that monetary or pecuniary compensation is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressal of the established infringement of the fundamental right to life of a citizen by the

public servants and the State is vicariously liable for their acts. The claim of the citizen is based on the principle of strict liability to which the defence of sovereign immunity is not available and the citizen must revive the amount of compensation from the State, which shall have the right to be indemnified by the wrong doer, in the assessment of compensation, the emphasis has to be on the compensatory and not on punitive element. The objective is to apply balm to the wounds and not to punish the transgressor or the offender, as awarding appropriate punishment for the offence (irrespective of compensation) must be left to the criminal courts in which the offender is prosecuted, which the State, in law, is duty bound to do, The award of compensation in the public law jurisdiction is also without prejudice to any other action like civil suit for damages which is lawfully available to the victim or the heirs of the deceased victim with respect to the same matter for the tortious act committed by the functionaries of the State. The quantum of compensation will, of course, depend upon the peculiar facts of each case and no strait jacket formula can be evolved in that behalf. The relief to redress the wrong for the established invasion of the fundamental rights of the citizen, under he public law jurisdiction is, thus, in addition to the traditional remedies and not it derogation of them. The amount of compensation as awarded by the Court and paid by the State to redress the wrong done, may in a given case, be adjusted against any amount which may be awarded to the claimant by way of damages in a civil suit.

18. In the matter of ***Nilabati Behera vs State of Orissa and Ors.*** reported in ***(1993) 2 SCC 746,*** the Hon'ble Apex Court held as follows:-

> **"14.** In this context, it is sufficient to say that the decision of this Court in *Kasturilal* [(1965) 1 SCR 375 : AIR 1965 SC 1039 : (1965) 2 Cri LJ 144] upholding the State's plea of sovereign immunity for tortious acts of its servants is confined to the sphere of liability in tort, which is distinct from the State's liability for contravention of fundamental rights to which the doctrine of sovereign immunity has no application in the constitutional

scheme, and is no defence to the constitutional remedy under Articles 32 and 226 of the Constitution which enables award of compensation for contravention of fundamental rights, when the only practicable mode of enforcement of the fundamental rights can be the award of compensation. The decisions of this Court in *Rudul Sah* [(1983) 4 SCC 141 : 1983 SCC (Cri) 798 : (1983) 3 SCR 508] and others in that line relate to award of compensation for contravention of fundamental rights, in the constitutional remedy under Articles 32 and 226 of the Constitution. On the other hand, *Kasturilal* [(1965) 1 SCR 375 : AIR 1965 SC 1039 : (1965) 2 Cri LJ 144] related to value of goods seized and not returned to the owner due to the fault of Government servants, the claim being of damages for the tort of conversion under the ordinary process, and not a claim for compensation for violation of fundamental rights. *Kasturilal* [(1965) 1 SCR 375 : AIR 1965 SC 1039 : (1965) 2 Cri LJ 144] is, therefore, inapplicable in this context and distinguishable.

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17. It follows that 'a claim in public law for compensation' for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution, is an acknowledged remedy for enforcement and protection of such rights, and such a claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right is 'distinct from, and in addition to, the remedy in private law for damages for the tort' resulting from the contravention of the fundamental right. The defence of sovereign immunity being inapplicable, and alien to the concept of guarantee of fundamental rights, there can be no question of such a defence being available in the constitutional remedy. It is this principle which justifies award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution, when that is the only practicable mode of redress available for the contravention made by the State or its servants in the purported

exercise of their powers, and enforcement of the fundamental right is claimed by resort to the remedy in public law under the Constitution by recourse to Articles 32 and 226 of the Constitution. This is what was indicated in *Rudul Sah* [(1983) 4 SCC 141 : 1983 SCC (Cri) 798 : (1983) 3 SCR 508] and is the basis of the subsequent decisions in which compensation was awarded under Articles 32 and 226 of the Constitution, for contravention of fundamental rights.

18. A useful discussion on this topic which brings out the distinction between the remedy in public law based on strict liability for violation of a fundamental right enabling award of compensation, to which the defence of sovereign immunity is inapplicable, and the private law remedy, wherein vicarious liability of the State in tort may arise, is to be found in Ratanlal & Dhirajlal's Law of Torts, 22nd Edition, 1992, by Justice G.P. Singh, at pages 44 to 48.

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20. We respectfully concur with the view that the court is not helpless and the wide powers given to this Court by Article 32, which itself is a fundamental right, imposes a constitutional obligation on this Court to forge such new tools, which may be necessary for doing complete justice and enforcing the fundamental rights guaranteed in the Constitution, which enable the award of monetary compensation in appropriate cases, where that is the only mode of redress available. The power available to this Court under Article 142 is also an enabling provision in this behalf. The contrary view would not merely render the court powerless and the constitutional guarantee a mirage, but may, in certain situations, be an incentive to extinguish life, if for the extreme contravention the court is powerless to grant any relief against the State, except by punishment of the wrongdoer for the resulting offence, and recovery of damages under private law, by the ordinary process. If the guarantee that deprivation of life and personal liberty cannot be made except in accordance with law, is to be real, the enforcement of the right in case of every contravention must

> also be possible in the constitutional scheme, the mode of redress being that which is appropriate in the facts of each case. This remedy in public law has to be more readily available when invoked by the have-nots, who are not possessed of the wherewithal for enforcement of their rights in private law, even though its exercise is to be tempered by judicial restraint to avoid circumvention of private law remedies, where more appropriate.
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> **22.** The above discussion indicates the principle on which the court's power under Articles 32 and 226 of the Constitution is exercised to award monetary compensation for contravention of a fundamental right. This was indicated in *Rudul Sah* [(1983) 4 SCC 141 : 1983 SCC (Cri) 798 : (1983) 3 SCR 508] and certain further observations therein adverted to earlier, which may tend to minimise the effect of the principle indicated therein, do not really detract from that principle. This is how the decisions of this Court in *Rudul Sah* [(1983) 4 SCC 141 : 1983 SCC (Cri) 798 : (1983) 3 SCR 508] and others in that line have to be understood and *Kasturilal* [(1965) 1 SCR 375 : AIR 1965 SC 1039 : (1965) 2 Cri LJ 144] distinguished therefrom. We have considered this question at some length in view of the doubt raised, at times, about the propriety of awarding compensation in such proceedings, instead of directing the claimant to resort to the ordinary process of recovery of damages by recourse to an action in tort. In the present case, on the finding reached, it is a clear case for award of compensation to the petitioner for the custodial death of her son."

19. In the matter of ***Achutrao Haribhau Khodwa v. State of Maharashtra*** reported in ***(1996) 2 SCC 634***, while considering the doctrine of res ipsa loquitur and the vicarious liability of the Government for the negligent act of its

employees, the Apex Court observed that, running a hospital was not in exercise of the State's sovereign power and as such, the State was vicariously liable in tort for the tortious acts committed by its servants. The relevant observation reads thus:

> "11. The High Court observed that the Government cannot be held liable in tort for tortious acts committed in a hospital maintained by it because it considered that maintaining and running a hospital was an exercise of the State's sovereign power. We do not think that this conclusion is correct. Running a hospital is a welfare activity undertaken by the Government but it is not an exclusive function or activity of the Government so as to be classified as one which could be regarded as being in exercise of its sovereign power. In Kasturi Lal Case itself, in the passage which has been quoted hereinabove, this Court noticed that in pursuit of the welfare ideal the Government may enter into many commercial and other activities which have no relation to the traditional concept of governmental activity in exercise of sovereign power. Just as running of passenger buses for the benefit of general public is not a sovereign function, similarly the running of a hospital, where the members of the general public can come for treatment, cannot also be regarded as being an activity having a sovereign character. This being so, the State would be vicariously liable for the damages which may become payable on account of negligence of its doctors or other employees."

20. The Apex Court in **Paschim Banga Khet Mazdoor Samity v. State of W.B.** *reported in* **(1996) 4 SCC 37**, observed that the Constitution envisaged establishment of a welfare State at the federal level as well as at the State level and that the primary

duty of the Government was to secure the welfare of the people. Medical facilities for the people was an essential part of the obligations undertaken by the Government in a welfare State. The Apex Court made it very clear that failure on the part of Government hospitals to provide timely medical treatment to a person in need of such treatment resulted in violating of his right to life guaranteed under Article 21 of the Constitution of India.

21. The appeal is accordingly allowed. The order impugned is set aside to the extent of relegating the appellant to an appropriate forum.

22. Compensation to the tune of Rs.5,00,000/- shall be paid to the appellant under the special circumstances we have discussed hereinabove, within eight weeks from date, by an account payee cheque or demand draft or RTGS. The learned Advocates will work out the modalities. If the amount is not paid within the stipulated time, the appellant will be entitled to simple interest to the tune of 6% per annum to be calculated from the date of this order, till the date of actual payment.

We arrive at this amount upon considering the expenses incurred during the treatment, loss of future prospect, and the fact that the appellant was the sole bread-earner of the family.

23. However, there shall be no order as to costs.

24. Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)

(Arjun Ray Mukherjee, J.)